

NEW YORK EASES RULES ON DEDUCTIONS FROM EMPLOYEE WAGES

By *Scott J. Wenner and Alizah Z. Diamond*

New York employers will soon be able to make deductions from their employees' wages, with the employees' consent, for reimbursement of advances, inadvertent overpayments of wages and in payment for purchases of employer-provided goods and services under a recently passed amendment to New York's strict wage deduction law.

Until now New York's wage deduction law, N.Y. Labor Law §193, broadly prohibited employers from making any and all deductions from employees' wages, with two limited exceptions for:

- Deductions authorized or required by law (e.g., social security or Medicare contributions, tax withholding and wage garnishment for child support); and
- Deductions authorized by the employee that are "for the benefit of the employee."

The latter exception to the wage deduction law has been narrowly construed by the New York State Department of Labor ("NYS DOL") to include only deductions for insurance premiums, contributions for pension, health or welfare benefits, contributions to charitable organizations, payments for U.S. Bonds, payments for dues or assessments to unions and similar payments, so long as they do not exceed 10 percent of the employee's gross wages for the pay period. See NYSDOL Counsel Opinion Letter RO-09-0152 (January 21, 2010).¹

Citing the disadvantages these severe restrictions create for both employers and employees, the New York Legislature last month passed N.Y. State Assembly Bill No. A10785-2011 (the "Amendment") which expands the categories of deductions employers may take from employees' wages upon receipt of written consent. The Amendment was signed by Governor Cuomo on September 7, 2012 and will be effective on November 6, 2012. The Amendment will

expire after three years unless expressly extended by the Legislature. Its essential features are described below.

Payments for Employer-Provided Goods and Services

The Amendment enlarges the list of deductions considered "for the benefit of the employee" and permits employees to consent to periodic deductions from their wages to pay for goods and services provided by their employer for the convenience of its employees. This expanded list includes:

- Costs associated with discounted parking or mass transit tickets, passes, vouchers or fare cards;
- Fitness or health club and/or gym membership dues;
- Purchases made at cafeterias, vending machines and pharmacies at the employer's place of business, and at gifts shops run by hospitals, colleges and universities;
- Tuition, room, board and fees for pre-school nursery, primary, secondary and post-secondary education;
- Day care and before-school and after-school care expenses; and
- Payments of a similar kind made for the benefit of the employee.

Recovery of Advances and Inadvertent Overpayments

Departing significantly from the prior law, the Amendment authorizes employers to make deductions from employee wages to recoup advances to employees and repay wage overpayments made unintentionally due to employer mathematical or clerical error. However, any such deductions will have to comply with regulations to be promulgated by the NYSDOL. Those forthcoming rules will prescribe the kinds of deductions permitted, the time, frequency, duration and method of recovery or repayment, limitations on the amount that can be deducted per pay period and the notice that must be given to employees before deductions commence, including notice of

1. Available online at <http://www.labor.ny.gov/legal/counsel-opinion-letters.shtm>.

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procedures for disputing any overpayments or delaying the start of recovery.

Written Notice and Authorization Required

As under the prior law, the Amendment permits employers to make deductions from employees' wages only if expressly authorized in writing by affected employees. The Amendment also requires employers to provide written notice to its affected employees of all terms and conditions of the deductions to be made, including the reason for the deductions and the manner in which they will be made. In addition, while an employer is making deductions it must provide employees with regular updates regarding the deductions, including a running total of all deductions made from wages in a pay period and any changes it will make to the terms and conditions of the deductions.

Employers are required to retain employee written authorizations for deductions for at least six years following the termination of employment. Except for wage deductions required by a collective bargaining agreement, an employee can revoke his or her consent to wage deductions in writing at any time. Upon receipt of a revocation, an employer must cease making wage deductions as soon as practicable, but no later than four pay periods or eight weeks after the employee's consent is withdrawn, whichever is sooner. Reimbursement of any money still due and owing from the employee at this point must be collected by other means, as under current law — i.e., voluntary payments by the employee, deduction from non-wage payments such as expense reimbursements or, as a last resort, through legal proceedings.

What this Means for You

Employers interested in utilizing the Amendment to make newly authorized wage deductions should be cognizant of its November 6 effective date and of its November 5, 2015 expiration date (unless extended by the Legislature).

Interested employers also should watch for publication of the regulations due from the NYSDOL which, in addition to providing necessary detail, also should provide or describe the content of the required employee notices and consent forms.

Employers should be mindful of the ease with which employees can revoke their consent to making deductions at any time when considering limits to fix on the value of goods or services that they will provide, subject to reimbursement, for their employees' benefit. Likewise, plans should be developed to respond to revocation of an employee's consent to deduct where a considerable balance remains on the repayment amount due. ♦

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For more information about Schnader's Labor and Employment Practices Group or to speak with a member of the Firm at a particular Schnader office location, please contact:

*Scott J. Wenner, Chair
212-973-8115; 415-364-6705
swenner@schnader.com*

*Michael J. Wietrzychowski, Vice Chair
856-482-5723; 215-751-2823
mwietrzychowski@schnader.com*

*Alizah Z. Diamond
212-973-8110
adiamond@schnader.com*

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