



Governor Cuomo Expands the Right of Employers to Make Deductions from Employee Wages

Syracuse, New York

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On September 7, 2012, Governor Andrew Cuomo signed legislation amending the New York Labor Law to significantly expand the number of permissible deductions that may be subtracted from an employee's wages. The legislation had been supported by advocates for both employers and employees. The old law limited when employers could make deductions from employee wages, allowing them only for a few specific purposes, such as health insurance premium deductions, retirement plan contributions, and charitable contributions. Even with an employee's consent, under the old law employers could not make wage deductions for items as simple as recoupment of an inadvertent overpayment of wages, or for the repayment of a loan or advance made by the employer to an employee.

The new law amends the list of allowable wage deductions, and now permits such deductions with an employee's consent, for several purposes including:

- a) discounted parking passes, tokens or vouchers;
- b) health club memberships;
- c) cafeteria and vending machine purchases made at the employer's place of business;
- d) tuition, room, board and fees for preschool, nursery, primary and/or secondary educational institutions;
- e) daycare and before and after school care expenses;
- f) to recover an overpayment of wages where such overpayment was due to a mathematical or clerical error; and
- g) for repayment of advances of salary or wages.

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An employee, however, can withdraw his/her consent to a wage deduction at any time. Upon notice of the withdrawal, the employer must cease the wage deduction "as soon as practicable, and in no event more than four pay periods or eight weeks after the authorization has been withdrawn, whichever is sooner." Thus, although an employee may agree to a wage deduction to repay an advance, an employer cannot necessarily rely on the wage deduction to satisfy repayment of the entire loan.

Additionally, the legislation contemplates that employees should be provided with "written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which the deductions will be made." A written voluntary authorization must be obtained and secured by the employer for the duration of the employee's employment and for six years thereafter. The new law also mandates that wage deductions comply with regulations enacted for repayments, which address such factors as the timing, frequency, amount and duration of the deductions. Employers must even provide employees with a procedure for disputing their repayment obligations. Written notice of the terms and content of this procedure must be delivered to an employee at the time any loan is made or prior to the recovery of any overpayment. The new law takes effect on **November 6, 2012**.

Consequently, while the new law provides welcomed news and relief to both employers and employees, it creates a set of duties and obligations for employers to implement and follow. We recommend that employers desiring to take advantage of this new legislation consult with their counsel to develop appropriate policies and practices that will satisfy the statutory and regulatory requirements.

The Employment & Labor Practice Group at **Bousquet Holstein PLLC** provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives. If we can provide you with additional insight and information regarding employer liability issues, please contact **John L. Valentino**. John Valentino is a Managing Member of Bousquet Holstein PLLC, (www.BHLAWPLLC.com) and concentrates his practice in the areas of Business Transactions and Employment Law. He can be reached directly at **315.701.6308** or **jvalentino@BHLAWPLLC.com**.

