



## **Employers Have More Flexibility to Make Deductions from Employee Paychecks**

Kimberly Klein Esq.

A semblance of sanity has been restored to the New York wage deduction law, giving employers some long overdue relief. Effective October 9, 2013, with the consent of the employee, employers may now recover overpayments due to a mathematical or clerical error and salary or wage advances made to employees. In addition, the amendment expands the types of permissible deductions made “for the benefit of the employee,” provided employees expressly authorize the deduction in writing and the authorization is voluntary.

Prior to the revision, employers’ hands were significantly tied when it came to recovering overpayments and advances or making deductions that benefited employees other than those specified in the Labor Law. Such deductions were limited to, among other things, tax withholdings, insurance premiums, pension or health and welfare benefits and charitable contributions. Although the statute always provided for deductions “for the benefit of the employee,” as a result of the New York Department of Labor’s restrictive interpretation of the statute and several New York court cases narrowly interpreting the law, this phrase was defined to exclude many goods and services employers may have offered their employees such as gym memberships, cafeteria purchases, loans or advances.

As a result, many employers stopped trying to accommodate employees who needed a loan, advance or some other benefit, simply because they were precluded by law from recovering the money from the employee’s wages, even if the employee agreed to the deduction.

The revised regulations address these concerns, allowing certain deductions advantageous to employees and practical for employers, provided the employee has knowledge and voluntarily consents to the deduction. The new permissible deductions include:

- Payment made for discounted parking or discounted passes, tokens, fare cards, vouchers or other items that entitle the employee to use mass transit, such as transit tickets, passes, or user cards;
- Fitness center, health club or gym membership dues;
- Cafeteria, vending machine and pharmacy purchases made at the employer’s place of business, and gift shops run by hospitals, colleges and universities;
- Tuition, room, board and fees for pre-school, nursery, primary, secondary and post-secondary education institutions;
- Daycare, before-school and after-school care expenses; and
- Purchases made at a gift shop where the employer is a hospital, college or university.

In addition, while employers may now recover overpayments and advances, they may do so only if they strictly comply with the Labor Law requirements. In the case of overpayments, prior to an employer making any deduction from wages, the employer must notify the employee of its intent to make the deduction and specify: when and over what period the deductions will be made (deductions may be made for a period of six years from the original overpayment), the frequency of the wage deduction, the method of recovery and the amount of the deduction permitted by law. While overpayments that are equal to or less than the net wages may be fully recovered in the next wage period, an employer may not recover more than 12.5% of the overpayment where the overpayment exceeds an employee’s net wages.

In addition, the hourly wage (to the extent applicable) cannot be reduced below the state mandated minimum wage.

The notice must also inform employees of their right to contest the overpayment and provide a procedure by which the employee may do so. The new law sets forth specific steps that must be followed in the event an employee contests the overpayment. Until such procedure is completed, the employer may not make the deduction from the employee's paycheck. A presumption that the contested deduction was impermissible will be created if an employer fails to follow the required procedure. An employer may only recover overpayments made in the eight weeks prior to the issuance of the required notice.

Much of the same information is required when an employer advances an employee wages, except that such information must be provided to the employee *prior to the advance being given*, and the employee must authorize the repayment process in writing. The authorization must contain the amount of the advance, the amount to be deducted per pay period and the dates of each deduction. An "advance" is defined as money paid by the employer in anticipation of future earnings. An advance that includes interest, fees or some other amount included in addition to the amount provided is not considered an advance and may not be reclaimed through a wage deduction.

Despite the expansion of permissible deductions, employers must be aware that there are still many items employers may not deduct from employee's wages. These include:

- Employee purchases of tools, equipment and attire required for work;
- Recoupment of unauthorized expenses;
- Repayment of employer losses such as spoilage, breakage, cash shortages, fine or penalties incurred by the employer as a result of employee conduct;
- Fines or penalties for tardiness, excessive leave, misconduct, quitting without notice;
- Contributions to political action committees, campaigns and similar payments; and
- Fees, interest or the employer's administrative costs.

The wage deduction law applies to all private sector employers, regardless of size, and all authorizations approving wage deductions must be kept by the employer for six years.

\* \* \* \*

Prior to making a deduction for an overpayment or advancing wages, employers should consult knowledgeable employment counsel to ensure they are properly complying with New York Labor Law requirements. Failure to do so could preclude employers from recovering the payments.