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I N  S E N A T E

June 18, 2012

Introduced by Sen. YOUNG -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the labor law, in relation to permitted deductions from wages; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 193 of the labor law, as added by chapter 548 of the laws of 1966, is amended to read as follows:

1. No employer shall make any deduction from the wages of an employee, except deductions which:

a. are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency INCLUDING REGULATIONS PROMULGATED UNDER PARAGRAPH C AND PARAGRAPH D OF THIS SUBDIVISION; or

b. are expressly authorized in writing by the employee and are for the benefit of the employee[;], provided that such authorization is VOLUNTARY AND ONLY GIVEN FOLLOWING RECEIPT BY THE EMPLOYEE OF WRITTEN NOTICE OF ALL TERMS AND CONDITIONS OF THE PAYMENT AND/OR ITS BENEFITS AND THE DETAILS OF THE MANNER IN WHICH DEDUCTIONS WILL BE MADE. WHENEVER THERE IS A SUBSTANTIAL CHANGE IN THE TERMS OR CONDITIONS OF THE PAYMENT, INCLUDING BUT NOT LIMITED TO, ANY CHANGE IN THE AMOUNT OF THE DEDUCTION, OR A SUBSTANTIAL CHANGE IN THE BENEFITS OF THE DEDUCTION OR THE DETAILS IN THE MANNER IN WHICH DEDUCTIONS SHALL BE MADE, THE EMPLOYER SHALL, AS SOON AS PRACTICABLE, BUT IN EACH CASE BEFORE ANY INCREASED DEDUCTION IS MADE ON THE EMPLOYEE'S BEHALF, NOTIFY THE EMPLOYEE PRIOR TO THE IMPLEMENTATION OF THE CHANGE. SUCH AUTHORIZATION SHALL BE kept on file on the employer's premises FOR THE PERIOD DURING WHICH THE EMPLOYEE IS EMPLOYED BY THE EMPLOYER AND FOR SIX YEARS AFTER SUCH EMPLOYMENT ENDS. NOTWITHSTANDING THE FOREGOING, EMPLOYEE AUTHORIZATION FOR DEDUCTIONS UNDER THIS SECTION MAY ALSO BE PROVIDED TO THE EMPLOYER PURSUANT TO THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT. Such authorized deductions shall be limited to payments for:

(I) insurance premiums[,] AND PREPAID LEGAL PLANS;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(II) pension or health and welfare benefits[,];
(III) contributions to A BONA FIDE charitable [organizations, payments for] ORGANIZATION;
(IV) PURCHASES MADE AT EVENTS SPONSORED BY A BONA FIDE CHARITABLE ORGANIZATION AFFILIATED WITH THE EMPLOYER WHERE AT LEAST TWENTY PERCENT OF THE PROFITS FROM SUCH EVENT ARE BEING CONTRIBUTED TO A BONA FIDE CHARITABLE ORGANIZATION;
(V) United States bonds[, payments for];
(VI) dues or assessments to a labor organization[,];
(VII) DISCOUNTED PARKING OR DISCOUNTED PASSES, TOKENS, FARE CARDS, VOUCHERS, OR OTHER ITEMS THAT ENTITLE THE EMPLOYEE TO USE MASS TRANSIT;
(VIII) FITNESS CENTER, HEALTH CLUB, AND/OR GYM MEMBERSHIP DUES;
(IX) 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;
(X) PHARMACY PURCHASES MADE AT THE EMPLOYER'S PLACE OF BUSINESS;
(XI) TUITION, ROOM, BOARD, AND FEES FOR PRE-SCHOOL, NURSERY, PRIMARY, SECONDARY, AND/OR POST-SECONDARY EDUCATIONAL INSTITUTIONS;
(XII) DAY CARE, BEFORE-SCHOOL AND AFTER-SCHOOL CARE EXPENSES;
(XIII) PAYMENTS FOR HOUSING PROVIDED AT NO MORE THAN MARKET RATES BY NON-PROFIT HOSPITALS OR AFFILIATES THEREOF; and
(XIV) similar payments for the benefit of the employee.

C. ARE RELATED TO RECOVERY OF AN OVERPAYMENT OF WAGES WHERE SUCH OVER-PAYMENT IS DUE TO A MATHEMATICAL OR OTHER CLERICAL ERROR BY THE EMPLOY-ER. IN MAKING SUCH RECOVERIES, THE EMPLOYER SHALL COMPLY WITH REGU-LATIONS PROMULGATED BY THE COMMISSIONER FOR THIS PURPOSE, WHICH REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, PROVISIONS GOVERNING: THE SIZE OF OVERPAYMENTS THAT MAY BE COVERED BY THIS SECTION; THE TIMING, FREQUENCY, DURATION, AND METHOD OF SUCH RECOVERY; LIMITATIONS ON THE PERIODIC AMOUNT OF SUCH RECOVERY; A REQUIREMENT THAT NOTICE BE PROVIDED TO THE EMPLOYEE PRIOR TO THE COMMENCEMENT OF SUCH RECOVERY; A REQUIREMENT THAT THE EMPLOYER IMPLEMENT A PROCEDURE FOR DISPUTING THE AMOUNT OF SUCH OVERPAYMENT OR SEEKING TO DELAY COMMENCEMENT OF SUCH RECOVERY; THE TERMS AND CONTENT OF SUCH A PROCEDURE AND A REQUIREMENT THAT NOTICE OF THE PROCEDURE FOR DISPUTING THE OVERPAYMENT OR SEEKING TO DELAY COMMENCEMENT OF SUCH RECOVERY BE PROVIDED TO THE EMPLOYEE PRIOR TO THE COMMENCEMENT OF SUCH RECOVERY.

