

### GOVERNOR CUOMO SIGNS LAW ESTABLISHING ADDITIONAL CATEGORIES OF PERMISSIBLE WAGE DEDUCTIONS FOR NEW YORK EMPLOYERS

On Friday, September 7, Governor Cuomo signed a law that will allow New York employers to make additional types of deductions from employee pay with the employee's consent. [Bill A10785-2011](#) (Assembly), S7790-2011 (Senate). The law, with some restrictions, also permits employers to use wage deductions (1) to recapture over-payments of wages due to clerical errors and (2) for repayment of wage advances given to employees.

#### **Deductions for the Benefit of the Employee**

The existing New York Labor Law § 193 strictly limits the types of deductions employers may take. It permits only deductions "made in accordance with the provisions of any law or governmental agency's rule or regulation," as well as deductions authorized by the employee and made "for the benefit of the employee," which are limited to "payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee." NYLL § 193(a)-(b). The New York Court of Appeals construed "similar payments" very narrowly in a pair of cases, barring employers from making almost any deduction other than those listed above – even if the employee desired it. See *Angello v. Labor Ready, Inc.*, 7 N.Y.3d 579 (2006); *Marsh v. Prudential Securities, Inc.*, 1 N.Y.3d 146 (2003).

The new law amends § 193 by creating 14 categories of allowable deductions made for the employee's benefit and with his or her authorization. Those categories include all deductions that are permissible today, as well as those taken for:

- prepaid legal plans;
- purchases made at events sponsored by a charitable organization affiliated with the employer;
- discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit;
- fitness center, health club, and/or gym membership dues;
- cafeteria and vending machine purchases made at the employer's place of business, and purchases made at gift shops operated by the employer, where the employer is a hospital, college, or university;
- pharmacy purchases made at the employer's place of business;
- tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions;
- day care, before-school and after-school care expenses;
- payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and
- similar payments for the benefit of the employee.

Any of the above deductions must be expressly authorized in writing by the employee, who must be given written notice of all of the terms and conditions of the deduction and its benefits. If the terms or conditions substantially change, the employer must notify the employee before making the change. Written authorization must be retained by the employer during the employee's employment and for six years after his or her employment ends.

Additionally, employers must set maximum dollar limits for deductions made for charitable purchases, cafeteria purchases, and pharmacy purchases in a single pay period. The employee must also set a maximum limit for their purchases from these categories that cannot exceed the employer limit.

The law clarifies that deductions made in conjunction with an employer-sponsored pre-tax contribution plan approved by the IRS or other taxing authority are considered permissible deductions made in accordance with a law or regulation.

As is currently the case with deductions of this sort, it remains the employer's prerogative whether it wishes to offer one or more of these deductions.

### **Other Permissible Deductions**

The law also allows employers to make wage deductions to recover "an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer." Further, it permits employers to make deductions for the repayment of any salary or wage advance given to the employee. Neither deduction is currently permissible; instead, employers must arrange for employees to repay these amounts in some other manner. These deductions will be subject to regulations set by the state Commissioner of Labor, which will include limitations on their size, frequency, and method, among other things.

The law leaves open a number of questions, particularly concerning how New York courts will interpret "similar payments" in light of § 193's expansion. Though the categories of permissible deductions have increased in number and scope, employers should be cautious in making any deduction that does not fall directly into one of the above categories once the amendments to § 193 become effective.

These amendments will take effect on November 6, 2012.

**This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.**

Lisa E. Cleary  
Catherine A. Williams  
Adam E. Pinto

212-336-2159  
212-336-2207  
212-336-2156

[lecleary@pbwt.com](mailto:lecleary@pbwt.com)  
[cawilliams@pbwt.com](mailto:cawilliams@pbwt.com)  
[apinto@pbwt.com](mailto:apinto@pbwt.com)

**IRS Circular 230 disclosure:** Any tax advice contained in this communication (including any attachments or enclosures) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication. (The foregoing disclaimer has been affixed pursuant to U.S. Treasury regulations governing tax practitioners.)

To subscribe to any of our publications, call us at 212.336.2186, email [info@pbwt.com](mailto:info@pbwt.com), or sign up on our website, [www.pbwt.com/resources/publications](http://www.pbwt.com/resources/publications).

This publication may constitute attorney advertising in some jurisdictions.

© 2012 Patterson Belknap Webb & Tyler LLP