

New York broadens payroll deductions, adds employer requirements

Back in June, the New York Senate and State Assembly passed an amendment to New York's wage deduction statute, New York Labor Law Section 193.

The amendment—effective Nov. 6, 2012—permits New York employers to make a wider range of payroll deductions than in the past, but also imposes several new deduction-related requirements.

For the benefit of employee?

The New York State Department of Labor (NYSDOL) in recent years has significantly narrowed its interpretation of Section 193. The 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—for example, deductions for health and retirement benefits, charitable contributions and union dues.

This interpretation varied from the NYSDOL's historical focus on whether a deduction is for the “benefit of the employee.” Recently, the NYSDOL has judged that several types of wage deductions are unlawful, including deductions for:

- Loans, wage overpayments or advances owed to an employer
- Recouping tuition assistance loans owed to an employer
- 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.

What's now deductible

The recent amendment to Section 193 expands the list of permissible wage deductions to include deductions for:

- Prepaid legal plans
- Purchases made at events sponsored

by a charity affiliated with the employer, where at least 20% of the profits from the event are contributed to the charity

- Discounted parking or mass transit passes, tokens, fare cards or vouchers
- Fitness center, health club and 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 preschool, nursery, primary, secondary and post-secondary educational institutions
- Daycare, before-school and after-school care expenses
- Payments for housing provided at no more than market rates by nonprofit hospitals or affiliates.

The amendment also expressly permits deductions for employer-sponsored pretax contribution plans approved by the IRS and other local taxing authority.

Some of the new deductions will be permitted only for certain types of employers (e.g., hospitals and universities). It isn't obvious why legislators included those limitations.

Correcting payroll errors

The amendment also permits employers to recover inadvertent wage overpayments and wage advances through payroll deductions under certain circumstances and subject to future NYSDOL rule-making.

According to the amendment, these forthcoming rules will include provisions governing the terms and conditions under which employers may deduct for wage overpayments and advances. They must also include provisions relating to employee notice and dispute-resolution procedures.

New employer requirements

Employers must follow several new deduction-related rules. For example, they must provide to employees in advance “all terms and conditions of the payment and ... the details of the manner in which the deductions will be made.”

Employers must notify employees in advance 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 limits the total amount of deductions that may be made each pay period, and requires giving employees access to real-time information about 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 years after termination.

For employers with unionized workers, the amended Section 193 clarifies that “written authorization” may be provided pursuant to the terms of a collective bargaining agreement.

Except where a deduction is “required or authorized” in a current collective bargaining agreement, employees are free to revoke their authorization at any time. If that happens, employers must stop making wage deductions “as soon as practicable” and no later than four pay periods or eight weeks after the employee's revocation, whichever occurs sooner.

Finally, employers should note that the amendment has a three-year “sunset” provision. That means it would require additional legislation to make permanent the corresponding changes to Section 193.

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