

Additional Deductions From Wages

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The NYS Legislature amended the permissible wage deductions in 2012. On May 7, 2013, the New York State Commissioner of Labor issued proposed regulations about how the permissible wage deductions can be made. The comment period expires in July, 2013.

Deductions continue to only be permitted if expressly authorized in writing by the employee and if the deductions are, generally, for the benefit of the employee. Under the new amendment and the regulations, employers are permitted to make deductions for numerous reasons that were previously prohibited, including the following:

- Discounted mass transit tickets, passes, or cards
- Fitness, health club, and/or gym membership dues
- Cafeteria, vending machine, and pharmacy purchases made at the employer's place of business
- Tuition, room, board, and fees for nursery, primary, secondary, and post-secondary education costs
- Day care and before- and after-school care expenses

The amendment also allows employers to deduct from employees' wages to recover advances in pay, unintentional overpayment of wages, or advances on vacation.

Two of the most significant additions are deductions for the repayment of overpayments to the employees and the deduction from wages for the recovery of advances.

The proposed regulations limit an employer to only recovering overpayments made in the eight (8) weeks prior to the employer providing a notice of the recovery of the overpayment. The duration of the recovery may be over a six (6) year period. Both overpayments and advances may be recovered through wage deduction or by a separate transaction, so long as the provisions of the regulations are met. The

employer has to provide the employee with notice of intent to deduct the overpayment, and establish a procedure so that the employee may dispute the amount of the overpayment, and there are limits as to how much can be deducted at any one time.

While loans are among the type of advance that may be permitted, to be deductible from wages, the employer loan cannot include interest or other charges in order to meet the requirements for permissible deductions. The parties must agree upon the repayment timing, no additional advance can be deducted until the first is repaid in full, it may provide for deduction of the remaining balance if employment ends, the employee has to sign an authorization form for the deductions, and there has to be a procedure for the employee to dispute the amount and frequency of deductions. The employer has to keep records relating to the authorization for at least 6 years.

Before employers take advantage of the expanded provisions for deductions from wages, they must make sure that their procedures comport with the Regulations, as they may be adopted. It is not too early to begin drafting appropriate policies, and auditing your policies for compliance. We would be glad to help you develop the necessary policies.

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