BOND SCHOENECK & KING

www.bsk.com

Information Memo

Labor and Employment Law

September 2012

New York's Wage Deduction Statute Amended

Governor Andrew Cuomo recently signed into law an amendment to New York's wage deduction statute, New York Labor Law Section 193 ("Section 193"). This amendment – effective on November 6, 2012 – will permit New York employers to make a wider range of payroll deductions than currently enumerated in Section 193 and will impose several new deduction-related requirements.

As many employers are aware, the New York State Department of Labor ("NYSDOL") in recent years significantly narrowed its interpretation of Section 193. To summarize, NYSDOL has taken the position that a wage deduction is not permissible unless it is very "similar" to those expressly recognized in the statute as lawful (e.g., deductions for "insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, [and] payments for dues or assessments to a labor organization"). This interpretation varied from the NYSDOL's historical focus on whether the deduction is for the "benefit of the employee."

Diverging from this historical focus, NYSDOL more recently opined that the following types of employee wage deductions, among others, are unlawful: (a) deductions for loans, wage overpayments, or wage advances owed to an employer; (b) deductions for the recoupment of tuition assistance monies owed to an employer; and (c) deductions for purchases from employers or employer-sponsored stores, cafeterias, and like establishments. To reiterate, NYSDOL found these types of deductions to be unlawful (even with an employee's voluntary agreement and written authorization) because they were not sufficiently "similar" to Section 193's enumerated list of permissible payments.

Fortunately for New York employers and employees, the recent amendment to Section 193 will expand the enumerated list of permissible wage deductions to include deductions for:

- Prepaid legal plans;
- Purchases made at events sponsored by a bona fide charitable organization affiliated with the employer, where at least twenty percent of the profits from the event are contributed to a bona fide charitable organization;
- Discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle an 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; and
- Payments for housing provided at no more than market rates by non-profit hospitals or affiliates.

The amendment will also expressly permit deductions made in conjunction with an employer-sponsored pre-tax contribution plan approved by the Internal Revenue Service or other local taxing authority. As the above list indicates, some of the new enumerated deductions will only be permitted for certain types of employers (e.g., hospitals, colleges and universities). It is not apparent why legislative drafters included these limitations.

Importantly, the amendment will additionally permit employers to recover inadvertent wage overpayments and wage advances by payroll deductions under certain circumstances and subject to future NYSDOL rulemaking. According to the amendment, these forthcoming rules must include provisions governing the terms and conditions under which employers may deduct for wage overpayments and advances and must also include provisions relating to employee notice and dispute resolution procedures.

The amendment also imposes new deduction-related requirements, which New York employers must follow. For example, the amendment provides that "all terms and conditions of the payment and/or its benefits and the details of the manner in which the deductions will be made" must be provided to employees in advance. Additionally, employers must give advanced notice to employees if there is a "substantial change" in the terms or conditions of the payment (e.g., a change in the amount of the deduction, or in the corresponding benefits). The amendment also establishes limitations on the total amount of deductions that may be made for certain purposes each pay period, and requires that employees have access to real-time information regarding certain deduction-related expenses.

Employers must now also keep any "written authorization" required under Section 193 for the respective employee's entire period of employment and, then, for an additional six (6) years after the end of that employment. For employers with union-represented workers, the amended Section 193 clarifies that the requisite "written authorization" may be provided pursuant to the terms of a collective bargaining agreement. Except where a deduction is "required or authorized" in such a current collective bargaining agreement, the amendment further provides that employees are free to revoke their authorization at any time. In such an event, employers must then cease the wage deduction in question "as soon as practicable" and not later than four pay periods or eight weeks after the employee's revocation, whichever occurs sooner.

Finally, New York employers should take note that the amendment has a three-year "sunset" provision, and, therefore, would require additional legislation to make the corresponding changes to Section 193 permanent. As with any new legislation, employers should carefully review the amendment to Section 193 and should prepare accordingly in advance of the pending effective date.

Buffalo / Niagara Falls: 716.566.2800
Robert A. Doren rdoren@bsk.com
Daniel P. Forsyth dforsyth@bsk.com
James J. Rooney jrooney@bsk.com

Capital District: 518.533.3000
John M. Bagyi jbagyi@bsk.com
Nicholas J. D'Ambrosio ndambrosio@bsk.com

Central New York: 315.218.8000
Louis P. DiLorenzo ldilorenzo@bsk.com
Larry P. Malfitano lmalfitano@bsk.com

Long Island: 516.267.6300
Craig L. Olivo colivo@bsk.com
Terry O'Neil toneil@bsk.com

New York City: 646.253.2300
Louis P. DiLorenzo ldilorenzo@bsk.com
Ernest R. Stolzer estolzer@bsk.com

Rochester Region: 585.362.4700
James Holahan jholahan@bsk.com
Peter A. Jones pjones@bsk.com