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## New York Department of Labor Determines that Wage Deductions to Recoup Overpayments are Impermissible

The New York Department of Labor (“NYDOL”) recently opined that certain deductions from an employee’s paycheck, including deductions to recoup overpayments, loan advances, and tuition reimbursements, are prohibited under the New York Labor Law § 193 (“Section 193”). Section 193(1)(b) of the New York Labor Law prohibits employers from making any deductions from an employee’s wages except for those that are expressly authorized in writing by the employee and that are for the benefit of the employee. The permissible deductions under Section 193(1)(b) include 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. Section 193(2) further states that an employer may not require an employee to make any payment by a separate transaction unless such payment is consistent with the permissible deductions listed in Section 193(1)(b). The NYDOL had previously opined that an employer may recoup overpayments or other advances from an employee, with his/her written consent, by deducting the total amount from the employee’s paycheck in the next pay period or by deducting a percentage of monies owed over x pay

periods so long as the deduction does not exceed 10% of total wages in that period. The NYDOL now has taken the position that such deductions are no longer permissible under Section 193.

In an opinion letter dated January 21, 2010, the NYDOL responded to an inquiry regarding the permissibility of retrieving an overpayment from an employee by means of a wage deduction where the employee consents to the deduction. The NYDOL responded that such deductions, regardless of amount or agreed-upon time period of repayment, are impermissible under Section 193 because deductions designed by an employer to recoup an overpayment do not qualify as an authorized deduction enumerated under Section 193(1)(b). The NYDOL explained that permissible deductions authorized by Section 193(1)(b) are all “monetary or supportive”, meaning they are investments of money for the later benefit of the employee (i.e., deductions for insurance, pension benefits, health and welfare benefits, payment of U.S. bonds) or they are used by a third party to support some other purpose of the employee (i.e., contributions to charitable organizations, payments of Union dues). The NYDOL also highlighted a New York Court of Appeals decision, *Angello v. Labor Ready*, 7 N.Y.3d 579, 586 (2006)

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in support of its determination. The *Angello* decision holds that payments that go “directly to the employer or its subsidiary violate[s] both the letter of the statute and the protective policy underlying it.” Accordingly, it is unlikely that any deductions beyond those enumerated in Section 193(1)(b), in particular deductions that are intended to benefit the employer exclusively, are permissible under Section 193. Furthermore, because a deduction to recoup an overpayment does not qualify as a “similar payment” under Section 193(1)(b), such deduction is incompatible with the language of Section 193.

The effect of this determination is that an employer may no longer recoup any amount of an overpayment by means of a wage deduction, even at the employee’s insistence. Nor may an employer require an employee to make any payment by a separate transaction if the employee would be disciplined for refusing to do so, as the NYDOL further clarified. The NYDOL has indicated, however, that an employer may request that the employee return the overpayment if the employer clearly communicates that the employee’s refusal to do so will not result in any discipline.

To the extent an employee refuses to return the overpayment voluntarily, the NYDOL has stated that employers may seek relief in a civil court action against the employee. In addition, an employer may still discipline an employee for failing to inform the employer of an overpayment so long as the disciplinary action does not violate a collective bargaining agreement or the employer’s policies.

In light of this opinion, it is increasingly important that employers take additional steps to avoid making overpayments to their employees. In addition, employers should be mindful that deductions for tuition reimbursement programs and loan repayment programs are also impermissible under the Labor Law. Given the restrictions on employers’ abilities to collect monies paid to their employees, employers are encouraged to advance monies to employees only under limited circumstances. Please contact [Adam Harris](#) or any other attorney at the Firm at (212) 758-7600 for additional information or if you have any questions about the content of this advisory.

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