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Governor Cuomo Signs Law Loosening Strict Interpretation of Unlawful Deductions from Wages

Published Date: September 10, 2012

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On September 8, 2012, Governor Andrew Cuomo signed a much-anticipated law that amends New York Labor Law § 193 by expanding the scope of permissible deductions from an employee's wages. The new law, which will take effect on November 7, 2012, and is subject to renewal in three years, benefits both employers and employees by allowing employers to deduct from an employee's wages for the employee's preauthorized personal activities (such as gym memberships). The new law also permits employers to recapture overpayments of the employee's wages as well as repayments for loans or advancements the employer made to such employee.

Currently, Section 193 prohibits deductions from an employee's wages unless a law, court, or government agency authorizes the deduction or the employee authorizes the deduction in writing and the deduction is for the benefit of the employee. N.Y. Labor Law § 193(1)(a)-(b). While the statutory language suggests that any deduction authorized by an employee and for the employee's benefit would be permitted, the New York Department of Labor (NYDOL) has interpreted and applied this catchall provision narrowly. The term for the "employee's benefit" has been interpreted to mean only payments for items such as insurance premiums, pension contributions, contributions to charitable organizations, and payments due to labor organizations. In addition, the NYDOL has held that employers may not deduct from an employee's wages for items such as the repayment of employee loans or advances, or the recoupment of an inadvertent overpayment of wages.

The recent amendments lift the NYDOL's restrictive interpretation of the statute, and permit employers to deduct wages, with an employee's written authorization, for: (1) purchases made at certain charitable events; (2) discounted parking or mass transit items; (3) gym membership dues; (4) cafeteria, vending machines, and pharmacy purchases at employer's business; (5) tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions; (6) certain child care expenses; and (7) payments for certain housing provided by non-profit hospitals and affiliates.

Importantly, the amendments also permit deductions, with an employee's written authorization, for the repayment of wage advances and for the recovery of wage overpayments made where the overpayment was due to the employer's mathematical or other clerical error. However, employers recovering overpayments must still comply with other provisions of the New York

Labor Law, which govern the timing, frequency, and duration of the deductions, as well as the total amount that can be deducted. Further, employers must implement a procedure to enable the employee to dispute the amount of any overpayments. Notice of this procedure must be provided to the employee prior to any deductions.

Employers should also be aware that they must make account information available to the employee that details the total amount deducted and the individual expenditures within the categories of deductions. The law suggests that employers set a maximum aggregate amount that may be deducted from an employee's wages, which will govern unless the employee establishes a lower amount (which can be as low as \$10) of permissible deductions from that employee's wages.

While employees and employers will likely benefit from this more lenient approach to permissible deductions from wages, employers should not revise their deductions policies until the law takes effect on November 7. It should also be noted that this law will expire three years after it takes effect, so absent renewal by the New York Legislature, employers should be aware of the end date for the expanded permissible deductions.

Additional Information

If you have any questions regarding the amendments to New York's deductions law, contact the Ogletree Deakins attorney with whom you normally work or the Client Services Department at 866-287-2576 or via email at clientservices@ogletreedeakins.com.

Note: This article was published in the September 10, 2012 issue of the *New York eAuthority*.

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