

Authorized Deductions from Employee Wages

In 2013, the New York Commissioner of Labor issued [regulations](#) implementing extensive [amendments](#) to Section 193 of the New York State Labor Law. Section 193 applies to every “person” except public employees and outlines what expenses an employer is permitted to deduct from an employee’s wages.

The regulation implemented the statutory amendments which greatly expanded the list of authorized deductions and provide employers with new avenues for collection in the event of salary advances or erroneous wage overpayments. This Legal Alert provides a high-level overview of the range of deductions and obligations that are contained in the 2014 law and updates since that time.

Introduction to Section 193

Prior to the 2013 amendments, the extent of deductions allowed under Section 193 was quite narrow. Employers were permitted to deduct from wages only where (i) such deduction was made in accordance with a law, rule or regulation (e.g., wage garnishments for child or spousal support and Federal tax withholdings); or (ii) the deductions were for payments which fit within one of the five categories listed in Section 193(1)(b) (i.e., insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, or payments for dues to labor organizations), were made for the benefit of the employee, and were expressly authorized by the employee. All other wage deductions were illegal under the previous provision, even if the employee consented to the deduction. Thus, prior to the passage of this bill, employers were severely limited in their ability to recover from employees for erroneous wage overpayments or salary advances.

Expanded List of Permitted Deductions

The categories of payments for which deductions are permitted to be made under Section 193(1)(b) also include:

- prepaid legal plans;
- purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least 20% of the profits from such event are being contributed to a bona fide charitable organization;
- discounted parking or discounted passes, tokens, fare cards, vouchers or other items that allow the employee to use mass transit;
- fitness center, health club, and/or gym membership dues;
- 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 (subject to aggregate limits for such deductions established by the employer and the employee);
- pharmacy purchases made at the employer’s place of business (subject to aggregate limits for such deductions established by the employer and the employee);
- 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;

- payments made for housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and
- similar payments for the benefit of the employee.

Authorization Forms

In addition to expanding the scope of payments for which deductions are permitted, Section 193(1)(b) includes a notice and consent provision that must be satisfied before an employer may begin making deductions. Pursuant to this provision (reflected in 12 NYCRR Section 195-4.2), before an employee may give her express written authorization of a deduction, the employer shall provide the employee with written notice of all terms and conditions of the payment and or its benefits, as well as the manner in which the deduction will be made. The employer must also provide the employee with notice of any substantial changes to these terms, prior to the implementation of any such change. The employee may revoke written authorization at any time. All written statements by the employer under this law must use ordinary language readily understood and appear in no smaller than 12-point font.

Section 193(1)(b) also includes a document retention provision which requires employers to retain employee authorizations for a period of six years following the end of the employee's employment term.

Recovery of Overpayments and Salary Advances

The provisions of the law that may be of greatest interest to employers are paragraphs (c) and (d) of Section 193(1) (reflected in 12 NYCRR Sections 195-5.1 and 195-5.2). These paragraphs address deductions related to (i) the recovery of an overpayment of wages due to a mathematical or other clerical error; and (ii) the repayment of advances of salary or wages. These categories of deductions are permissible.

The regulations also permit deductions that are in accordance with laws, rules, or regulations issued by any governmental agency (12 NYCRR Section 195-3.1). However, employers should be cautious in implementing these deduction policies for several reasons. First, the employer must obtain written authorization from the employee prior to making any deductions. Second, employers must implement a procedure by which employees may dispute the deduction and the employer must notify the employee of the procedure prior to any deductions. Third, employers must allow employees access to account information detailing the categories of deductions and a running total that will be deducted from the employee's pay for the next pay period. Finally, the regulations provide detailed restrictions governing the timing, frequency, duration, and method of any recovery/repayment and the periodic amounts of any such repayments. These restrictions include that (i) overpayments recovered must have been made within eight weeks prior to the issuance of a notice of intent to recover and (ii) if the entire overpayment is less than or equal to net wages in the next payment, it may be recouped entirely from that payment and notice must be given at least three days in advance of the deduction, but if the overpayment is more than such net wages, deductions are limited to 12.5% of gross wages in that wage payment, may not reduce pay below minimum hourly wage and notice must be given at least three weeks in advance of beginning such deductions.

While employers should be aware of the opportunity to utilize deductions to facilitate the recovery of funds from employees, they should proceed with caution when implementing these policies.

Revocation of Authorization

Pursuant to Section 193(3)(c), with the exception of wage deductions required or authorized in a collective bargaining agreement, an employee's authorization may be revoked in writing at any time. Once revoked, the employer must cease the wage deduction as soon as practicable, and, in no event more than four pay periods or eight weeks after revocation.

Deductions Permitted Under Collective Bargaining Agreements

Section 193(3)(a) of the amended provision permits wage deductions by employers that are required or permitted under any provision of a current collective bargaining agreement.

2021 Amendment

Effective August 20, 2021, Sections 193(5) and 198(3) now contain the following identical provisions: "There is no exception to liability under this section for the unauthorized failure to pay wages, benefits or wage supplements." This was meant to close a judicial loophole and protect employees from the unauthorized theft of their wages.

This alert is meant to provide general information only, not legal advice. This alert was prepared by Judith Moldover. If you have any questions about this alert or if you need legal assistance please contact info@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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