

July 19, 2012

Wage Deductions Almost Legal in NY? Legislation Allowing Employers to Make Wage Deductions Awaits Governor's Signature

By Bruce Millman and Adam Colón

The New York State Senate and Assembly recently passed a bill amending New York Labor Law section 193 to expand an employer's ability to make deductions from employee wages. The bill is currently awaiting delivery from the New York State Assembly to the governor's office for his approval. The governor's approval is virtually certain as his office previously submitted a memorandum supporting the amendment.¹

Current State of the Law

Currently, the Labor Law permits wage deductions only for items authorized by law, such as tax withholdings, and for items authorized in writing and "for the benefit of the employee," such as insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, and payments for dues or assessments to a labor organization. The existing law does not allow employers to make deductions commonly allowed in other states, such as for employee purchases or even the overpayment of wages. Indeed, in 2009, 2010 and 2011, the New York State Department of Labor issued written opinions stating that the current law prohibits deductions for wage overpayments and advances, even with the employee's written consent, reversing decades of contrary interpretations and creating significant practical dilemmas for employers. One perhaps unintended consequence was that employers scrambled to "lag" their payrolls, if they did not already do so, because they could no longer correct in a subsequent payroll period for overpayments made in a prior payroll period.

Changes – Expanded Employee Authorized Deductions

Once effective, the new law will amend Labor Law section 193 to allow employers to make additional wage deductions, with an employee's written consent, for:

- Prepaid legal plans;
- Purchases at certain charitable events;
- Discounted parking or passes, fare cards, or vouchers related to mass transit;

¹ The governor's memorandum is available at www.governor.ny.gov/assets/documents/GPB49-WAGE-DEDUCTION-MEMO.pdf.

- Fitness, health club or gym memberships;
- Cafeteria, vending machines and pharmacy purchases at the employer's premises;
- Tuition, room, board and fees related to certain education institutions; and
- Certain child care expenses.

Prior to making any of the above deductions, employers must give written notice of the terms and conditions or benefits of the deduction, as well as the manner in which the deduction will be made. Employers must also provide advance notice when there is a substantial change in the terms or conditions of the payment including, but not limited to, a change in the amount, a substantial change in the benefits, or a change in the manner in which the deduction is made.

Changes – New Employer Approved Deductions

Further, once effective, the amendment will allow employers to make deductions for both wage overpayments due to mathematical or clerical errors, and repayments of salary or wage advances, provided that the employer complies with regulations to be issued by the Department of Labor. The amendment authorizes the Commissioner of Labor to create regulations addressing issues such as: the size of the overpayment that may be deducted; the timing, frequency, duration, and method of deductions; notice to the employee; and procedures for disputing or seeking a delay of the deduction.

New Recordkeeping Requirements

The amendment also provides additional recordkeeping requirements for employers. It requires employers to keep employees' written deduction authorizations for the duration of the employee's employment and for six years after the employment relationship ends.

With respect to charitable, cafeteria, vending machine, and pharmaceutical deductions, as well as deductions not listed in the amended statute that fall within the category of "other deductions for the benefit of the employee," employers must also allow employees to access, from within the workplace, their current account information. This information must detail the individual deductions and provide a running total of the amount that will be deducted during the next applicable pay period. Employers must provide this information, without charge, either in writing or in a manner in which it can be printed by the employee.

The bill will take effect on the 60th day after it becomes law (either by the governor's signature or "pocket approval"²), and then expire three years later unless extended by the legislature.

Recommendations

The expanded deduction law may enable employers to reevaluate practices or policies that fell out of favor or were even discontinued over the past several years due to the restrictions on deductions imposed by the Department of Labor. For example, employers may want to reconsider such matters as advances on vacation or sick leave, tuition reimbursement plans, relocation bonuses, and advances on commissions, which had become risky because of the limitations on employers' ability to recoup such advances or payments.

Further, under continuing pressure to hold down expenses, employers may want to explore whether the law affords them an opportunity to offer employees additional benefits at little or no cost. For example, employers may be able to negotiate discounted group fees with third-party vendors (e.g., parking passes, gym memberships), who would have the guarantee of regular payment by wage deduction, and pass those savings along to their employees as a benefit.

Final decisions on wage or wage supplement advances, as well as the establishment of forms or policies concerning recoupment of wage overpayments, should likely be deferred until the Department of Labor issues regulations on such matters as notice requirements, deduction limits, and procedures for contesting deductions.

² When the governor fails to act on a bill within 10 days of receiving it, it is automatically approved.