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KD Alert: New NYS Law Expands Permissible Deductions from Employee Wages

By Keith Gutstein and Angel Sevilla
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On September 10, 2012, Governor Andrew Cuomo signed into law legislation that amends New York Labor Law Section 193 to significantly expand the permissible types of employee-authorized deductions employers may take from employees' paychecks. The legislation will also permit employers to recoup inadvertent wage overpayments and repayment of wage advances through wage deductions authorized by the employee.Previously, Section 193 only allowed pay deductions for a limited number of specified categories otherwise allowed by law, such as tax and Social Security withholdings, or well established deductions authorized by and for the benefit of the employee, such as retirement contributions, insurance premiums, pension or health and welfare benefits, union dues, contributions to charitable organizations, and payments for U.S. bonds. The amendments in the new law afford employers – and employees – some much-needed flexibility from the stringent requirements of Section 193, by establishing new categories of permissible wage deductions that are authorized by the employee, such as health club memberships, mass transit tickets, day care expenses, and food and similar items purchased at the workplace.

Employers will also benefit from the Section 193 revisions that would permit wage deductions for the repayment of salary advancements and wage overpayments. Previously, Section 193 prohibited such deductions, even when voluntarily authorized by the employee. The Department of Labor had issued an opinion letter on January 21, 2010, which made it clear that employers are prohibited from recovering overpayments or loans to employees though pay deductions. Employers were left with limited options, such as a formal legal action, to recover overpaid sums. The new law provides for the use of wage deductions to recapture overpayments of wages due to clerical or mathematical error, or for repayment of advances on wages paid to employees.

Employers should be aware that the changes will take effect in 60 days. Moreover, the New York Department of Labor will establish additional regulations setting forth the permissible amount of deductions, the timing and frequency of recovery, notice requirements, and mechanisms for employees to dispute deductions. Finally, unless amended or extended by future legislation, these amendments will automatically expire three years following its adoption.

If you have questions about the information presented in this email, please contact Keith Gutstein. KD's attorneys can assist you in ensuring that "best practices" are in play, thereby minimizing the exposure to liability.

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