

### **Legal Alert: Authorized Deductions from Employee Wages**

The New York Commissioner of Labor has issued final [regulations](#) implementing extensive [amendments](#) to Section 193 of the New York State Labor Law. Section 193 applies to every “person” except public employees and outlines what expenses an employer is permitted to deduct from an employee’s wages.

The new regulations, which are effective, implement the statutory amendments which greatly expand the list of authorized deductions and provide employers with new avenues for collection in the event of salary advances or erroneous wage overpayments. This Legal Alert provides a high-level overview of the range of deductions and obligations that are contained in the new law.

#### **Introduction to Section 193**

Prior to these amendments, the extent of deductions allowed under Section 193 was quite narrow. Employers were permitted to deduct from wages only where (i) such deduction was made in accordance with a law, rule or regulation (e.g., wage garnishments for child or spousal support and Federal tax withholdings); or (ii) the deductions were for payments which fit within one of the five categories listed in Section 193(1)(b) (i.e., insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, or payments for dues to labor organizations), were made for the benefit of the employee, and were expressly authorized by the employee. All other wage deductions were illegal under the previous provision, even if the employee consented to the deduction. Thus, prior to the passage of this bill, employers were severely limited in their ability to recover from employees for erroneous wage overpayments or salary advances.

#### **Expanded List of Permitted Deductions**

Under the new law, the categories of payments for which deductions are permitted to be made under Section 193(1)(b) have been expanded to include:

- prepaid legal plans;
- purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least 20% of the profits from such event are being contributed to a bona fide charitable organization;
- discounted parking or discounted passes, tokens, fare cards, vouchers or other items that allow 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 (subject to aggregate limits for such deductions established by the employer and the employee);

- pharmacy purchases made at the employer’s place of business (subject to aggregate limits for such deductions established by the employer and the employee);
- 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 made 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.

The regulations elaborate on the meaning of “similar payments for the employee”, indicating these must benefit the employee by providing financial or other support for the employee, the employee’s 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.

### **Authorization Forms**

In addition to expanding the scope of payments for which deductions are permitted, Section 193(1)(b) was amended to include a notice provision that must be satisfied before an employer may begin making deductions. Pursuant to this provision (reflected in 12 NYCRR Section 195-4.2), before an employee may give her express written authorization of a deduction, the employer shall provide the employee with written notice of all terms and conditions of the payment and or its benefits, as well as the manner in which the deduction will be made. The employer must also provide the employee with notice of any substantial changes to these terms, prior to the implementation of any such change. The employee may revoke written authorization at any time. All written statements by the employer under this law must use ordinary language readily understood and appear in no smaller than 12-point font.

The amended Section 193(1)(b) also includes a document retention provision which requires employers to retain employee authorizations for a period of six years following the end of the employee’s employment term.

### **Recovery of Overpayments and Salary Advances**

The provisions of the law that may be of greatest interest to employers are the new paragraphs (c) and (d) of Section 193(1) (reflected in 12 NYCRR Sections 195-5.1 and 195-5.2. These paragraphs address deductions related to (i) the recovery of an overpayment of wages due to a mathematical or other clerical error; and (ii) the repayment of advances of salary or wages.

Under the new law, these categories of deductions are no longer prohibited, but note that the provisions will automatically expire after three years, after which point the legislature will need to revisit the issue to renew the provisions.

In the context of wage overpayment deductions, employers are not required to get prior authorization from the employee but must follow certain notice and dispute resolution

procedures before such deductions are permitted, as outlined in the two paragraphs below. The regulations provide detailed restrictions governing the timing, frequency, duration, and method of any recovery/repayment and the periodic amounts of any such repayments. These restrictions include that (i) overpayments recovered must have been made within eight weeks prior to the issuance of the notice of intent to recover described below and (ii) if the entire overpayment is less than or equal to net wages in the next payment, it may be recouped entirely from that payment, but if the overpayment is more than such net wages, deductions are limited to 12.5% of gross wages in that wage payment and may not reduce pay below minimum hourly wage.

The employer must provide the employee with notice of intent to commence deductions. In cases where the entire amount of the overpayment may be recouped from the next payment, notice must be given at least three days prior to the deduction. In all other cases, notice must be given at least three weeks prior to the deduction. The notice must include: (i) the total amount overpaid and the amount overpaid per pay period, (ii) the total amount to be deducted, (iii) the date each deduction will occur and the amount of each deduction, and (iv) an affirmative statement to the employee that he or she may contest the overpayment, the date by which the employee must contest and the procedure by which the employee may contest the overpayment and/or the terms of recovery or a reference to where such procedure can be located.

The employer must implement a procedure by which the employee may dispute the overpayment and terms of recovery and/or seek a delay in the recovery of such overpayment. The employee must respond within one week from the date of the receipt of the notice of intent to commence deductions (within two days in the case of an overpayment that can be recouped from the next payment), and if the employee responds, the employer must reply to such employee's response within one week of the receipt of such response. The employer must also give the employee written notice of the opportunity to meet with the employer within one week of receiving the employer's response to discuss any disagreements that remain. Finally, the employer must provide the employee written notice of the employer's final determination regarding the deductions within one week of this meeting. If the employee avails him or herself of such procedures, the employer may not begin taking deductions until at least three weeks after issuing the final determination.

In the context of deductions for advances to employees, the employee must give prior written authorization as to the amount to be deducted and the timing and duration of deductions. Note that there is no gross cap as to the amount(s) to be deducted.

Thus, while employers should be aware of the opportunity to utilize deductions to facilitate the recovery of funds from employees, they should proceed with caution when implementing the new policies.

### **Revocation of Authorization**

Pursuant to Section 193(3)(c) of the new law, with the exception of advances (which may be revoked only prior to the actual provision of the advance by the employer) and wage deductions required or authorized in a collective bargaining agreement, an employee's authorization may be

revoked in writing at any time. Once revoked, the employer must cease the wage deduction as soon as practicable, and, in no event more than four pay periods or eight weeks after revocation.

### **Deductions Permitted Under Collective Bargaining Agreements**

Section 193(3)(a) of the amended provision permits wage deductions by employers that are required or permitted under any provision of a current collective bargaining agreement.

### **Effective Date**

On September 8, 2012, Governor Cuomo signed the bill into law. The statute took effect on November 7, 2012 and will expire if not renewed in 3 years. The regulations took effect on October 9, 2013

*This alert is meant to provide general information only, not legal advice. If you have questions about whether a particular expense can be deducted from an Employee's wages, please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information.*