

Richard H. Waxman, P.C.

Employment Law Newsletter

news

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April 2013

WHEN AN EMPLOYEE OWES MONEY TO YOUR COMPANY:

Collection Efforts under the New York Labor Law.

Until recently, New York law¹ prohibited employers from making deductions from an employee's wages, other than: (1) deductions required by law or (2) deductions that are expressly authorized by the employee in writing and that are for "the benefit of the employee." The New York State Department of Labor construed this second exception as limited to deductions for insurance premiums, pension or health benefits, charitable contributions, and dues for labor organizations, and a limited number of similar deductions.

Deductions for "Repayment of loans, advances or debts" owed by the employee to the employer were strictly prohibited according to the NY Department of Labor².

The scope of permissible wage deductions was expanded effective November 6, 2012³ after Governor Cuomo signed legislation amending the New York Labor Law⁴. As a result the following deductions may now be taken by employers, but only with the employee's written consent:

- prepaid legal plans;
- purchases made at events sponsored by a charitable organization affiliated with the employer;

¹ NY Labor Law Section 193

² See e.g. July 2010 NY Department of Labor wages poster, a copy of which is attached to this Newsletter.

³ Please note that the amendment will "sunset" three years later on November 6, 2015

⁴ A copy of the amended Section 193 may be found at: <http://www.labor.ny.gov/formsdocs/wp/LS605.pdf>

- discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the 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;
- payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and
- similar payments for the benefit of the employee.

Far more significantly, at least for some situations, the amended statute now allows deductions to recover “repayment of advances of salary or wages made by the employer to the employee”⁵ but only in certain circumstances. Section 193 (d) now provides:

“Deductions to cover such repayments shall be made in accordance with regulations promulgated by the commissioner for this purpose, which regulations shall include, but not be limited to

- [1] provisions governing: the timing, frequency, duration, and method of such repayment;
- [2] limitations on the periodic amount of such repayment;
- [3] a requirement that notice be provided to the employee prior to the commencement of such repayment;
- [4] a requirement that the employer implement a procedure for disputing the amount of such repayment or seeking to delay commencement of such repayment;
- [5] the terms and content of such a procedure and
- [6] a requirement that notice of the procedure for disputing the repayment or seeking to delay commencement of such repayment be provided to the employee at the time the loan is made.”

Although more than six months have passed since Governor Cuomo signed the amendment into law⁶ the Labor Commissioner has not yet promulgated the regulations with procedures that employers must follow to take advantage of the new law. Therefore, we recommend that employers refrain from making wage deductions to repay salary advances or other loans until the regulations are issued.

However, if the employer must act before the regulations are issued, affirmative steps may be taken to increase the likelihood that collection efforts will comply with the new law. Our office can assist you in your compliance efforts.

⁵ Section 193 (d) of the amended law also permits deductions to recover “an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer.”

⁶ The bill was signed on September 7, 2012.

If you have any questions about wage deductions, or about the wage and hour laws generally, or any other legal issue involving employers or their businesses, please contact Richard Waxman at:

rwxman@waxmanlaw.com

In case you have trouble reading this e-mail, we have attached a PDF copy in the banner.

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New York State Department of Labor
Division of Labor Standards

Deductions from Wages

Section 193 of the New York State Labor Law

§ 193. Deductions from wages.

1. No employer shall make any deduction from the wages of an employee, except deductions which:
 - a. are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency; or
 - b. are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer's premises. Such authorized deductions shall be limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee.
2. No employer shall make any charge against wages, or require an employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages under the provisions of subdivision one of this section.
3. Nothing in this section shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, nor with any other law applicable to deductions from wages.

The Department applies the following interpretations and guidelines to administer this statute:

- A. **Posting:** Every employer engaged in the sale or service of food or beverages must post these documents:
 - LS 605, Deduction from Wages (Section 193 of the NYS Labor Law) and
 - LS 204, Tip Appropriation (Section 196-d of the NYS Labor Law).
- B. **Employee Coverage:** Section 193 applies to every "person" except public employees.
- C. **Recent Decisions:** The New York Court of Appeals, the state's highest court, decided two cases¹ interpreting Section 193 of the Labor Law relating to wage deductions. Under those decisions and Section 193, employers may make deductions from wages only if the deductions fit under the following categories:

¹*Marsh v. Prudential Securities*, 1 NY3d 146 (2003) and *Angello v. Labor Ready*, 7 NY3d 579 (2006).

1. Authorized by Law

Deductions are allowed where any law, rule, or regulation authorizes an employer to deduct wages from an employee's pay. Examples include wage garnishments for child or spousal support and State and Federal taxes withholdings.

2. Expressly Authorized by Section 193 with the Employee's Consent

- a. New York State permits five categories of wage deductions as long as the deduction is
 - For the benefit of the employee and
 - Expressly authorized by the employee.

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- b. The permitted wage deductions categories are:
 - Payments for insurance premiums
 - Examples include health, medical and dental insurance for the employee and/or the employee's family
 - Payments for pension or health and welfare benefits:
 - Examples include 401K contributions, and retirement account contributions
 - Contributions to charitable organizations
 - Payments for United States bonds
 - Payments for dues or assessments to a labor organization
- c. Deductions similar to these five categories are permissible if they
 - Are for the benefit of the employee
 - Are expressly authorized by the employee, and
 - Do not exceed ten percent of the employee's gross wages (minus required deductions) for the pay period

All other wage deductions are illegal in New York. These include, but are not limited to:

- Repayment of loans, advances or debts
- Recovery of employment-related expenses
- Recovery for spoilage or breakage
- Purchases made from employers or employer-sponsored stores, cafeterias, and like establishments
- Cash register shortages

For more information, call or write the nearest office of the Division of Labor Standards:

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