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News Alert for NY Employers: New Permissible Wage Deductions

Until recently, New York law has imposed rather onerous limitations on the types of deductions employers may take from employee wages, even with the employee's permission. However, the New York legislature finally passed a new law, which was signed into law by Governor Cuomo effective November 6, 2012, amending New York Labor Law § 193 to expand the list of permissible wages deductions.

Prior to the new law, employers were only allowed to take wage deductions for limited purposes, such as tax withholdings, insurance premiums, retirement contributions, charitable contributions, United States bond payments and union dues. Under the new amended law, employers may now take wage deductions for the following items:

- Prepaid legal plans;
- purchases at events sponsored by a bona fide charitable organization affiliated with the employer;
- discounted parking or mass transit commuting passes;
- fitness or health club or gym membership dues;
- cafeteria, vending machine or pharmacy purchases made at the employer's place of business;
- tuition, room, board and fees for nursery, primary, second and post-secondary education costs;
- day care and before and after school care expenses; and
- payments for housing provided by nonprofit hospitals or their affiliates (at no more than market rates).

Note that these wage deductions still require the express written authorization of the employee. In fact, the new amended law imposes some new additional consent and notification requirements on employers. Specifically, employers must now

provide employees with written notice of the terms and conditions of the payment or benefits at issue and the details of how the deductions will be made. The employee must sign an authorization, which must be kept on file for six years after the end of the employee's employment. Finally, if the terms or conditions substantially change, the employer must notify the employee before making the change.

The other significant change under the new law is that employers can now take wage deductions to recoup overpayments of wages if an employee was overpaid due to a mathematical or other clerical error. The new law also allows for wage deductions for the repayment of a salary or wage advance given to the employee. Prior to the enactment of this amendment, such deductions were not permissible under New York law. The amended law instructs the New York State Department of Labor to issue regulations covering issues such as the types of payments covered by this provision; the timing, frequency, duration and method of recovery or repayment; limitations the periodic amount of such recovery or repayment; and notices to employees.

Note that the amendment was passed with a sunset provision, providing that the amendment will automatically expire three years after its effective date.