

## Client Alert

### **RECENT DEVELOPMENTS IN NEW YORK EMPLOYMENT LAW:**

- **NEW YORK CITY PROHIBITS UNEMPLOYMENT DISCRIMINATION, REQUIRES MANDATORY SICK LEAVE**
- **NEW YORK STATE SPECIFIES PERMISSIBLE WAGE DEDUCTIONS (SLOWLY)**

#### **Unemployment Discrimination**

On June 11, 2013, New York City joined a handful of other jurisdictions such as New Jersey, Oregon and Washington D.C. in banning discrimination based on the status of being unemployed. New York City amended its Human Rights Law to prohibit employers with at least four employees (in distinction to the other provisions of the NYC Administrative Code, which permit the New York City Commission on Human Rights (“NYCCHR”) to assert jurisdiction over employers with as few as one employee) from basing “employment decisions regarding hiring, compensation, or the terms, conditions and privileges of employment on an applicant’s unemployment.” The new law defines “unemployment” as “not having a job, being available for work, and seeking employment.” The new law also prohibits employment advertisements that require current employment as a qualification for employment or that disqualify applicants based on unemployment. The law further prohibits policies and practices that have a disparate impact on unemployed persons. Based on the new law, individuals and the NYCCHR are now empowered to bring an action alleging unemployment discrimination, and may seek damages, punitive damages, injunctive relief, and attorneys’ fees. The NYCCHR may also impose civil penalties up to \$125,000, or up to \$250,000 for willful acts of discrimination. Accordingly, all New York City employers should be vigilant in reviewing their employment listings, job application forms, and hiring practices for compliance with the new law. Those management employees involved in the hiring process should also be trained with respect to the new law and be mindful to properly document the legitimate, non-discriminatory reasons why particular applicants were not considered for interviews or offered positions of employment.

## **Mandatory Sick Leave**

As a follow-up to our Client Alert entitled “The Earned Sick Time Act: City Council Adopts Mandatory Paid Sick Leave,” dated May 9, 2013, the New York City Council yesterday overwhelmingly overrode Mayor Bloomberg's veto and enacted the Earned Sick Time Act, which will require employers with 20 or more employees to provide up to five paid sick days (*i.e.*, up to 40 hours) per year commencing on April 1, 2014. By October 1, 2015, the law would be extended to employers with 15 or more employees. Employers with workforces below these employee thresholds would be required to provide their employees with five unpaid sick days per year. Once the legislation takes effect, employees will still need to have worked at least four months (or 120 days) before becoming eligible for such paid or unpaid sick leave. Our May 9, 2013 Client Alert can be found at: <http://www.morrisoncohen.com/news-page?itemid=163>.

## **Wage Payment Deductions**

As a follow-up to our Client Alert entitled “New York Labor Bill Would Expand Employer’s Ability to Recoup Employee Advances,” dated August 15, 2012, we can report that only just this past month the New York Department of Labor (“DOL”) published its proposed regulations concerning an employer’s ability to make voluntary deductions from employee wages. Section 193 of the New York Labor Law, which prohibits most deductions from an employee’s pay which are not for the employee’s benefit (as defined in the law), was amended, effective November 6, 2012, to expand the list of additional deductions an employer is allowed to make from an employee’s wages, but there has been controversy regarding the date on which employers may begin to implement these more liberal changes. The DOL submitted its Notice of Proposed Rulemaking and attendant documents to the Department of State on May 7, 2013 for publication in the May 22, 2013 issue of the State Register. The proposed Wage Deduction regulations would repeal existing 12 NYCRR 195 and adopt a new 12 NYCRR 195. The proposed new regulations may be found at: <http://www.labor.ny.gov/legal/wage-deduction-regulation.shtm>. The DOL has taken the position that the new law cannot be implemented until the DOL’s enabling regulations and guidance have been promulgated. While it had been expected that these regulations would be promulgated before the November 2012 effective date of the legislation, they were only issued this past month and are still now subject to public comment (and thus potential modification) until July 6, 2013. Under the proposed new regulations, employers are permitted to take deductions out of the paychecks of employees who consent in writing for charity events, mass transit or parking, gym membership, cafeteria charges, certain purchases made at the employer’s place of business, tuition and fees for education, day care and, more significantly for employers, to recoup overpayments or advances made to employees, subject to the procedures set forth in the regulations. In regard to the new recoupment process, an employer can recover advances by wage deduction no more frequently than once per wage payment, and the amount recovered per wage payment shall be determined by the written terms of the advance authorization the employer receives from the employee prior to making the wage deduction. The proposed regulations also require that the employer adopt procedures for employees to dispute the amount and frequency of deductions and provide employees receiving an advance with written notice of these procedures.

As a practical matter, many employers have begun to implement these policy changes ahead of the regulations being finalized, given that the effective date noted in the statute has passed. However, our formal guidance is to await the promulgation of the final regulations by the DOL. We shall, of course provide a follow-up alert once the new regulations have been promulgated by the DOL. Our August 15, 2012 Client Alert may be found at: <http://www.morrisoncohen.com/news-page?itemid=118>.

If you have any questions concerning these laws and proposed regulations, or any other employment related inquiries, please contact either of the Morrison Cohen partners named below, or your usual Morrison Cohen attorney contact.

Jeffrey Englander  
212-735-8720  
[jenglander@morrisoncohen.com](mailto:jenglander@morrisoncohen.com)

Keith Markel  
212-735-8736  
[kmarkel@morrisoncohen.com](mailto:kmarkel@morrisoncohen.com)

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