

New York Expands Permissible Wage Deductions/Awaiting Governor Cuomo's Signature

June 28, 2012

Last week, the New York State Assembly and Senate passed amendments to Section 193 of the New York Labor Law ("NYLL") restoring employers' ability to make deductions from employee wages in a number of circumstances which the New York Department of Labor ("NYDOL") had opined were otherwise impermissible. In addition to the limited list of statutorily enumerated permissible deductions that already existed (e.g., insurance premiums; United States bonds; pension, health, and welfare benefits; union dues), the new amendments would allow employers to make deductions to recover pay advances, accidental overpayment of wages, deductions for purchases made at events sponsored by bona fide charitable organizations; discounted parking passes and mass transit vouchers; gym membership dues; cafeteria, vending machine and pharmacy purchases made at the employer's place of business; tuition, room, board and fees for educational institutions; day care expenses; and payments for housing provided at no more than market rates by non-profit hospitals. All such deductions will require the employee's voluntary written authorization. These amendments to the NYLL await Governor Cuomo's expected signature.

Section 193 of the NYLL prohibits employers from making deductions from employees' wages except those those which "are made in accordance with the provisions of any law or any rule or regulation issued by any government agency" or that "are expressly authorized in writing by the employee and are for the benefit of the employee." The statute limited authorized deductions to payments for "insurance premiums, pension or health and welfare benefit, contributions to charitable organizations, payment for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee."

As discussed in our [June 2, 2010 client alert](#), the NYDOL had issued a series of Opinion Letters, beginning in late 2008, interpreting Section 193 of the NYLL narrowly so as to prohibit employers from recouping accidental wage overpayments via wage deductions, as well as prohibiting employers from making wage deductions where wages had been advanced to employees and, similarly, prohibited employers from using wage deductions as the mechanism for repayment of tuition assistance – in all cases, even when the employee's consent was voluntary. [Bill Number A10785](#) amends Section 193 of the NYLL, greatly expanding the employer's ability to make a number of deductions which, over the last three or four years, were held impermissible by the NYDOL.

Employers Should Proceed Cautiously

Although the new amendments are welcome news for employers and employees alike, caution must be exercised before any new deduction policies are implemented. *First*, once signed by the Governor, the new law does not take effect for sixty (60) days. *Second*, the amendments include instructions for the NYDOL to issue regulations governing the timing and frequency of such deductions, as well as additional notice requirements and a requirement that employers implement a procedure that employees can use to dispute the amount of the deductions. As a result, while some employers may move forward and enter into voluntary wage deduction agreements with employees, others may decide to await the NYDOL's regulatory pronouncements before implementing a program for the recovery of overpayments and wage advances.

Third, the amendments also include enhanced requirements for the employee's written authorization. As before, any deductions must be for the employee's benefit and voluntarily authorized by the employee in writing. Written notice of terms must now also be given to the employee. The new amendments require the authorization to be "voluntary and given following receipt by the employee of 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." The employer must maintain any written authorizations throughout the employee's employment, as well as for six years *after* employment ends. Additionally, the employee may freely revoke written authorization in writing *at any time* upon which the employer must cease the deductions "as soon as practicable."

Fourth, the amendments contain a "sunset provision" that automatically extinguishes the newly identified wage deductions three (3) years after the effective date. The Legislature will, therefore, have to revisit this issue at a later date in order to review the amendments and determine whether they are working as intended in order to revoke the "sunset provision."

Finally, while the new law restores the "playing field" to a time prior to late 2008, permitting employers and employees to voluntarily agree to wage deductions for their mutual benefit without resort to lawsuits for recoupment of wage advances/loans or terminations for alleged theft (due to inadvertent overpayment or failure to reimburse for personal expenses), the list of permissible wage deductions is limited to fourteen categories, including a catch-all for "similar payments for the benefit of the employee." As such, until the NYDOL weighs in with its regulations, it remains unclear how broadly, or narrowly, it will interpret the aforementioned "catch-all". While personal expense charges can be characterized as a form of a wage advance, pending the regulations, the best course of action is to consult with your Human Resources professionals and counsel to discuss the best manner in which to proceed.