

# Amendment to New York Wage Deduction Statute Expands Allowable Deductions

By Diane Windholz

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Expanding the scope of permissible deductions from wages under New York law, Governor Andrew Cuomo, on September 7, 2012, has signed legislation amending New York Labor Law §193. This change was in reaction to a strict position taken by the New York State Department of Labor in recent years severely limiting the types of permissible deductions — essentially prohibiting any deductions not specifically set forth in pre-amendment Section 193. The amendment goes into effect on November 6, 2012, 60 days after it becomes law, and, unless extended, will expire and be deemed repealed three years after the effective date.

Section 193 of the New York Labor Law prohibits employers from making “any deduction from the wages of an employee,” with two exceptions: (1) deductions required by law or (2) deductions that are expressly authorized by the employee in writing and that “are for the benefit of the employee.” According to the New York State Department of Labor (NY DOL), this second exception permits deductions for insurance premiums, pension or health benefits, charitable contributions, and dues for labor organizations, as well as other limited deductions.

The amendment expands the list of categories for which deductions may be taken by employers with an employee’s written consent and allows deductions for overpayments due to clerical or mathematical errors or for repayment of advances on wages or vacations paid to employees.

The permissible deductions under the amendment include the following:

- prepaid legal plans;
- purchases made at events sponsored by a charitable organization affiliated with the employer;
- discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit;
- fitness center, health club, and/or gym membership dues;
- cafeteria and vending machine purchases made at the employer’s place of business, and purchases made at gift shops operated by the employer, where the employer is a hospital, college, or university;
- pharmacy purchases made at the employer’s place of business;
- tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions;
- day care, before-school and after-school care expenses;
- payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and
- similar payments for the benefit of the employee.

Significantly, the amended law also allows employers to make wage deductions to recover “an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer” and “repayment of advances of salary or wages made by the employer to the employee.”

## Written Authorization Still Required

Under the amended law, deductions still are permitted only if expressly authorized in writing by the employee and if the deductions are, generally, for the benefit of the employee. The employer must retain each authorization for at least six years following the termination of the employee’s employment. The amendment requires that, before any deduction is made, the employee must receive “written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made.” Further, the employer must provide the employee with

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information regarding deductions and an updated total of all deductions from the employee's wages. Employees have the right to revoke authorization for any or all wage deductions at any time, and employers are required to cease those deductions as soon as possible.

The NY DOL is expected to issue regulations on the timing, frequency, and notice requirements for these deductions, including a procedure that the employee may use to dispute the amount of the deduction. Employers should refrain from entering into any wage deduction agreement with employees based on the amended law until after its effective date and after the NY DOL issues its regulations.

Jackson Lewis attorneys are available to assist employers with this and other workplace developments.

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