

New York Wage Deductions

*What May Companies Withhold
from Workers' Pay?*

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Overview



Prohibited Practices



Permissible Deductions



Recovering Overpayments



Wage Advances

Prohibited Practices

- ▶ “No employer shall make any deductions from wages except”
- ▶ “Whenever any employee who is engaged to perform labor shall be promised an agreed rate of wages for his or her services . . . or shall be entitled to be paid or provided prevailing wages or supplements . . . it shall be unlawful for any person to request, demand, or receive, . . . a return, donation or contribution of any part or all of said employee's wages, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment. Further, any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this section shall be guilty of a violation of the provisions of this section.”



“Employer”

- ▶ “[A]ny person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service.”
- ▶ But not a governmental agency (e.g., State, city, county, town, school district, public authority)

“Wages”

- ▶ “[T]he earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is determined on a time, piece, commission or other basis.”
- ▶ Includes “benefits or wage supplements” (e.g., reimbursement for expenses; health, welfare and retirement benefits; and vacation, separation, or holiday pay)

Permissible Deductions

- ▶ Deductions made in accordance with any law, rule, or regulation issued by any governmental agency
- ▶ Voluntary deductions, for the employee's benefit, and expressly authorized in writing by the employee
- ▶ Deductions for the recovery of overpayments made in accordance with DOL regulations
- ▶ Deductions for the repayment of wage advances made in accordance with DOL regulations



Deductions in Accordance with Law

- ▶ Tax withholdings
- ▶ Wage garnishments/levies
- ▶ Pre-tax contribution plans



Voluntary Deductions

- ▶ Must fall into a statutory category
- ▶ Must be for the employee's benefit
- ▶ Employee must authorize, in writing, in advance, without revoking

Voluntary Deductions

- ▶ insurance premiums and prepaid legal plans
- ▶ pension or health and welfare benefits
- ▶ contributions to a bona fide charitable organization
- ▶ purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least 20% of the event's profits are being contributed to a bona fide charitable organization
- ▶ United States bonds
- ▶ dues or assessments to a labor organization
- ▶ 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
- ▶ daycare, before-school, and after-school care expenses
- ▶ payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof
- ▶ similar payments for the benefit of the employee

“Similar Payments”

- ▶ Convenience is not a benefit
- ▶ Provide financial or other support for the employee, the employee’s family, or a charitable organization
- ▶ Must fall into one of these categories
 - ▶ Health and Welfare Benefits
 - ▶ Pension and Savings Benefits
 - ▶ Charitable Benefits
 - ▶ Representational (i.e., union) Benefits
 - ▶ Transportation Benefits
 - ▶ Food and Lodging Benefits

Authorization

- ▶ Written agreement between employer and employee or union (12+ font)
- ▶ “Express, written, voluntary, and informed”
- ▶ Informed = employee is provided with written notice of all terms and conditions of the deduction, its benefit, and the details of the manner in which deductions shall be made
- ▶ Must provide notice before any change in the amount of a deduction or a substantial change in the benefits of a deduction
- ▶ Retain for at least 6 years after employment ends

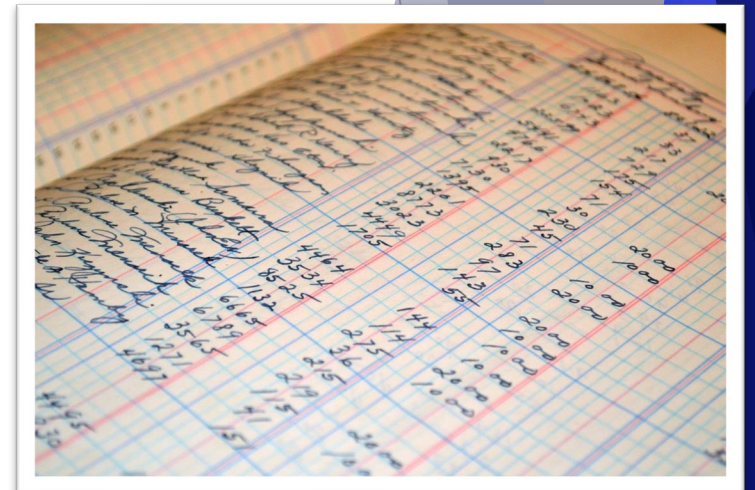
Impermissible Deductions

- ▶ Employee purchases of tools, equipment, and work clothes
- ▶ Fines or penalties for misconduct
- ▶ Repayment of employer losses, such as spoilage, breakage, and cash shortages



Recovering Overpayments

- ▶ Overpayment must be due to “a mathematical or other clerical error by the employer”
- ▶ Limitations on timing and amounts
- ▶ Must implement a notice and dispute procedure
- ▶ Can use wage deduction or separate transactions



Timing/Duration/Frequency

Can only go back 8 weeks before notice of overpayment to employee

Can recover through deductions lasting up to 6 years from overpayment

No more than one deduction per wage payment

Amount of Deductions

- ▶ If overpayment is less than the employee's wages (net of other deductions) in the next payroll, then can recover in full from that payment
- ▶ Otherwise, recovery may not exceed 12.5% of gross wages in a payroll or reduce employee's pay below minimum wage

Notice to Employee

- ▶ Amount Overpaid (total and per pay period)
- ▶ Schedule of deductions
- ▶ Procedure for disputing deductions
- ▶ 3 days or 3 weeks before deductions begin

Dispute Procedure



Employee has a week to respond to notice



Employer has a week to respond to dispute



Employee may request meeting within a week to discuss employer's response



Employer must issue final determination within a week after meeting



No deduction until at least 3 weeks after final determination

Pay Advances

- ▶ “Provision of money by the employer to the employee based on the anticipation of the earning of future wages.”
- ▶ If any interest or fees attached to repayment, then it’s not an advance and can’t be recovered through wage deduction

Pay Advance Authorization

- ▶ Employer and employee must agree in writing to timing and duration of repayment deductions before the advance is made
- ▶ Employee may revoke authorization before advance is made
- ▶ Must include notice that employee can contest any deduction as not in accordance with authorization

Pay Advance Conditions



No further advance may be made until original advance has been repaid in full



May provide for total reclamation in last pay period upon termination of employment



Employee may object to any deduction(s) in writing and employer must stop deductions until replying with employer's position

What To Do?

- ▶ Review existing deductions
- ▶ Analyze new deductions carefully
- ▶ Follow pay advance and overpayment requirements

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Questions?



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