Erroneous Wage Overpayments
What Happens Next?

The "no deductions from wages" rule means that employers cannot recoup money from employees except when it is for the benefit of the employee and with his consent. However, some believe that recoveries made in the next pay period to correct a payroll error constitute an exception to the rule.

Generally, no deductions from wages are allowed unless they are authorized in writing and are "for the benefit of the employee" and for purposes similar to certain enumerated purposes. These can include insurance premiums, pension or health and welfare benefits, contributions to charity, payments for U.S. bonds, or dues or assessments to labor organizations. No more than 10% of the employee's wages can be deducted for the purposes listed above.

In 2007, the NYS DOL issued an opinion letter stating that its policy would be to permit an employer to recoup an erroneous overpayment of wages in the employee's next immediately succeeding wage payment. Further, the correction *could* exceed the 10% limit on wage deductions that otherwise applied.

However, in 2010, the NYS DOL issued a new opinion letter **changing its position** in light of a 2006 opinion by the NYS Court of Appeals. DOL now said that all deductions for overpayments of wages would be considered impermissible because they are not for the employee's benefit and not similar to the enumerated deductions. Further, based upon the language of the statute, DOL added that what an employer cannot do directly through a wage deduction, it cannot require its employee to do indirectly through a separate transaction. Thus, the employer cannot *require* the employee to write a check to the employer to pay back the erroneous wage payment.

When asked what options an employer has to recoup erroneous overpayments of wages, the NYS DOL stated that an employer can *request* that the employer pay the overpayment back as a separate transaction, as long as it makes clear that the employee's refusal will not result in any form of discipline or retaliation. The other avenue DOL indicated was acceptable was for the employer to initiate a civil action in court to recover the overpayment.

The court noted that an employer may discipline an employee who fails to inform the employer that he has been overpaid if it was obvious to the employee that he was overpaid, and he was therefore deceitful in not informing his employer of this fact. But the employee cannot be disciplined for failure to repay the erroneously paid wages.

With the above in mind, employers may be able to *request* repayment by separate payment, and also prepare a written acknowledgement by the employee stating that he was overpaid and that the employer requested repayment but he was informed that he would not be subject to discipline

or retaliation for his refusal to repay. Further, the employer could advise the employee that if he does not repay the money, the employer will be forced to start a lawsuit to recover the overpaid funds. The employer can discipline its employees in such cases only if it appears obvious that the employee would have known of the overpayment and did not inform the employer.