



## The New Employee Wage Deduction Law in New York

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Governor Andrew Cuomo (D-N.Y.) just made things a little easier for employers. Effective on November 6, 2012, employers in New York will have greater flexibility when it comes to permissible deductions from employee wages. The new amendment to New York Labor Law Section 193 – passed by the state legislature and signed by Governor Cuomo this month – expands the list of reasons an employer can take deductions from wages other than the usual withholding taxes and insurance premiums, and now provides lawful approaches to many of the practical realities in the employer-employee relationship.

### Section 193 – The Old Version

For the past 46 years, employers in New York have faced a virtually insurmountable roadblock when it came to permissible deductions from an employee's earned wages. The old version of Section 193 provided that **no** wage deductions could be made **unless** they were either provided for by law or by government agency rule, or they were (i) expressly authorized in writing by the employee **and** (ii) for the benefit of the employee. Section 193, though, made clear that the only authorized deductions that would be deemed "for the benefit of the employee" were in all cases "limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee."

The New York State Department of Labor (DOL) offered no great comfort to employers with the seemingly catch-all nature of the final clause "and similar payments for the benefit of the employee," as the DOL took a very narrow interpretation of that clause. Thus, under the old version of Section 193, any deductions taken under that catch-all provision still had to be similar to those already enumerated deductions. Thus, for years employers were still unable to recoup inadvertent

overpayments through future payroll deductions, or to allow an employee to repay voluntary loans through payroll deductions going forward, for fear that they would be deemed in violation of the labor law and subject to the very onerous remedies (including double damages and attorneys' fees) that could be awarded.

Finally, change came.

### Section 193 – The 2012 Amendments

Beginning on November 6, 2012, employers will have greater rights to take deductions from employee wages, and will be better able to allow employees to use payroll deductions as a means for obtaining certain privileges that truly benefit the employee.

### The Process for Wage Deductions

A few procedural and record-keeping requirements have been added.

- Any wage deduction must still be voluntary, and made only after the employer gives written notice to the employee of the terms and conditions of the deduction and the details of how the deduction will be made.
- If there is a substantial change in the terms or conditions of the deduction (including the amount of the deduction), the employer must notify the employee as soon as practicable before implementing the change.
- The employer must maintain the employee's written authorization for the deduction for the entire period of that employee's employment, and for six years after such employment ends.

### The Expanded List of Authorized Wage Deductions

In addition to the existing (limited) list from the old version of Section 193, there are new permissible deductions that can be authorized in writing by an employee.

- Prepaid legal plans.
- Purchases made at events sponsored by a bona fide charity that is affiliated with the employer, provided that at least 20 percent of the event's profits are contributed to such charity.
- Discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that enables an employee to use mass transit.
- Dues for a fitness center, health club, or gym membership.
- For hospital, college and university employers, employee purchases at a cafeteria, gift shop and vending machine at the employer's place of business.
- Pharmacy purchases at the employer's place of business.
- Tuition, room and board, and fees for pre-school, nursery, primary, secondary, and post-secondary educational institutions.
- Day care and other before-school and after-school expenses.
- Payments for housing provided at no more than market rates by nonprofit hospitals or their affiliates.

### Other Permissible Purposes for Wage Deductions

Employers may now utilize wage deductions to also accomplish certain goals that were previously prohibited under Section 193.

- An employer may deduct from wages to recover an overpayment of wages, where the overpayment is due to a mathematical or clerical error by the employer. In doing so, the employer must comply with regulations that will be promulgated by the DOL for this type of deduction, and which will provide for, among other things, the size of overpayment subject to this permissible deduction; the timing, frequency, duration and method of the employer's recovery; the notice required to be given to the subject employee; and a mechanism for the subject employee to dispute the attempted recovery.
- An employer may deduct from wages for the purpose of obtaining a repayment of advances of salary or wages. The employer must similarly comply with regulations that will be promulgated by the DOL for this type of deduction.

### Miscellaneous Provisions

The new amendments to Section 193 also impose new miscellaneous obligations.

- Section 193 continues to prohibit an employer from making any deduction, or requiring any employee payment "by separate transaction" unless the deduction or payment is permissible under this section. However, the amended Section 193 also allows a collective bargaining agreement to provide for permitted or required deductions or payment as otherwise permitted by Section 193.
- Any authorized deductions for purchases at charitable events; cafeteria, gift shop and vending machine purchases; and pharmacy purchases are also subject to certain aggregate amount restrictions under the new Section 193. Employers are also required to provide access to certain financial information in relation to these particular authorized deductions.
- An employee is entitled to revoke his or her authorization for a deduction in writing at any time (except those authorized in a collective bargaining agreement), in which case the employer must cease the deduction for which authorization was revoked as soon as practicable, but in no event after the earlier of four pay periods or eight weeks after the revoked authorization.

Finally, where the legislature giveth, it also potentially taketh as well. The Section 193 amendments provide a "sunset provision" that expressly states these amendments shall expire and automatically be deemed to be repealed in three years – *i.e.*, on November 6, 2015. Hopefully, the new amendments will be a welcomed change in the workplace, and the New York legislature will see fit to renew (and possibly add to) these Section 193 amendments before the sun sets on them.

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