

New York Labor Law Significantly Expands the Scope of Permissible Wage Deductions

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New York State has finally codified its position on permissible deductions from employees' wages. On November 6, 2012, an amendment to New York's Labor Law ("Labor Law") will take effect. The amendment expands the list of employee wage deductions that New York employers may lawfully make, so long as the employee authorizes such deductions.

On September 7, 2012, Governor Andrew Cuomo signed into law the legislation that he introduced, which amends Labor Law Section 193 ("Section 193"), relating to permissible deductions from employees' wages. Currently, the Labor Law expressly prohibits deductions from wages, with limited exceptions. Over the past few years, the New York State Department of Labor has issued several opinion letters severely limiting the types of permissible deductions—essentially forbidding any deductions not specifically set forth in pre-amendment Section 193.

The amended Section 193, on the other hand, includes several deductions that are now permitted and provides employers with the ability to recoup inadvertent mathematical or clerical wage overpayments. The amendment also permits employers to create repayment schedules, via wage deduction, for wage advances to employees. One caveat, however, is that the amendment to Section 193 expires and will be deemed repealed three years after its effective date.

New Categories of Permissible Wage Deductions

Pursuant to Section 193, as amended, with an employee's prior written authorization, an employer may now deduct the following expenses from its employees' wages:

- Discounted parking or passes, tokens, fare cards, vouchers, or other items that permit the employee to use mass transit;
- Fitness centers, health clubs, and/or gym membership dues;

- Cafeteria, vending machine, and pharmacy purchases made at the employer's place of business;
- Purchases made at gifts shops operated by the employer, if the employer is a hospital, college, or university;
- Tuition, room, board, and fees for pre-school, nursery, primary, secondary, and post-secondary educational institutions;
- Daycare, before-school, and after-school care expenses; and
- Payments for employee housing provided at no more than market rates by nonprofit hospitals or their affiliates.

Employers may also continue to deduct wages with an employee's authorization for the categories that existed in Section 193 prior to the amendment, with certain additions and clarifications:

- Insurance premiums and "pre-paid legal plans";
- Pension or health and welfare benefits;
- Contributions to a bona fide charitable organization;
- United States bonds;
- Labor union dues or assessments; and
- ***Similar payments for the benefit of the employee.***

Recoupment of Wages for Overpayments and Advances

Significantly, the Labor Law eases New York employers' abilities to use wage deductions for the purpose of recovering overpayments, so long as such overpayments were due to the employers' mathematical or clerical errors. Employers can also deduct from wages to recoup salary advances. In making such recoveries or repayments, employers must comply with regulations to be promulgated by the Commissioner of Labor associated with these purposes ("Regulations"). The Regulations, which have not yet been issued, will require the Commissioner of Labor to set forth provisions governing: (1) the size of overpayments that will be covered by Section 193; (2) the timing, frequency, duration, and method of the recovery or repayment; (3) limitations on the periodic amount of such recovery or repayment; (4) notice requirements to the employee (which must be made in advance of the recovery or repayment); and (5) procedures for employees to (a) dispute any overpayments or repayment, and (b) delay the commencement of the recovery or repayment.

Limitations on Wage Deductions

Additionally, the Labor Law now imposes limitations on deductions for certain types of employee purchases, including:

- Purchases made at events sponsored by a bona fide charitable organization affiliated with an employer where at least 20 percent of the profits from such event are being contributed to the charitable organization;
- Purchases made in the employer's cafeteria or vending machines;
- Gift shop purchases if the employer is a college, university, or hospital; and
- Pharmacy purchases made at the employer's place of business.

Specifically, notwithstanding the fact that employees must authorize these above-itemized deductions, the total aggregate amount of the purchases within a pay period must:

- not exceed a maximum aggregate limit established by the employer; and
- not exceed a maximum limit established by the employee, which limit may be for any amount (in \$10 increments), up to the maximum amount established by the employer.

Employers must provide employees with access in their workplace to current account information detailing their expenditures within these categories of deductions and a total of the amount that will be deducted from the employee's pay during the next pay period. Further, this information must be made available in printed form or the employee should be able to print the information, at no charge.

Other New Features

Section 193 now clarifies that deductions made in conjunction with an employer-sponsored pre-tax contribution plan are permissible. The Labor Law also allows employers to make charges against wages if required or permitted under the provisions of a current collective bargaining agreement.

Significantly, with the exception of wage deductions required or authorized in a current existing collective bargaining agreement, an employee's authorization for any and all wage deductions *may be revoked at any time* by the employee, so long as the revocation is in writing. If an employee revokes a prior authorization, the employer must stop the wage deduction as soon as practicable, and in no event more than four pay periods or eight weeks after the authorization has been withdrawn, whichever is sooner.

From a procedural standpoint, employers must notify employees as soon as practicable regarding any change in the amount of the deduction, whether there is a substantial change in the benefits of the deduction or the manner in which deductions are made. Prior to the implementation of an increased deduction, employers also must notify employees of the change. Finally, the law requires that employee authorization forms must be kept on file for six years after employment terminates.

What Employers Should Do Now

- Update policies and employee handbooks to reflect the permissible deductions allowed under the Labor Law.
- Update authorization forms for employees to provide written consent for employers to make the deductions.
- Await the Regulations regarding the timing, frequency, duration, and method of the recovery or repayment; limitations on the amount to deduct; the notice requirement to the employee in advance of the recovery or repayment; and procedures to dispute the amounts of overpayment or repayment.
- Consider setting a “maximum aggregate limit” that can be deducted from an employee’s paycheck.
- Ensure that payroll systems have the capability to make any newly implemented deductions.
- Consider whether your organization wishes to avail itself of any of these new rules—i.e., re-instituting deductions for gym memberships or a loan repayment.

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