

# One Minute Memo<sup>®</sup>



## New York Labor Law Amendment Would Expand Permissible Deductions From Wages

New York employers still smarting from the obligations of the Wage Theft Prevention Act will soon receive some welcome news from Albany, as the Legislature has passed, and Governor Cuomo is expected to sign, an amendment to the Labor Law that make it easier to take deductions from employees' wages, including for accidental overpayments and pay advances.

Section 193 of the Labor Law broadly prohibits deductions from wages, with only a handful of enumerated exceptions. Under the amendment, employers would be permitted to make deductions for a number of new reasons, including purchases at events sponsored by charitable organizations; discounted passes for mass transit or parking; gym membership dues; cafeteria, vending machine and pharmacy purchases made at the employer's place of business; tuition for educational institutions; day care expenses; and payments for housing provided at no more than market rates by non-profit hospitals.

Deductions to recover pay advances would be permitted, as would deductions to recover an overpayment of wages to an employee where the overpayment was due to the employer's mathematical or clerical error. Employers will have to wait, however, before implementing programs for the recovery of overpayments and pay advances. Included in the amendments are instructions for the New York Department of Labor to issue regulations governing, among other things, the timing, frequency, and limitations on the periodic amount of such deductions, as well as notice requirements and a requirement that employers implement a procedure for disputing the amount of the deductions.

The amendments would also beef up employee notice and authorization requirements. As has always been the case, employers may only take deductions from employees' wages if the deductions are expressly authorized by employees in writing and the deductions are made for the employees' benefit. But the amended law would require that employee authorizations be "voluntary and given following receipt by the employee of written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made." Employers would have to keep authorizations on file throughout the employment of affected employees and for six years after the end of the employment.

In addition, employers would have to give prompt notice to affected employees whenever there is a substantial change in the "benefits of the deduction" (a phrase the statute does not define) or in the manner in which a deduction is made. Employers would need to give such notices "as soon as practicable, but in each case before any increased deduction is made on the employee's behalf."

Finally, employees would have the right to revoke their authorization for any and all wage deductions in writing at any time. Employers would be required to cease wage deductions as soon as practicable after receipt of written revocation.

The amendments take effect 60 days after the Governor's approval, but also expire three years after that effective date. Presumably the Legislature can revoke this "sunset" provision if it determines that the amendments are working as intended.

**By:** *Robert Whitman* and *Carlos Lopez*

*Robert Whitman* is a partner and *Carlos Lopez* is an associate in Seyfarth's New York office. If you would like further information, please contact your Seyfarth attorney, Robert Whitman at [rwhitman@seyfarth.com](mailto:rwhitman@seyfarth.com) or Carlos Lopez [clopez@seyfarth.com](mailto:clopez@seyfarth.com).