

Governor Signs Amendment to New York Wage Deduction Law

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Law permits employers to make more employee wage deductions.

Governor Cuomo has signed an amendment to New York Labor Law § 193, that expands permissible deductions from employee wages, effective November 6, 2012. Amended Labor Law § 193 greatly expands the circumstances under which an employer may deduct from wages, while also adding additional procedural and notice requirements applicable to such deductions.

Prior to this amendment, § 193 was considerably restrictive as to when wage deductions were permitted. A deduction required the express consent of the employee and had to be made in relation to a narrow category of deductions made "for the benefit of the employee." These categories were limited to payments made for insurance premiums, pension and health benefits, charitable contributions, payments for U.S. bonds, labor organization payments, and other "similar payments." The Department of Labor and courts maintained a conservative position on what other deductions might qualify. Notably, deductions for loans, advances, inadvertent overpayments, and the procurement of various goods and services (e.g., laptops, gym memberships, etc.) all had been found to be impermissible deductions.

The now amended § 193 expands the expressly authorized categories of deductions for "the benefit of the employee," including deductions previously found improper. Deductions for the benefit of the employee now include payments made for:

- prepaid legal plans;
- purchases at charitable fundraisers;
- transportation costs (e.g., parking passes and mass transit fees);
- gym membership;
- food purchases at the employer's place of business (and gift shop purchases for certain educational institutions or hospital employers);
- pharmacy purchases at the employer's place of business;
- tuition and room and board for certain educational institutions;
- child care expenses (e.g., day care, after-school care, etc.); and
- housing payments made by non-profit hospitals.

Deductions for any of these new categories still require express, written authorization from the employee, though employees may now provide their consent pursuant to a collective bargaining agreement. The amendment also adds a notice requirement before such authorization can be given:

the employer must first give written notice detailing all terms and conditions of the relevant payment and the manner in which the deduction shall be made. Any changes to deduction amounts or significant changes to the benefit or manner of deduction must likewise be accompanied by written notice to the employee prior to implementation of the change. Employers must also keep records of such authorization for up to six years after the departure of the employee.

The catch-all category for "similar payments for the benefit of the employee" remains in the statute. Deductions related to charitable fundraisers, food and gift shop purchases, pharmacy purchases, and any "similar payments" are all to be subject to maximum aggregate limits and additional record-keeping requirements set forth in § 193(3)(b). Further, unless a deduction is authorized by a collective bargaining agreement, an employee's authorization for a deduction may be revoked in writing at any point.

The amended law adds two new subdivisions allowing for entirely new categories of permissible deductions: (1) those "related to a recovery of an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer" and (2) "repayment of advances of salary or wages made by the employer to the employee." (§ 193(1)(c) and (d).) For each of these new categories, the statute directs the labor commissioner to promulgate regulations which will govern, in part, limitations on the timing, frequency, and method of such repayment, notice requirements, and procedures relating to potential disputes of the amount of repayment.

Finally, the amended law contains several additional clarifications and guidelines. A new subsection § 193(2) has been introduced to clarify that deductions related to pre-tax contribution plans are considered permissible deductions. What was formerly § 193(2) is now § 193(3)(a). That provision prohibits employers from requiring an employee to repay money to the employer by "separate transaction" (in other words, by a manner other than a wage deduction), if such payment would not be permitted under the statute as a wage deduction. The amended law maintains this prohibition although it now exempts transactions that are permitted or required by collective bargaining agreements.

New York's new wage deduction law is set to expire November 6, 2015.

If you have any questions or would like to discuss these developments or other related matters in more detail, please contact:

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