

## New York Labor Department Issues Regulations Interpreting Recent Amendments to Wage Deduction Statute

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The New York State Department of Labor (NYSDOL) has issued proposed regulations to guide compliance with a recent state statute expanding the scope of permissible wage deductions in New York as of November 6, 2012. The public is invited to comment on the proposed regulations until July 6, 2013. Along with the statutory amendments, the regulations, if adopted in their current form, would allow for greater flexibility with respect to permissible deductions.

The proposed regulations reiterate the four categories of wage deductions that are permitted under Section 193 of New York Labor Law:

- a. deductions made in accordance with any law, rule or regulation issued by any governmental agency;
- b. deductions specified by, or similar to those specified by, Section 193 of the Labor Law, authorized by and for the benefit of the employee;
- c. deductions for the recovery of overpayments made in accordance with [the regulations]; and
- d. deductions for the repayment of wage advances made in accordance with [the regulations].

### Deductions for the Benefit of the Employee

The proposed regulations clarify the meaning of “similar” deductions “for the benefit of the employee” under Section 193(1)(b). Such deductions would benefit the employee by providing financial or other “support” for the employee, his or her family, or a charitable organization designated by the employee. This “support” must fall into one of the following categories: health and welfare benefits; pensions and retirement benefits; child care and educational benefits; charitable benefits; dues and assessments; transportation; and food and lodging. In addition, the regulations clarify that “convenience of the employee” is not sufficient to satisfy the benefit-of-the-employee requirement.

The proposed regulations also state that the following types of deductions would not be permissible under Section 193(1)(b):

- a. repayment of loans, advances, and overpayments that are not in accordance with the proposed regulations;
- b. employee purchases of tools, equipment and attire required for work;
- c. recoupment of unauthorized expenses;
- d. repayment of employer losses, including for spoilage and breakage, cash shortages, and fines or penalties incurred by the employer through the conduct of the employee;
- e. fines or penalties for tardiness, excessive leave, misconduct, or quitting without notice;
- f. contributions to political action committees, campaigns and similar payments; and
- g. fees, interest or the employer's administrative costs.

The proposed regulations also clarify what would be considered sufficient “authorization” from an employee under Section 193(1)(b) to permit an allowable deduction. It must be in writing, voluntary (either set forth in a collective bargaining agreement between the employee representative and employer or in a

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written agreement between the employee and employer), and contain all terms and conditions of the deduction including the benefit to the employee and the manner in which the deduction will be made. Employers would be required to obtain authorization prior to making the deduction as well as prior to any change in the terms of the deduction.

## Recovery of Overpayments

When an employer seeks to recoup overpayments made to employees due to mathematical or other clerical error, pursuant to Section 193(1)(c), according to the proposed regulations:

- The employer may recover overpayments made within eight weeks prior to the issuance of a notice of intent to recoup an overpayment.
- Where the entire overpayment is less than or equal to the net wages in the next wage payment, the entire amount of the overpayment may be recouped in the next wage payment; otherwise, deductions for overpayments are limited to 12.5 percent of the gross wages (provided the deduction does not reduce wages below the statutory minimum wage rate).
- Notice of intent to recoup must be given three weeks prior to the deduction, or three days prior where full recoupment through deduction is otherwise permitted.

The proposed regulations also specify the content of the notice to be provided and require employers to implement procedures for employees to dispute overpayments and the terms of recovery, and/or to seek to delay the recovery. (Different timeframes for dispute resolution are provided where the overpayment may properly be reclaimed in full in the next wage payment.)

## Repayment of Wage Advances

The proposed regulations allow the parties to agree in advance in writing on the material terms for repayment of wage advances. The terms may include total reclamation of the balance owed from the employee's final wages. The proposed regulations would continue to prohibit an employer from making any charge against wages or requiring an employee to make any payment by separate transaction unless such charge or payment is a permissible deduction from wages under the proposed regulations or required pursuant to a current collective bargaining agreement.

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If the regulations are adopted as proposed, New York employers lawfully will be able to: (1) implement pre-authorized, enumerated wage deductions that are for the benefit of their employees, (2) recoup wage overpayments due to mathematical or clerical errors, and (3) allow for repayment of wage advances through deductions, upon terms clearly set forth in agreements with employees requesting such advances. In addition, the elimination of prior limitations on the amount of lawful deductions for the benefit of the employee and for repayment of advances will allow for greater flexibility for employers and authorize employees and employers to set terms agreeable to both parties. Prior to the amendments to Labor Law Section 193, each of these actions carried significant risk of a violation. Employers should continue to proceed with caution, however, until the proposed regulations are finalized.

Jackson Lewis will keep you apprised of the status of the proposed regulations. If you have questions about the recent amendments to New York's wage deduction law or the proposed regulations, please contact the Jackson Lewis attorney with whom you regularly work.

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## Practices

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