



For your information

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New York Expands Permissible Wage Deductions by Employers

On September 7, 2012, New York Governor Andrew Cuomo signed into law legislation that expands the scope of permissible deductions from employees' wages and imposes additional notice and recordkeeping requirements on employers. The new law, which takes effect on November 6, 2012, allows employers to make deductions authorized by their employees to recover salary advances and accidental wage overpayments, among other things. Until the New York State Department of Labor issues applicable regulations, employers should exercise caution in implementing new wage deduction policies.

Background

New York Labor Law [Section 193](#) currently permits wage deductions only for items expressly authorized by law, such as tax withholdings, insurance premiums, and for certain other items provided the deductions are expressly authorized by the employee in writing and are "for the benefit of the employee." Insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, and payments of union dues are examples of permissible deductions. Unlike other states, New York does not allow employers to recoup wage overpayments and advances through wage deductions. In a series of written opinions beginning in late 2008, the New York State Department of Labor (NYSDOL) confirmed that such deductions, even with the employee's written consent, are not permissible under New York law.

Permissible Wage Deductions

On June 21, 2012, the New York legislature passed [legislation](#) (A.10785) to expand the scope of permissible deductions from employees' wages. Governor Cuomo signed the bill into law on September 7, 2012. The law, which takes effect on November 6, 2012, will expire after three years unless extended by the legislature.

The new law amends Labor Law Section 193 in several important ways. First, it allows employers to make authorized deductions from employees' wages for overpayments resulting from mathematical or clerical errors and for salary advances, subject to regulations to be issued by the NYSDOL. The regulations are expected to address, among other things: the size of the overpayment amenable to

deduction; the method of deduction; when, how often, and for how long deductions can be made; employee notice; and procedures to resolve disputed deductions.

Second, the law expands the list of wage deductions that may be made with an employee's written authorization to include deductions for:

- Prepaid legal plans
- Purchases at certain charitable events
- Discounted parking or passes, fare cards, or vouchers related to mass transit
- Fitness, health club, or gym memberships
- Cafeteria, vending machine, and pharmacy purchases at the employer's premises
- Tuition, room, board, and fees related to certain education institutions
- Certain child care expenses
- Payments for certain housing provided by nonprofit hospitals or their affiliates.

Certain categories of permissible deductions (such as cafeteria and pharmacy purchases) may be subject to maximum aggregate limits per pay period set by the employer and/or employee.

With the exception of wage deductions required or authorized in an existing collective bargaining agreement, an authorization for wage deductions may be revoked by an employee at any time. The employer must stop any revoked wage deduction as soon as practicable, but no more than four pay periods or eight weeks after the authorization to deduct has been withdrawn, whichever is earlier.

Notice and Recordkeeping Requirements

Employers must give employees written notice of the terms and conditions of the payment and/or benefits of the deduction, and how the deduction will be made before making it. In addition, employers must provide advance notice of any substantial change in the terms or conditions of the payment, such as a change in the amount or benefits of the deduction, or how the deduction is made.

The new law imposes additional recordkeeping requirements for employers. Employers will be required to maintain employees' written authorizations for the period of an employee's employment and for six years after employment ends.

Employers also must allow employees to access, in the workplace, their current account information regarding charitable, cafeteria, vending machine, and pharmaceutical deductions, as well as deductions that fall in the category of "other deductions for the benefit of the employee." Along with information detailing the individual deductions in these categories, the employer also must provide a running total of

the amount that will be deducted during the next applicable pay period. Employers must provide this information without charge, either in writing or in a printable format.

Conclusion

With fewer limitations on the ability to recoup salary advances and payments, employers may wish to consider whether to institute a more liberal allowance policy. Employers could, for example, provide advances for vacation or tuition reimbursement. Employers also may want to explore whether to offer employees additional benefits, such as discounted-rate gym memberships, paid for by the employee through wage deduction. Because the new law relies on regulations to be promulgated by the NYSDOL governing, among other things, the timing and frequency of deductions, employers may decide not to change their current pay practices until the NYSDOL weighs in.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.
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