

## **New York State Department of Labor Adopts Wage Deduction Regulations**

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The New York State Department of Labor (“DOL”) has adopted wage deduction regulations (“Final Regulations”) pertaining to the expanded categories of permissible wage deductions in the New York Labor Law, effective October 9, 2013. As we previously reported (see the *Act Now Advisory* entitled “[New York State Releases Proposed Wage Deduction Regulations](#)”), among other things, the Final Regulations (i) set forth information concerning the subset of permissible wage deductions referred to as “similar payments for the benefit of the employee,” (ii) provide information regarding prohibited deductions and requirements relating to an employee’s authorization, and (iii) specify procedures and notice requirements concerning the recovery of overpayments and wage advances to employees. The Final Regulations are codified at 12 New York Code of Rules and Regulations Part 195.

The Final Regulations are substantially similar to the proposed regulations issued during the summer. Of note, the Final Regulations clarify the following:

- A single written authorization containing more than one deduction is permissible as long as all the required information is provided.
- For the purpose of calculating time frames, any reference to “days” means calendar days, not business days. Any reference to a “week” means seven consecutive days.
- Dispute resolution provisions contained in collective bargaining agreements existing at the time the Final Regulations are issued will be deemed compliant so long as they provide at least as much protection to the employee as the Final Regulations. In this regard, the employee must be permitted to provide written notice of his or her objections to the deduction, the employer must provide a written reply containing its position with regard to the deduction and a reason why the employer agrees or disagrees, and the employer must cease deductions

until the reply has been provided and any appropriate adjustments have been made.

- Dispute resolution provisions in collective bargaining agreements executed after the issuance of the Final Regulations must provide at least as much protection to the employee, as described above, AND must specifically reference the applicable dispute resolution section of the Final Regulations.

During the Public Comment period, which ended on July 6, 2013, commenters requested, among other things, that the regulations permit employers to charge employees for the reasonable replacement value of items provided by the employer that had been lost, stolen, or destroyed while in the employee's possession. The DOL responded that "[n]either the statute nor the regulations allow this to take place through deductions." Accordingly, it is important that employers do not make any deductions from wages for lost, stolen, or destroyed property.

In response to commenters, the DOL also clarified that the Final Regulations expressly repeal the "10 percent rule," which capped deductions relating to "similar payments for the benefit of the employee" at 10 percent of the employee's gross pay for the particular pay period. Employers should keep in mind, however, that certain deductions may not reduce an employee's hourly wage below the statutory minimum wage.

### **What Employers Should Do Now**

- Review employee handbooks and other policies and procedures to reflect the rules set forth in the Final Regulations (including updating lists of permissible deductions).
- Ensure that payroll systems (including any third-party vendors used for this purpose) have the capability to make any newly implemented deductions.
- Inform payroll, human resources, and any other applicable departments responsible for implementing wage deductions of the specific deadlines and dispute procedures set forth in the Final Regulations.
- Update wage deduction authorization forms so that such forms comply with the rules set forth in the Final Regulations.
- Ensure all new loan or repayment arrangements comply with the new rules.
- Implement procedures that allow employees to contest deductions for overpayments and wage advances in compliance with the procedures set forth in the Final Regulations.
- Prepare notices in connection with deductions relating to overpayments.

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