

September 14, 2012

## **Bill Amending Wage Deductions Statute is Signed by Governor Cuomo**

Employers may recall that in 2010, the New York State Department of Labor abandoned its long-standing interpretation of New York Labor Law § 193 (“Section 193”), and held that employers were not permitted to recoup salary overpayments, loans, salary advances, tuition payments, and other benefits from employee wage payments, even if the employee authorized or requested it. As a result, many employers ceased making loans to employees and advancing tuition expenses, among other things.

On June 21, 2012, however, the New York State Senate and Assembly passed a bill designed to restore employers’ ability to deduct from employees’ wages under certain circumstances. Governor Cuomo signed the bill into law on September 7, 2012. The bill will go into effect on November 6, 2012.

### **The Current Law**

In its current form, Section 193 prohibits employers from making any deductions from an employee’s wages except for those that are expressly authorized in writing by the employee and that are for the benefit of the employee. The permissible deductions under Section 193 include: (a) payments for insurance premiums; (b) payments for health and welfare benefits; (c) contributions to charitable organizations; (d) payments for United States bonds; (e) payments for dues or assessments to a labor organization; and (f) similar payments for the benefit of the employee. Section 193(2) also states that an employer may not compel an employee to make any payment by separate transaction unless such payment is consistent with the permissible deductions listed

above.

In an opinion letter dated January 21, 2012, the DOL held that it is impermissible for an employer to recoup wage overpayments, even overpayments resulting from mathematical error, by means of a wage deduction, even if the employee consents to the deduction. The DOL currently interprets Section 193 to prohibit deductions designed to recoup overpayments because such deductions are not listed as one of the specifically enumerated permissible deductions.

Under the DOL’s current interpretation of Section 193, to recoup any loan, advance, or other payment made to an employee, employers may request that the employee return the overpayment by means other than a wage deduction so long as the employer clearly communicates that refusal to do so will not result in any discipline. If an employee refuses to return the overpayment voluntarily, employers may seek relief in a civil court action. Employers, however, have been reluctant to pursue these causes of actions given the costs associated with bringing a lawsuit over potentially small sums.

### **Amendments to Section 193**

The new bill signed by Governor Cuomo is designed to re-establish employers’ ability to recoup certain payments or advances to employees by means of a wage deduction. The bill accomplishes the following: (a) it establishes additional categories of permissible wage deductions by employers; (b) it permits the use of wage deductions to recapture overpayments of wages due to clerical or

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mathematical error and to collect on certain advances provided to employees; and (c) it sets forth other rules and regulations regarding employers' use of wage deductions.

Under the amended Section 193, an employer may deduct the following from employees' wages so long as the employee consents to the deduction: (a) costs associated with discounted mass transit tickets, passes, or user cards; (b) fitness or health club and/or gym membership dues; (c) cafeteria, vending machine, and pharmacy purchases made at the employer's place of business, and gift shops run by hospitals, colleges, and universities; (d) tuition, room, board and fees for nursery, primary, secondary, and post-secondary education costs; (e) daycare, before-and after-school care expenses; and (f) payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof.

Furthermore, the amended Section 193 will permit employers to recoup wage advances, loans, and wage overpayments by means of a wage deduction. Before an employee may give consent to a wage deduction, however, the employer must provide the employee with written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made. Whenever there is a substantial change to the terms or conditions of the payment, or as soon as a substantial change in the manner the deduction is made, the employer must, as soon as practicable and at least before any increased deduction is made, notify the employee of the change. Employee authorizations shall be kept by the employer for the duration of the employee's employment and for six years thereafter.

The bill also requires the Commissioner of Labor to issue regulations governing wage deductions for these purposes. The regulations will, once drafted, include provisions governing the following: (a) the types of payments that will be covered; (b) the timing, frequency, duration and method of recovery or repayment; (c) limitations on the periodic amount of such recovery or repayment; and (d) notice to employees before commencing the recovery or repayment, including notice of procedures for disputing any overpayments or delaying the start of recovery or repayment.

The bill specifies that an employee may revoke his/her consent in writing at any time (except when deductions are required by collective bargaining agreements), at which point the employer must cease the wage deduction as soon as practicable, and in no event more than four pay periods or eight weeks after consent is withdrawn.

The bill also limits deductions for certain items such as payments on purchases made at fundraising events, cafeteria, vending, pharmacy, covered gift shop purchases, and similar payments, by requiring the aggregate amount in a given pay period not exceed a maximum amount established by employer and employee.

### **Considerations for Employers**

In light of this bill's passage, employers will once again have the tools to implement loan advancement and tuition reimbursement programs for employees. Furthermore, employers will once again be able to recoup accidental overpayments by means of the wage deductions.

Employers should be mindful that the Commissioner of Labor will soon announce regulations governing wage deductions to recoup overpayments and advances; given that employers put many such programs on hold in 2010, and the law does not take effect until November, it may be prudent to wait for further legal developments before proceeding. Although some portions of the bill will certainly require additional regulatory clarity, employers can anticipate that they will be required to notify employees of the amount to be deducted in each pay period and the duration of the deductions, and employers will be required to develop a procedure for employees to dispute any wage deductions as they happen. Most importantly, employers must obtain employee consent for many of the deductions contained in the amendments before the employer commences the deductions.

If you have any questions or need further guidance regarding this bill, please contact [Adam Harris](#) at (212)-758-7724 or any other attorney at the Firm.

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