

Recent Legislative and Regulatory Activity Will Impact the Payment of Wages in New York

October saw a flurry of activity from workplace regulators in New York, and employers should take note of several recent legal developments.

First, Governor Andrew Cuomo recently signed legislation extending a so-called “sunset” provision in prior amendments to New York’s wage deduction statute – Section 193 of the New York Labor Law. Those amendments, enacted in 2012, broadened the scope of permissible wage deductions under state law, including deductions for certain overpayments and advances. Absent legislative action, the amendments were set to expire this month, which would have caused Section 193 to revert to its prior, more restrictive form. These amendments will now be extended for another 3-year period. Notably, this recent legislative action serves to concurrently extend existing deduction-related regulations promulgated by the New York State Department of Labor (NYSDOL). Among other things, the regulations set forth detailed requirements which employers must follow in order to lawfully deduct to recover overpayments and advances.

Second, the NYSDOL proposed revised regulations on October 28, 2015, governing the payment of employee wages via payroll debit cards, direct deposit, and other means. These revised regulations – which are not yet final or effective – would impose a number of new requirements regarding how employers pay their covered employees. As reported in the June 23, 2015 [New York Labor and Employment Law Report article](#), the NYSDOL initially proposed regulations on this same subject earlier this year, which were open for an extended public comment period. The recently-issued revised regulations contain several changes from what NYSDOL originally proposed, ostensibly in response to feedback it received during the prior public comment period. On balance, the newly-revised version provides better clarity on certain requirements and may also render implementation of payroll debit card programs more feasible for employers. As additional good news for employers, NYSDOL has indicated that there will be a six-month delay in the effective date once the revised regulations are adopted and published in final form. The specific requirements proposed in the revised regulations can be accessed [here](#), and are open for another 30-day public comment period.

Third, the NYSDOL published [proposed regulations](#) on October 21, 2015, which would implement the [recommendation](#) of Governor Cuomo’s Fast Food Wage Board to raise the minimum wage for fast food workers to \$15 per hour. NYSDOL’s Commissioner subsequently adopted this recommendation, which will now proceed through New York’s rulemaking process. The proposed regulations are presently open for a 45-day public comment period. Businesses and their advocates in New York have opposed this drastic change and have questioned the NYSDOL’s authority to enact such an industry-specific raise without legislative action. It is expected that there will continue to be considerable opposition to this proposal, that there will be significant public commentary provided through the rulemaking process, and that opponents will, if necessary, assert a legal challenge to the proposed change.

And fourth, the NYSDOL has proposed [additional regulations](#) which would – effective on and after December 31, 2015 – raise the minimum wage and reduce the maximum available “tip credit” for certain workers who fall under the existing Hospitality Industry Wage Order. Specifically, the proposed regulations would raise the applicable minimum wage for covered “service employees” and “food service workers” to \$7.50 per hour (from \$5.65 and \$5.00, respectively). Concurrently, the maximum available “tip credit” for these workers would be reduced to \$1.50 per hour (from \$3.35 and \$4.00, respectively). The proposed regulations also contain similar changes for covered “service employees” working in resort hotels, and would also include new language governing the calculation of hourly tip rates. These proposed regulations are currently open for a 45-day public comment period, which began on October 7, 2015.

As a reminder, the NYSDOL proposed regulations referenced above remain pending and are not yet effective. There is no specific timetable for further action on the part of NYSDOL. Even so, it is conceivable that the regulations will be issued in final form and adopted at or near the end of this year.

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