

Fast fix to FLSA error can save you, but 'correction window' closes fast

If you screw up on a Fair Labor Standards Act (FLSA) pay issue, don't count on the "window of corrections" to save you. Sure, this Labor Department rule allows you to fix FLSA mistakes without losing the employees' exempt status. To use this window, you usually need to show that your FLSA mistake was "inadvertent" and that you reimbursed the worker to comply with the law.

But courts are becoming stingier about letting employers use the window of corrections to remedy FLSA mistakes. Labor's position is that this fix is not available to companies that have a policy or practice of defying the FLSA, even if they act to correct it. And lately, courts are more willing to side with this tight interpretation.

Still, some courts will let you use the window of corrections if you act fast and the mistake is clearly inadvertent, as this case below shows.

Bottom line: Educate managers on the FLSA to avoid pay mistakes in the first place. If you do slip up, don't use this fix-it rule if employees can show a pattern of illegal pay mistakes.

Recent case: A group of KFC restaurants followed a policy of deducting cash-register shortages from its managers' monthly bonuses. But the restaurant unwisely changed its policy and started taking the deductions from the managers' weekly salaries instead.

After four months, the company's attorney told the restaurant to stop taking deductions from weekly pay. It did, plus it repaid managers the improper amounts it deducted.

Even so, the managers sued, alleging that they were not exempt from overtime pay requirements because their weekly pay was subject to improper deductions.

A lower court sided with the managers. But an appeals court reversed and sided with the company, saying employers can save themselves from ruining an employees' exempt status as long as the company's mistake was inadvertent, it reimburses the correct amount and promises to comply with the law in the future. (*Moore v. Hannon Food Servs. Inc.*, No. 01-60844, 5th Cir., 2003)