Schulte Roth&Zabel

# Alert

## Recent Employment Law Updates for New York Employers

### October 24, 2013

Employers in New York should be aware of: (1) recent New York State Department of Labor regulations on permissible deductions from wages; (2) changes to New York State unemployment insurance; and (3) a new New York City law requiring employers to provide reasonable accommodations for pregnancy, childbirth and related medical conditions.

**New York State Regulations on Wage Deductions**
In September 2012, Governor Andrew Cuomo signed legislation that amended Section 193 of the New York State Labor Law ("Section 193") to expand permissible employee wage deductions. The amendments were designed to counter the New York State Department of Labor's view that only deductions specifically enumerated under Section 193 were permitted. See SRZ's Sept. 11, 2012 *Alert*, "New York Expands Permissible Employee Wage Deductions." On Oct. 9, 2013, the state's Department of Labor's regulations on permissible deductions took effect. The regulations address when deductions from an employee's wages for the benefit of the employee comply with Section 193. Employers most likely will focus on the detailed regulations for deductions of overpayments and advances.

*Deductions for Overpayments*
Section 193(1)(c) now expressly permits an employer to make deductions from an employee's wages for "an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer." Under the regulations, prior to any deduction for overpayments, the employer must provide the employee with notice, within a specified time period, of its intent to make such deductions. The notice must also specify the amounts and dates the deductions will be made. Employers may only recover overpayments that were made in the eight weeks prior to the issuance of the notice.[1] The regulations also set a maximum amount that may be deducted from each wage payment due to an overpayment.

*Deductions for Advances*
Section 193(1)(d) now expressly permits an employer to make deductions from an employee's wage for "repayment of advances of salary or wages made by the employer to the employee." An "advance" is the "provision of money by the employer to the employee based on the anticipation of earning of future wages." Loans are not advances. Under the regulations, the employer and employee must agree to the timing and duration of the repayment deduction, and the employee must give written authorization for the deductions to be made before any advance is made. No further advance may be made or deducted until any existing advance is repaid in full. If an employer gives an employee anything in excess of the agreed amount, the excess may not be recovered through wage deductions.

[1] After notice is given, an employer may make deductions for a period of up to six years to recoup the overpayment.

*Employee Disputes of Overpayments and Advances*
The regulations provide for specific procedures that each employer must establish to allow employees to dispute an overpayment and the terms of recovery or dispute the amount and frequency of deductions for advances.

**New York State Unemployment Insurance Reform**
Several changes to the New York State Unemployment Insurance system recently became effective and other important changes will take effect next year.

Effective Oct. 1, 2013, the New York State Department of Labor must receive an employer's response to a notice of potential charges to the employer's account within 10 calendar days of the date on the claim notice. If there is an overpayment to a claimant due to an employer's late response or a response with insufficient information, the employer will not be able to receive a credit to its account. Employers soon may use the newly established online State Information Data Exchange System (SIDES) to receive and respond to inquiries from the Department of Labor.

Changes that will take effect Jan. 1, 2014 include:

- The basis on which employers' unemployment insurance premiums are calculated is changing and, due to the insolvency of the unemployment insurance system, the six lowest rates for employers are being eliminated. These changes will likely increase many employers' unemployment insurance costs going forward.
- If a claimant receives severance or dismissal pay which exceeds the maximum weekly benefit rate, the claimant will not be eligible for unemployment insurance benefits during any week that the claimant is receiving dismissal pay, and no day within such week will be considered a day of total unemployment. Dismissal pay does not include payments for pension, retirement, accrued leave, and health insurance or payments for supplemental unemployment benefits. This provision does not apply if the initial payment of dismissal pay is made more than 30 days from the last day of the claimant's employment. Employers will need to consider this change in the law when structuring separation agreements.
- If a claimant is collecting pension benefits from the employer and that employer contributed to the pension, the claimant's unemployment benefits will be reduced by the amount of the prorated weekly amount of the pension.

**New York City Pregnancy Accommodation**
On Oct. 2, 2013, Mayor Michael Bloomberg signed into law an amendment to the New York City Human Rights Law that requires employers with four or more employees to provide reasonable accommodations for pregnancy, childbirth and related medical conditions, unless the employer can prove that the accommodation would cause an undue hardship. Prior to the passage of this amendment, employers were required to provide reasonable accommodations for disabled employees under various federal, state and city laws, but pregnancy was not, in and of itself, a disability. The law provides examples of the types of reasonable accommodations employers may be expected to provide, such as restroom breaks, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time and assistance with manual labor. Employers are required to provide employees with written notice of their rights under the law in a form and manner to be determined by the New York City Commission on Human Rights. New employees must be notified of their rights at the commencement of their employment beginning on Jan. 30, 2014 and existing employees must be notified prior to May 30, 2014.

If you have any questions concerning this Alert, please contact your attorney at Schulte Roth & Zabel or one of the following attorneys: Mark E. Brossman, Ronald E. Richman, Holly H. Weiss, Scott A. Gold and Adam B. Gartner.

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