

New York Labor Bill Would Expand Employer's Ability to Recoup Employee Advances

August 15, 2012 -- For some years now, New York employers have been severely limited in their efforts lawfully to recoup overpayments to their employees, whether in the form of inadvertent wage overpayments, salary advances, or recoupment of vacation pay advanced to employees which their employer had agreed to permit them to take prior to actual accrual, among many other accommodations. These limitations are imposed by New York Labor Law § 193 and the New York State Department of Labor's well established policy of strict enforcement of this statutory provision.

The existing law—similar to that which exists in many other states—has discouraged otherwise benevolent employers from granting advances in the use of vacation time or providing loans to employees who had provided good reasons for seeking advances, since, if those employees severed their employment relationship with their employer prior to repayment, there was no lawful basis to recoup advances through otherwise appropriate payroll deductions. New York's Wage Theft Protection Act, which became effective April 9, 2011, only further complicated matters by providing employees with the right to seek double damages and attorneys' fees against employers for any such unlawful deductions.

Under a new bill, however, which was passed by both the New York State Senate and Assembly earlier this summer, and now awaits the Governor's signature, an employer would be permitted to deduct from an employee's paycheck for the employee's repayment of loans or advances in vacation pay. An employer would also be permitted to deduct from an employee's paycheck for inadvertent wage overpayments which were the result of mathematical or clerical errors. Additionally, employers who obtain the written consent of employees would be permitted to deduct from an employee's paycheck amounts expended on behalf of the employee for such things as charitable contributions; discounted passes for mass transit or parking; cafeteria, vending machine and pharmacy purchases made at the employer's place of business; gym membership dues; tuition and fees for educational institutions and day care expenses.

The legislation is viewed as beneficial to both employers and their employees, since it would permit employers to reinstitute salary advancement and similar programs without fear of violating New York Labor Law (or the unpalatable alternative of suing employees to recoup the loss for such overpayments) and would permit employees the benefit of systematic payment deductions for covered expenses.

Employers should take note, however, that as written the legislation has a "sunset" provision three years after the statute takes effect. In other words, if the legislation is not renewed by legislative action, the more stringent provisions applicable to payroll deductions will come back into effect after three years.

Please check for updates regarding this legislation, including the promulgation by the Department of Labor of regulations concerning the manner, means and procedure by which payroll deductions may be taken.

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