

# My Clients Are Canceling Contracts and Demanding Refunds, but I've Already Paid Commissions to My Sales Force ... What Do I Do?

March 19, 2020

*Scenario:*

Employee is an FLSA-exempt outside sales employee and compensated 100% through sales commissions. Company has already paid Employee most of the commission due for a live trade show that has now been canceled due to COVID-19. Vendors are seeking a full refund due to the virus, and Company has informed Employee that if any of her accounts accept the full refund (which of course they will), the already-paid commissions will be deducted from her future sales commissions. Is this a violation of the FLSA?

*Answer:*

Probably not. While this could be a tough pill for both sides to swallow, a setoff against future commissions does not appear to violate the FLSA because the FLSA's salary basis test requirements do not apply to those meeting the outside sales exemption. Of course, the employer would need to check any commission agreement with the employee or state wage laws.

There's also nothing preventing an employer from seeking a gradual recovery once things return to normal — which might help it retain its sales force!

It's also too early to say whether and to what extent employers will receive state or federal government stimulus relief, and how such measures would prevent this sort of future wage reduction.

# Related Practices

## Labor & Employment

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.