

New Wage Deduction Regulations To Go Into Effect Soon: **New York Employers** Be Prepared

Last year, New York amended its [wage deduction statute](#) to specify which deductions New York employers may and may not make from employees' pay. Under the new law, permissible deductions fall into four categories:

1. Deductions made in accordance with any law, rule or regulation issued by any governmental agency (i.e. taxes, pre-tax contribution plans approved by the IRS, wage garnishments and child support orders).
2. Voluntary deductions authorized by the employee for the benefit of the employee;
3. Deductions for the recovery of overpayments made in accordance with the regulations; and
4. Deductions for the repayment of wage advances made in accordance with the regulations.

The New York State Department of Labor ("DOL") recently [proposed wage deduction regulations](#) interpreting Labor Law Section 193, and final regulations are expected to be published soon. With the new regulations likely to go into effect soon, New York employers should plan now to bring their procedures and processes relating to pay deductions into compliance with the new law.

Notably, the proposed regulations will replace the "10% rule" currently in effect, which capped deductions relating to "similar payments for the benefit of the employee" at 10% of the employee's gross pay for the pay period. Under the new regulations, the 10% rule will no longer be in effect.

Deductions for the Benefit of Employees

[New York Labor Law section 193\(b\)](#) lists numerous allowable deductions "for the benefit of the employee," and also provides for "similar payments for the benefit of the employee." These deductions are only permissible, however, if they are stated in a collective bargaining agreement or are authorized in writing by the employee following notice of all the payment terms and benefits provided to the employee. Permissible deductions "for the benefit of the employee" specifically include:

- insurance premiums and prepaid legal plans;
- pension or health and welfare benefits;
- contributions to a bona fide charitable organization;
- purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least twenty percent of the profits from such event are being contributed to a bona fide charitable organization;
- United States bonds;
- dues or assessments to a labor organization;
- discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle 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;
- pharmacy purchases made at the employer's place of business;
- 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 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.

The proposed regulations clarify that such “similar payments” are expressly limited to benefits for health and welfare, pension and savings, charity, representation, transportation, and food and lodging. The proposed regulations provide a list of non-exclusive examples of benefits that fall into each of the above categories.

The proposed regulations also warn against deductions which are for the “convenience” of the employee but not for the “benefit” of the employee (i.e. cashing an employee’s payroll check and charging a fee). The proposed regulations also specifically prohibit deductions for the following purposes:

- Repayment of loans, advances, and overpayments that are not in accordance with the regulations;
- Employee purchases of tools, equipment and attire required for work;
- Recoupment of unauthorized expenses;
- Repayment of employer losses, including for spoilage and breakage, cash shortages, and fines or penalties incurred by the employer through the conduct of the employee;
- Fines or penalties for tardiness, excessive leave, misconduct, resignation without notice;
- Contributions to political action committees, campaigns and similar payments;
- Fees, interest or the employer’s administrative costs.

Deductions for Overpayments

The new regulations do not require written authorization from the employee for the employer to make deductions for unintended overpayments due to mathematical or clerical errors. However, they specify in detail the timing, frequency, method, permitted amount of recovery, how to provide the employee proper advance notice of the deductions, dispute resolution procedures to resolve employee contentions on overpayments, and how to repay improperly taken deductions.

Timing, Duration, Frequency, and Method: The proposed regulations provide that an employer may only recover overpayments made in the 8 weeks prior to issuing a required “notice of intent” for overpayment deductions. The employer may make deductions to recover overpayments over a period not exceeding 6 years from the date of the original overpayment. Further, an employer may recover overpayments by wage deductions no more frequently than once per wage payment. Employers may recover overpayments through wage deduction or by separate transaction so long as they follow timing and duration requirements and limitations on the amount of recovery set forth in the regulations and summarized below.

Amount: The proposed regulations allow an employer to recover overpayments by deducting the amount of the overpayment from the employee's wages, limited to the following:

1. Where the entire overpayment is less than or equal to the net wages earned after other permissible deductions in the next wage payment, the employer may recover the entire amount of such overpayment in that next wage payment;
2. Where the recovery of an overpayment exceeds the net wages after other permissible deductions in the immediately subsequent wage payment, the recovery may not exceed 12.5% of the gross wages earned in that wage payment nor may such deduction reduce the effective hourly wage below the statutory state minimum hourly wage.

Any recovery of overpayments must also comply with any final determination made under the dispute procedure.

Notice of Intent: The proposed regulations require that employers give employees a "notice of intent" at least 3 days prior to the date of a deduction for an overpayment if the entire deduction will be taken in a single wage payment, or 3 weeks prior to the commencement of deductions that will be taken periodically. The notice must state the total amount overpaid, the total amount to be deducted and the date each deduction, followed by the amount of each deduction. It must also inform the employee of the dispute resolution procedure.

Deductions for Advances

The proposed regulations define an advance as "the provision of money by the employer to the employee based on the anticipation of the earning of future wages." The proposed regulations warn that the provision of money by an employer that is accompanied by interest, fees, or a repayment amount consisting of anything other than the strict amount provided is not an advance and may not be reclaimed through wages. Notably, the regulations are unclear as to whether this definition includes sick or vacation days. While there is an argument that an advance of leave is the same as an advancement of wages, or should be treated in the same manner, the language of the regulations does not seem to contemplate advances of leave rather than wages or money. The final regulations may be amended to address these circumstances.

Timing, Duration, Frequency, and Amount: The proposed regulations provide that the employer and employee must agree in writing to the timing and duration of the repayment deduction before the advance is given. Deductions may then be taken, so long as they are in accordance with those written terms. The proposed regulations also specify that once an advance is given, no further advance may be given or deducted until any existing advance has been repaid in full—and any money given by the employer to the employee in excess of the amounts and durations permitted to be deducted by their agreement are not recoverable through wage deductions.

Dispute Resolution: As with deductions for overpayments, the proposed regulations require that employers implement a dispute resolution procedure whereby the employee, after receiving the advance, may dispute the amount and frequency of deductions not made in accordance with the terms of the written advance authorization.

What do these new proposed rules mean for your company?

Employers should review the permissible deductions for the "benefit" of the employee to identify if there are additional benefits they want to offer employees through payroll deduction.

Additionally, although the regulations on overpayments and advancements are not yet finalized, employers should anticipate that the final regulations will be substantially similar. Employers should consider developing policies, procedures, and notices that conform to the requirements of the



proposed regulations, in order to permit them to make deductions for overpayments and for advances once the final regulations are passed.

For more information on New York deduction laws, please contact your principal Squire Sanders lawyer or one of the individuals listed in this publication.

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