

Final New York wage deduction regulations now in effect

The New York State Department of Labor has published final regulations—effective Oct. 9, 2013—governing employee wage deductions under Section 193 of the Labor Law.

Most important changes

The final Section 193 regulations include procedures employers must follow when seeking to recover wage overpayments and advances by payroll deduction. Employers must establish and implement the correct procedures before attempting to recover wages. Not doing so will create a presumption that the deductions were illegal.

Among other things, the final regulations list specific prohibited deductions, impose precise requirements for obtaining proper “authorization” from employees and provide guidance on what types of deductions may be deemed permissible “similar payments for the benefit of the employee.”

An advance is defined as “provision of money based on anticipation of earning future wages.”

Permissible deductions

In order to recoup an advance through paycheck deductions, you must have an agreement in place with the employee before you make the advance. If you don’t follow all the rules, you can’t deduct the advance from the employee’s paycheck.

The agreement must be in writing and must spell out the timing and duration of the repayment. Repayments can only be taken on regular paydays. The advance must be interest- and fee-free. Second advances aren’t permitted until the entire first advance has been repaid.

The agreement must include:

- Amount to be advanced
- Amount to be deducted (total and per wage payment)
- Dates of the deduction(s)
- Notice that employee can contest any deduction
- Notice that the employee can revoke authorization only before

the money is advanced.

The agreement can include a provision for complete repayment from the last paycheck if employment ends before the last payment is due.

In addition, employers must provide a way for employees to challenge any advance repayment deductions, via a dispute-resolution procedure.

Employers have to explain this process before the advance is issued. The process must include a way for employees to provide written notice that they object to a deduction. Employers must reply in writing “as soon as practicable.” The reply must address issues raised by the employee’s objection and contain a clear statement of the employer’s position, including whether it agrees or disagrees with employee’s position and why. Employers must cease deductions until a reply is given and any adjustments are made.

Overpayments

You can now also deduct accidental overpayments that were “due to a mathematical or other clerical error.” Consult with your attorney about such deductions, since the procedure can be quite complicated. However, act quickly, because you only have eight weeks from the overpayment to notify the employee that you plan to recoup the funds from his paychecks. There is a six-year limitation on recouping the money.

Generally, an employer can recover the entire overpayment in the employee’s next wage payment if the amount is less than the employee’s net wages after permissible deductions. You have to give at least three days’ notice before the paycheck is due.

If overpayment exceeds net wages after permissible deductions, recovery cannot exceed 12.5% of the gross wages earned for that wage payment and also cannot reduce the employee’s effective hourly rate below the state minimum. In those cases, you must inform employees three weeks before the first deduction.

What can’t be deducted

Under the final rules for wage deductions under Section 193, you may not make payroll deductions for:

- Purchases of tools, equipment and attire required for work
- Recoupment of unauthorized expenses
- Repayment of employer losses (spoilage, breakage, cash shortages, etc.),
- Contributions to political action committees, campaigns and similar payments
- Fees, interest or employer’s administrative costs.

Other permissible deductions

The final regulations also clarify permissible deductions that “benefit the employee by providing financial or other support to the employee, his or her family, or a charitable organization designated by the employee.”

Examples:

- Benefits such as gym memberships and day care expenses
- Pension and savings benefits
- Charitable benefits such as United Way drives
- Labor organization dues
- Transportation benefits (parking or mass transit passes)
- Food and lodging benefits, such as purchases made in a company cafeteria.

What employers should do

Review your handbook and policies to make sure they comply with the revised rules. Because the regulations provide for a dispute-resolution program, ask your attorney to assess your current policies, draft the right notices and forms and set up the dispute-resolution process.

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