

Paying back 'Borrowed' vacation leave

Q. We allow our employees to “borrow” unearned vacation time. Our policy provides that if employees quit or are terminated with a “negative” vacation balance, the amount that they owe us for the vacation time taken before it was earned will be deducted from their final pay. Can we do this?

A. This is one of the rare instances where the U.S. Labor Department actually permits deductions from an employee’s wages that will result in the employee receiving less than minimum wage for the hours worked. If the employee has been informed in advance of the unearned vacation time policy and that the employer will deduct from the employee’s pay the cost of such vacation time if he or she leaves the company prior to earning sufficient time to eliminate the vacation deficit, the amount of wages advanced as paid vacation time can be considered a loan or cash advance to which the employee has voluntarily agreed.

As such, the employer may deduct the amount advanced for the vacation hours from the employee’s final paycheck, regardless of whether the deduction brings the employee’s pay below the applicable minimum wage.