

Alert

New York Expands Permissible Employee Wage Deductions

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Amendments to Section 193 of the New York Labor Law ("Section 193") that expand permissible employee wage deductions were signed into law by Governor Cuomo on Sept. 7, 2012 and are effective sixty (60) days from the signing (the "Effective Date").

Since at least 2010, the New York State Department of Labor ("NYS DOL") has interpreted Section 193 narrowly, opining that most employee wage deductions that are not specifically enumerated are prohibited. For example, deductions for mistaken wage overpayments have been prohibited. Under Section 193, allowable deductions from an employee's wages were limited to deductions authorized by law (e.g., tax withholdings and Medicare contributions), insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues to a labor organization and similar payments for the benefit of the employee (the "Catch-All Exception").

The amendments to Section 193 are designed to counter the NYS DOL's recent limited view of the Catch-All Exception. The amendments will now permit additional deductions for prepaid legal plans; purchases made at events sponsored by, or contributions to, a bona fide charitable organization; discounted parking or transportation passes; discounted gym memberships; cafeteria, vending machine and pharmacy purchases made at an employer's place of business; child care expenses; tuition, room and board, and other fees for educational institutions; and housing payments at no more than the market rates by non-profit hospitals.

Subject to future NYS DOL regulations, Section 193 also will now specifically permit employers to make deductions for an overpayment of wages that is due to mathematical error or other clerical errors and to recoup salary or wage advances. The future regulations are expected to address the periodic amounts that may be recovered and the timing, frequency, duration and method of repayment, and procedures for employees to dispute the amount of the overpayment or seek a delay of the deduction. Notably, the amendments only reference employee loans in the context of permissible deductions for salary or wage advances. The NYS DOL has previously taken a limited view of whether employee loans, whether repaid via wage deductions *or otherwise*, are permitted under Section 193.

Prior to making any permissible deductions, an employer must provide the employee with written notice of the terms and conditions and/or benefits of the deduction, and the employee must consent voluntarily to the deductions in writing. The amendments require that an employee's written authorization for deductions be kept on the employer's premises for the duration the employee's employment and for six additional years after his employment ends. The employee may revoke his consent in writing at any time. In addition, an employer must notify an employee of any substantial change in the terms or conditions of the payment as soon as possible, and before an increased deduction is made.

The amendments to Section 193 expire three years after the Effective Date, unless further legislative action is taken. Until the NYS DOL issues its regulations on the amendments, employers should proceed cautiously in making deductions from employees' wages or providing loans to employees.

Authored by [Mark E. Brossman](#), [Ronald E. Richman](#), [Holly H. Weiss](#), [Scott A. Gold](#) and [Adam J. Rivera](#).

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

New York

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
+1 212.756.2000
+1 212.593.5955 fax

www.srz.com

Washington, DC

Schulte Roth & Zabel LLP
1152 Fifteenth Street, NW, Suite 850
Washington, DC 20005
+1 202.729.7470
+1 202.730.4520 fax

London

Schulte Roth & Zabel International LLP
Heathcoat House, 20 Savile Row
London W1S 3PR
+44 (0) 20 7081 8000
+44 (0) 20 7081 8010 fax

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