

WHAT NY EMPLOYERS SHOULD KNOW ABOUT DEDUCTIONS FROM WAGES

12 NYCRR Part 195

In October, 2015, Governor Andrew M. Cuomo signed into law an amendment to the New York Labor Law Section 193 (“NY Wage Deduction Law”) extending the law, which sets forth permissible deductions from wages, for another three years. The NY Wage Deduction Law is now effective until November 6, 2018.

What Is the NY Wage Deduction Law?

The NY Wage Deduction Law expands the scope of permissible wage deductions, including deductions for accidental overpayments and salary advances. The NY Wage Deduction Law (part of the State Labor Law) also established rules regarding the scope and form of employee authorizations that an employer must obtain prior to making any wage deductions and set limitations on certain types of deductions.

Permissible Deductions

The NY Wage Deduction Law permits wage deductions for, among other things:

- insurance premiums and “prepaid legal plans”;
- pension or health and welfare benefits;
- discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit;[1]
- fitness center, health club, and/or gym membership dues;
- payments for employee housing provided at no more than market rates by nonprofit hospitals or their affiliates; and similar payments for the benefit of the employee.

Authorizations for Wage Deductions

Prior to withholding any wage deductions, employers must obtain a written, informed authorization from the employee (“Advance Authorization”). The Advance Authorization can be obtained through a written agreement between the employee and employer,[2] or through a collective bargaining agreement.

The Advance Authorization must provide notice of all terms and conditions of the deduction, the purpose for the deduction, and the details of the manner in which the deduction will be made. The notice must be provided prior to:

- any deduction being made,
- any change in the amount of a deduction, or
- any substantial change to the authorized deduction, including any change with respect to the item that is the basis for the deduction, or the manner in which the deduction will be made.\

New York State Department of Labor Regulations

The New York State Department of Labor issued regulations, effective October 9, 2013, that provided further insight into the NY Wage Deduction Law (“Regulations”).

Among other things, the Regulations detail the procedures for recouping wages for both overpayments and advances. Wage deductions for overpayments are permitted, so long as the overpayment was due to the employer’s mathematical or clerical errors and the employer first provides the employee, within eight weeks of the employer’s overpayment, with a written “Notice of Intent” to make the deduction.[3] Wage deductions for advances are permissible for advances of wages, vacation, paid time off (“PTO”), or sick days, as well. The Regulations also confirm that wage deductions for advances are not permissible when interest is charged on the advances (e.g., loans).

For deductions due to overpayments or advances, employers must develop and follow a dispute procedure by which the employee may dispute the overpayment or terms of recovery, seek a delay in the recovery of such overpayment, or dispute the amount and frequency of deductions for advances that are not in accordance with the terms of an authorization for such advance. Failure to follow the procedures set forth in the Regulations will create a presumption that the deduction is impermissible.[4]

The Regulations also state that payments by separate check are treated the same as a payroll deduction under the NY Wage Deduction Law.

Further, the Regulations do not permit employers to make deductions for lost, stolen, or destroyed employer property that was in the employee’s possession.

What Steps are Required for Employers?

1. Revise employee handbooks and other policies and procedures to reflect the rules set forth in the Regulations (including updating lists of permissible deductions).
2. Ensure that payroll systems (including any third-party vendors used for this purpose) have the capability to make any permitted deductions.
3. Inform payroll, human resources, and any other applicable departments responsible for implementing wage deductions of the dispute procedures and deadline set forth in the Regulations.
4. Update wage deduction authorization forms, including Advance Authorizations for wage deductions to recoup salary advances or vacation/PTO/sick leave advances, and Notices of Intent for overpayments, so that such forms comply with the rules set forth in the Regulations.
5. Implement dispute procedures that allow employees to contest deductions for overpayments and wage advances in compliance with the procedures set forth in the Regulations and include the dispute procedures in any Advance Authorization or Notice of Intent.