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The Official Blog of the New York State Bar Association's Labor and Employment Law Section

Summary of Proposed Regulations Regarding Permissible Wage Deductions

On May 7, 2013, the New York Department of Labor ("NY DOL") submitted Notice of Proposed Rulemaking concerning the recent amendments to New York Labor Law Section 193 ("Section 193"), which became effective on November 6, 2012. On July 6, 2013, the period for notice and public comments closed. Accordingly, the final regulations are expected to be released later this year.

The amendments to Section 193 expanded the permissible categories of wage deductions employers can make under New York law. In addition, the amendments to Section 193 permit employers to recoup overpayments and seek repayment of advances made to employees. The major highlights of the Proposed Rulemaking are outlined in greater detail below.

Permissible deductions. The amendments to Section 193 authorized voluntary deductions made "for the benefit of the employee." The Proposed Rulemaking clarifies that permissible voluntary deductions will be considered to be for the "benefit of the employee" when they provide "financial or other support" for the employee, his or her family or a charitable organization. 12 NYCRR § 195-4.3(a). The categories of "other support" are limited to health and welfare benefits, pensions and retirement benefits, child care and educational benefits, charitable benefits, dues and assessments, transportation and food and lodging. *Id.* However, deductions made solely for the "convenience" of the employee - absent a benefit to the employee that falls in these permissible categories - are not "recognized benefits" of the employee. *Id.* § 195-4.3(b).

Written, informed consent. According to the Proposed Rulemaking, a deduction shall be authorized if it is agreed to in a collective bargaining agreement or by a written agreement between the employer and employees that is "express, written,

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voluntary, and informed." 12 NYCRR § 195-4.2(a). An employee will be "informed" when "the employee is provided with written notice of all terms and conditions of the deduction, its benefit and the details of the manner in which the deductions shall be made." *Id.* Significantly, written notice of the deduction must be provided to the employee *prior* to the initial authorization and deduction, and prior to any change in the amount of a deduction or "substantial change" in the benefits of the deduction. *Id.* When the amount of the deduction increases, a "substantial" change is *presumed* for purposes of requiring the employer to issue a written notice. *Id.* Moreover, in the event that the nature of the deduction fluctuates (for example, employee purchases in the workplace cafeteria), the employer and employee may agree in advance to pre-define the permissible range of authorized deductions to obviate the need for any additional notice or authorization. *Id.*

Prohibited deductions. In addition, Subpart Section 195-4.5 of the Proposed Rulemaking identifies specifically prohibited wage deductions, which include: (i) any repayments of loans, advances or overpayments not made in conformity with the Proposed Rulemaking; (ii) employee purchases of tools, equipment and attire required for work; (iii) recoupment of unauthorized expenses, repayment of employer losses, including spoilage and breakage, cash shortages, and fines or penalties incurred by the employer for the employee's conduct; (iv) fines or penalties for tardiness, excessive leave, misconduct, or quitting without notice; (v) contributions to political action committees, campaigns and similar payments; and (vi) fees, interests or the employer's administrative costs. 12 NYCRR § 195-4.5.

Recoupment of overpayments. To recoup an overpayment made to an employee due to mathematical error or other clerical error, the employer must follow the procedures set forth in Subpart Section 195-5.1. Specifically, the employer must provide a written "notice of intent" to the employee before commencing the deductions to recover the overpayment. 12 NYCRR § 195-5.1(e). The employer's notice of intent to recover the overpayment shall contain: (i) the amount overpaid in total and per pay period; (ii) the total amount to be deducted; (iii) the date each deduction

shall occur; (iv) the amount of each deduction; (v) a notice to the employee that he or she may contest the overpayment by a set deadline; and (vi) the procedure to contest the overpayment. *Id.* § 195-5.1(e).

Dispute procedure for overpayment. The Proposed Rulemaking sets forth specific guidelines governing a permissible dispute procedure for employees to contest the deduction of wages for overpayment. 12 NYCRR § 195-5.1(f)(1). If an employee avails himself of the employer's dispute procedure, the employer may not commence deductions until at least three weeks after issuing the final determination to the employee. *Id.* § 195-5.1(g). The employer must pay the employee for any deduction found to be improper no later than the time period provided for payment of wages earned on the day of that determination, and may make the payment immediately. *Id.*

Effect of collective bargaining agreement. Significantly, if the dispute resolution procedure of a collective bargaining agreement *existing* at the time of the issuance of the regulations provides at least as much protection as the dispute procedure contemplated by the regulations, the agreement's procedure will be in compliance with the law. *Id.* § 195-5.1(f). If a dispute resolution procedure is enacted in a collective bargaining agreement *after* the issuance of the regulations and provides at least as much protection to the employee as the contemplated dispute procedure, and the agreement references Subpart Section 195-5.1 (f), that agreement's procedure also will be in compliance with the law. *Id.*

Repayment of wage/salary advances. The amendments to Section 193 also permit an employer to make wage deductions for repayment of wage/salary advances, exclusive of any interest or fees (which may not be reclaimed through deductions). Prior to paying any advance to an employee, the employer and employee must agree to the timing, duration and manner of repayment by deduction in writing, and no further advance may be given to the employee until the existing advance has been repaid in full. 12 NYCRR § 195-5.2(a).

Dispute procedure for advances. Similar to the dispute procedure for overpayments, the employer shall implement a dispute procedure for employees to contest the amount and frequency of deductions for advances. 12 NYCRR § 195-5.2(f).

Format of documents and recordkeeping. The Proposed Rulemaking requires any written authorizations, notices, responses, replies, or determinations set forth therein to be given in writing, through email or by other electronic means. 12 NYCRR § 195-5.3. Moreover, the employer must keep a record of any authorization obtained from an employee for at least six years following the employee's termination of employment. *Id.*

This post was authored by [Matt Lampe](#), [Terri Chase](#), and [Joanne Alnajjar](#) of Jones Day. The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association.

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