

Client Alert

New York Department of Labor Adopts Rules on Permissible Wage Deductions

October 17, 2013 – Although it has been more than a year since New York Labor Law §193 was amended to provide an employer with the right to make lawful wage deductions, the New York Department of Labor (“DOL”) recently issued its final regulations that provide the necessary guidance to employers to ensure compliance with the new law. The full text of the DOL’s newly published regulations, which became effective on October 9, 2013, is available [here](#).

Our [August 15, 2012 Client Alert](#) discussed the relevant amendments to the Labor Law. As previewed in our prior Client Alert and now explained more fully by the DOL in the new regulations, employers are permitted to deduct from an employee’s paycheck amounts that are expended “for the benefit of the employee”, including deductions for (i) health and welfare benefits; (ii) pensions and retirement benefits; (iii) child care and educational benefits; (iv) charitable benefits; (v) representative benefits; (vi) transportation benefits; and (vii) food and lodging benefits.

In addition to providing detailed explanations of the categories of permissible deductions listed above, the new DOL regulations also address an employer’s ability to recover wage overpayments and salary advances. The procedures for recovering these amounts are summarized below.

Deductions for Overpayments

- **Timing and Duration.** The employer may only recover an overpayment due to a mathematical or other clerical error within eight (8) weeks after it is made. However, the employer can agree to make the necessary deductions from the employee’s wages to recoup the overpayment over as long as a six (6) year period.
- **Amount of Deduction.** The employer may recover the total overpayment from the employee’s next wage payment, so long as the total overpayment is less than or equal to the employee’s net wages earned after accounting for all other permissible deductions. If

the overpayment is greater than the employee's net wages earned in the subsequent wage payment, the deduction may not exceed 12.5% of the gross wages earned in that wage payment. Furthermore, an employer cannot take a deduction that reduces the effective hourly wage below the statutory state minimum hourly wage (currently \$7.25/hour and \$8.00/hour as of January 1, 2014).

- **Notice Requirement.** Notice to recover an overpayment must be given to the employee in writing at least three (3) days prior to a deduction if the entire overpayment will be reclaimed in the next wage payment. In all other cases, a minimum of three (3) weeks' prior written notice is required before any deductions may commence. The notice must contain the amount overpaid and the pay period in which the overpayment was made, the total amount to be deducted and the date each deduction is to be taken.
- **Dispute Resolution Procedures.** The regulations require that the employer adopt formal dispute resolution procedures by which an employee can contest the employer's notice of overpayment or the terms of any recovery by the employer for such overpayment. If an employee provides a timely objection under the procedures, the employer is precluded from commencing any wage deduction until three (3) weeks after a final determination by the employer is made in respect of the dispute. The regulations expressly provide that failing to follow the appropriate dispute resolution procedures will create a presumption that a contested deduction was impermissible.

Deductions for Salary/Wage Advances

- **Written Authorization.** Before any advance is issued, the employer and employee must enter into a written agreement that sets forth the amount of the advance and the timing and duration of the repayment deductions. Authorization by an employee may only be revoked prior to the employer providing the advance.
- **Timing and Duration.** Once an advance is issued, no additional advances may be given to the employee until the existing advance has been repaid in full.
- **Amount of Deduction.** The employer may recover advances no more frequently than one deduction per wage payment. The amount of the deduction is determined by the terms of the parties' agreement.
- **Dispute Resolution Procedures.** Similar to that with overpayments, the regulations require that the employer adopt formal dispute resolution procedures by which the employee can contest the amount or frequency of a deduction on the grounds that such deduction is not in accordance with the written authorization.

With the amendment to New York Labor Law §193 and with the recent final regulations now in place, employers have a roadmap that allows them to make authorized legal deductions from employee wages. Employers must ensure, however, that they have the necessary policies in place before making any payroll deductions from their employees' wages.

For further information concerning this and any other employment-related issues, please contact:

Jeffrey P. Englander
(212) 735-8720
jenglander@morrisoncohen.com

Keith A. Markel
(212) 735-8736
kmarkel@morrisoncohen.com

Evan S. Lupion
(212) 735-8853
elupion@morrisoncohen.com