

OC Register Q&A – Incentive Plan

Q. I work for a large luxury car dealership in Orange County. A couple of months ago our General Manager implemented a new program to increase our customer satisfaction score. If we receive 100% on a survey we receive \$100 each. If we score above or at regional average we receive \$50. However, if we are 0.1% below regional average we get a \$50 deduction; at 0.2% or more the deduction is \$200. A few of us have received enough negative surveys that we actually have more money deducted than earned at this bonus program. Is this practice legal?

A. Bonus plans are considered "wages" under the California Labor Code and therefore are subject to California's anti-forfeiture laws. A significant case was recently decided by the California Court of Appeal in *Ralphs Grocery Co. v. Superior Court (Swanson)*, which addressed whether the prohibition against deducting cash and inventory shortages from wages prohibits the employer from implementing an incentive compensation plan for employees in which the amount of the incentive bonus is based on the achievement of sales and profitability goals. The decision also addressed the prohibition against deducting workers' compensation costs from bonus plans for both to exempt (employees paid an annual salary) and non-exempt employees (employees paid by the hour).

Employers need to be especially careful when drafting provisions of a bonus plan, especially when elements of the plan may result in forfeitures and deductions. For non-exempt employees, employers are prohibited from making any deductions from any earnings for cash shortages, breakage or loss of equipment unless it can be shown that the loss was caused by a dishonest act, willful act or gross negligence of that employee. A plan that rewards staff for meeting specified sales targets may be acceptable. However, any deductions for not meeting identified sales levels (like subtractions from commissions for unidentified returns), might lead to a claim that the bonus plan is unlawful because it takes away wages for reasons beyond the employee's control.