

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.

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