

Wage Deduction From Final Paycheck Narrowly Allowed by Ninth Circuit

January 31, 2014

In a recent unpublished decision, the Ninth Circuit Court of Appeals upheld a trial court's decision that Costco Wholesale did not violate the Fair Labor Standards Act (FLSA) or the California Labor Code when it deducted the outstanding balances due on company-guaranteed credit cards from the final paycheck of each discharged employee.

Ward v. Costco Wholesale Corp., No. 11-56757 (January 9, 2014): In a recent unpublished decision, the Ninth Circuit Court of Appeals upheld a trial court's decision that Costco Wholesale did not violate the Fair Labor Standards Act (FLSA) or the California Labor Code when it deducted the outstanding balances due on company-guaranteed credit cards from the final paycheck of each discharged employee.

The lead plaintiff in the collective action, Carrie Ward, worked for Costco from 2003 to May 2006. While still employed by Costco, Ward applied for a company-guaranteed credit card. At the time of her discharge from Costco, she earned \$13.37 per hour and owed \$1,139 on her card. Costco deducted the \$1,139 balance from her final paycheck.

Ward and 18 other similarly situated former employees sued Costco, alleging violations of the FLSA and the California Labor Code. Costco claimed that each employee who applied for a company-guaranteed credit card had signed an application agreeing that any outstanding balance on the credit card could be deducted from his or her final paycheck.

As to the FLSA claim, the Ninth Circuit panel found that 1) the FLSA does not require employers to pay all accrued vacation and sick pay to employees upon termination; 2) the amount that Costco deducted under the credit card agreement did not exceed the amount of employees' balance of vacation and sick pay; and 3) employees' hourly wages exceeded minimum wage and overtime requirements.

The Ninth Circuit rejected the claim that the deductions were a violation of the California Labor Code. In arriving at this conclusion, the court found it relevant that each employee had agreed that any remaining

balance on the credit card would be deducted from the employee's "final paycheck upon separation of employment with Costco." The court noted that because "no earned, unpaid wages remain[ed] outstanding upon termination," Costco did not violate the Labor Code. The court further noted that this conclusion is based on the fact that the employees had elected to receive some of their compensation in the form of credit card balances rather than in cash.

According to a shareholder in the San Francisco office of Ogletree Deakins: "The *Ward v. Costco Wholesale Corp.* case appears to be a very narrow decision. This is because the guaranteed nature of the credit cards required the employer to pay a portion of the employees' wages to a third party as specifically authorized by the employees. Employers should be cautious in applying this *unpublished* holding to deductions from the final wage payments to employees in any circumstances other than those addressed in the decision."

TOPICS

California, Employment Law, State Developments, Wage and Hour