Wage Deductions

What You Need to Know

Since last November, New York's Wage Deduction Law has allowed employers to make deductions from employee paychecks in certain cases, such as recovering overpayments due to a clerical or mathematical error by the employee, or paying for things which benefit the employee. With that in mind, the Department of Labor (DOL) issued a proposed rule last month providing examples of permissible deductions on an employee's behalf and setting out procedures for reclaiming overpayments or salary advances.

The rule lists several categories for which employers may be able to deduct wages with an employee's authorization. These are:

- Health and Welfare Benefits (i.e. gym membership dues)
- Pension and Savings Benefits (i.e. pensions and United States bonds)
- Charitable Benefits (i.e. donations to a bona fide charity)
- Representational Benefits (i.e. labor organization dues)
- Transportation Benefits (i.e. discounted parking or mass transit fare cards)
- Food and Lodging Benefits (i.e. cafeteria purchases at the employer's place of business)

Employee authorization under this rule means that a deduction has been specifically permitted under either a collective bargaining agreement, or an express, written, voluntary, and informed agreement with the affected employee(s) prior to any deduction being made. An employer must inform employees in writing of any "substantial change" for the change to qualify as authorized. This could include a reduction in the benefit(s) to be received in return for a wage deduction, or an increase in the amount of a deduction. Employers do not need employee authorization for deductions such as taxes or wage garnishments that comply with applicable laws, rules, or regulations.

Certain types of deductions are specifically prohibited. Examples include deductions for purchasing equipment required for work, internal fines or penalties for tardiness or other misconduct, fines or penalties the employer incurs as a result of an employee's conduct, or for the employer's administrative costs.

Employers must follow a specific procedure in order to deduct wages to recover overpayments caused by the employer's clerical or mathematical error, or wage advances given to employees. The employee must receive a notice of the employer's intent to do so at least three weeks in advance (three days if the entire deduction will be fulfilled through the next scheduled wage payment). This notice must state the amount overpaid per pay period and in total, the total amount to be deducted from future wages, how much will be deducted on what dates, and a procedure by which the employee can contest an overpayment and/or proposed recovery that he/she disagrees with or wishes to have delayed (including the deadline to do so). Collective bargaining agreements with dispute resolution policies may comply with this requirement if they offer at least as much protection to the employee as the DOL's rule (future agreements must specifically reference the rule in doing so). For wage advances, the employer and employee must agree to the terms (including the timing and duration of repayment) in writing prior to the advance being given, and only actual wages advanced can be recovered through future wage deductions. As with overpayments, employees must be afforded a procedure whereby they can dispute wage deductions that do not comply with the written agreement. The rule requires wage deductions to be held in abeyance during this process. Employers who do not offer a suitable dispute resolution process will be presumed to have improperly deducted the wages in question.

The DOL is accepting emailed comments on this rule through July 6, 2013.
