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ALERT

# NEW YORK GOVERNOR SIGNS WAGE DEDUCTION BILL

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With one signature on September 7, 2012, Gov. Andrew Cuomo has made the business community very happy by amending New York State Labor Law § 193 to expand the scope of permissible deductions from an employee's wages. The amendment: (1) creates additional categories of wage deductions that may be taken with employee consent; (2) permits wage deductions to recoup overpayments of wages to employees; (3) permits wage deductions for repayment of wage advances paid to employees; and (4) enacts and clarifies various other provisions with regard to deductions. The new law takes effect in 60 days. However, at present, the law has a sunset provision and will expire after three years unless extended by future legislation.

Previously, deductions from employees' paychecks were strictly limited to items such as tax deductions, insurance premiums, union dues, charitable contributions, retirement contributions and pension benefits. Under prior interpretations of the law, employers were not permitted to recover overpayments of wages or even paycheck advances or loans. Now, with an employee's consent, employers may deduct the following expenses:

- Discounted parking or mass transit expenses;
- Fitness, health club and gym membership dues;
- Cafeteria, vending machine and pharmacy purchases made at the employer's place of business;
- Tuition, room, board and fees for certain educational expenses; and
- Daycare expenses.
- Significantly, employers may now make wage deductions to recapture overpayments made to employees due to clerical errors. Employers may also deduct for the repayment of advances on wages paid to an employee. However, in order to do so, employers must comply with specific regulations to be promulgated by the Commission of Labor at a later date.

The new law also clarifies that deductions made in conjunction with employer-sponsored pre-tax contributions are permissible under New York labor law. However, it does not broaden any component of what constitutes a permissible pre-tax deduction. Accordingly, the newly authorized deductions remain after-tax deductions.

Notably, employers may only make deductions under these additional categories with employee consent. With a few exceptions, an employee's consent may be revoked in writing at any time. Once an employer receives notice of an employee's revocation, it must cease the wage deduction. Additionally, employees must be fully informed of the terms associated with all deductions.

New York employees and employers will benefit from the convenience that is likely to come from the state's new approach to permissible deductions from wages. To ensure compliance with the new law, employers should start by reviewing their workplace policies and considering additional wage deductions. Once the Commissioner of Labor issues regulations regarding deductions for the overpayment of wages or repayment of wage advances, employers should take advantage of these deductions within the confines of those regulations. Employers should train their human resources staff on the new law and communicate with employees about any voluntary deductions.

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