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## CivilLITIGATION

### What Labor Law Section 193 amendments mean

New York Labor Law § 193 and New York Compilation of Codes, Rules and Regulations Title 12, § 195.1 govern employer deductions from employee's wages. Until now, § 193 generally prohibited employers from making deductions from employees' wages, with two exceptions: First, when the deductions were authorized by law, such as income tax withholdings and court ordered garnishments; and second, when the deductions were authorized in writing and for the benefit of the employee, such as health insurance premiums, pension or health and welfare benefits, contributions to labor organizations and charitable organizations, and/or similar types of payments.

The regulations provided that permissible deductions for all non-enumerated items must not exceed 10 percent of the gross wages due to the employee in a payroll period.

Initially, the law was interpreted to mean that employers could make deductions from employees' wages provided the deduction was authorized in writing by the employee, for the benefit of the employee, and were for purposes that were "similar" to the purposes authorized by the statute. However, in recent years the New York State Department of Labor changed its interpretation of § 193 and drastically reduced the types of deductions an employer could make. The Department of Labor interpreted the old law as prohibiting deductions for accidental overpayment of wages or payment advances on vacations or loans because the deductions were not considered as being "for the benefit of the employee," even in cases where the employee specifically consented.

The New York State Department of Labor's interpretations were so strict that even obvious and gross overpayments to an employee could not be deducted, again, even where the employee agreed to the deduction. The recent interpretation also prohibited employers from requiring employees to repay the employer by means of a separate transaction by threat of discipline. This left employers with no recourse but to sue current and former employees when they refused to voluntarily repay an overpayment or an advance.

Because of the narrow interpretation, the legislature recently amended the provision, and the new law became effective on Nov. 6. New York Labor Law § 193 now gives employers greater leeway in making deductions from employee paychecks.

Under the amended legislation, employers are permitted to deduct from employees' paychecks to repay advances of salary or wages, and to recoup overpayments stemming from clerical or mathematical errors, subject to regulations promulgated by the New York State

Department of Labor. It is presently unclear if overpaid "Paid Time Off" and vacation would be subject to inclusion under the amendments. The amended law also permits employers to take deductions out of the paychecks of employees who consent in writing for certain categories of payments, including:

- 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;
- Fitness center, health club, and/or gym membership dues;
- Discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit;
- Events sponsored by charitable organizations;
- 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; and
- Similar payments for the benefit of the employee.

Prior to making these deductions, employers will be required to provide employees with written notice detailing the purpose of the deductions and the manner in which they will be made. The new provisions specify that the notice must be updated whenever there is a substantial change in the manner of the deduction, the amount or the terms of the conditions of the payment for which the deduction is being made. Employers must comply with the notice requirements in addition to obtaining written employee authorizations.

A word of warning to employers. Although the new law took effect Nov. 6, the New York Department of Labor has yet to issue its regulations. The regulations will likely deal with the timing and frequency of deductions, the amounts that may be recovered, as well as notice requirements and a requirement that employers implement a procedure that employees can use to dispute the amount of overpayment or salary/wage advance.

Employers are cautioned to wait for the regulations before acting in accordance with the amended provisions. Finally, the law has a sunset provision stating that it expires in three years, so if the legislature does not renew the amendments, it will revert back.

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