D. REPAYMENT OF ADVANCES OF SALARY OR WAGES MADE BY THE EMPLOYER TO THE EMPLOYEE. DEDUCTIONS TO COVER SUCH REPAYMENTS SHALL BE MADE IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE COMMISSIONER FOR THIS PURPOSE, WHICH REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, PROVISIONS GOVERNING: THE TIMING, FREQUENCY, DURATION, AND METHOD OF SUCH REPAYMENT; LIMITATIONS ON THE PERIODIC AMOUNT OF SUCH REPAYMENT; A REQUIREMENT THAT NOTICE BE PROVIDED TO THE EMPLOYEE PRIOR TO THE COMMENCEMENT OF SUCH REPAYMENT; A REQUIREMENT THAT THE EMPLOYER IMPLE-MENT A PROCEDURE FOR DISPUTING THE AMOUNT OF SUCH REPAYMENT OR SEEKING TO DELAY COMMENCEMENT OF SUCH REPAYMENT; THE TERMS AND CONTENT OF SUCH A PROCEDURE AND A REQUIREMENT THAT NOTICE OF THE PROCEDURE FOR DISPUTING THE REPAYMENT OR SEEKING TO DELAY COMMENCEMENT OF SUCH REPAYMENT BE PROVIDED TO THE EMPLOYEE AT THE TIME THE LOAN IS MADE.

S 2. Subdivisions 2 and 3 of section 193 of the labor law, subdivision 2 as added and subdivision 3 as renumbered by chapter 160 of the laws of 1974 and subdivision 3 as added by chapter 548 of the laws of 1966, are amended to read as follows:

2. DEDUCTIONS MADE IN CONJUNCTION WITH AN EMPLOYER SPONSORED PRE-TAX CONTRIBUTION PLAN APPROVED BY THE IRS OR OTHER LOCAL TAXING AUTHORITY,

INCLUDING THOSE FALLING WITHIN ONE OR MORE OF THE CATEGORIES SET FORTH IN PARAGRAPH B OF SUBDIVISION ONE OF THIS SECTION, SHALL BE CONSIDERED TO HAVE BEEN MADE IN ACCORDANCE WITH PARAGRAPH A OF SUBDIVISION ONE OF THIS SECTION.

3. A. No employer shall make any charge against wages, or require an employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages under the provisions of subdivision one of this section OR IS PERMITTED OR REQUIRED UNDER ANY PROVISION OF A CURRENT COLLECTIVE BARGAINING AGREEMENT.

B. NOTWITHSTANDING THE EXISTENCE OF EMPLOYEE AUTHORIZATION TO MAKE DEDUCTIONS IN ACCORDANCE WITH SUBPARAGRAPHS (IV), (IX), AND (X) OF PARAGRAPH B OF SUBDIVISION ONE OF THIS SECTION AND DEDUCTIONS DETERMINED BY THE COMMISSIONER TO BE SIMILAR TO SUCH DEDUCTIONS IN ACCORDANCE WITH SUBPARAGRAPH (XIV) OF PARAGRAPH B OF SUBDIVISION ONE OF THIS SECTION, THE TOTAL AGGREGATE AMOUNT OF SUCH DEDUCTIONS FOR EACH PAY PERIOD SHALL BE SUBJECT TO THE FOLLOWING LIMITATIONS: (I) SUCH AGGREGATE AMOUNT SHALL NOT EXCEED A MAXIMUM AGGREGATE LIMIT ESTABLISHED BY THE EMPLOYER FOR EACH PAY PERIOD; (II) SUCH AGGREGATE AMOUNT SHALL NOT EXCEED A MAXIMUM AGGREGATE LIMIT ESTABLISHED BY THE EMPLOYEE, WHICH LIMIT MAY BE FOR ANY AMOUNT (IN TEN DOLLAR INCREMENTS) UP TO THE MAXIMUM AMOUNT ESTABLISHED BY THE EMPLOYER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; (III) THE EMPLOYER SHALL NOT PERMIT ANY PURCHASES WITHIN THESE CATEGORIES OF DEDUCTION BY THE EMPLOYEE THAT EXCEED THE AGGREGATE LIMIT ESTABLISHED BY THE EMPLOYEE OR, IF NO LIMIT HAS BEEN SET BY THE EMPLOYEE, THE LIMIT SET BY THE EMPLOYER; (IV) THE EMPLOYEE SHALL HAVE ACCESS WITHIN THE WORKPLACE TO CURRENT ACCOUNT INFORMATION DETAILING INDIVIDUAL EXPENDITURES WITHIN THESE CATEGORIES OF DEDUCTION AND A RUNNING TOTAL OF THE AMOUNT THAT WILL BE DEDUCTED FROM THE EMPLOYEE'S PAY DURING THE NEXT APPLICABLE PAY PERIOD. INFORMATION SHALL BE AVAILABLE IN PRINTED FORM OR CAPABLE OF BEING PRINTED SHOULD THE EMPLOYEE WISH TO OBTAIN A LISTING. NO EMPLOYEE MAY BE CHARGED ANY FEE, DIRECTLY OR INDIRECTLY, FOR ACCESS TO, OR PRINTING OF, SUCH ACCOUNT INFORMATION.

C. WITH THE EXCEPTION OF WAGE DEDUCTIONS REQUIRED OR AUTHORIZED IN A CURRENT EXISTING COLLECTIVE BARGAINING AGREEMENT, AN EMPLOYEE'S AUTHORIZATION FOR ANY AND ALL WAGE DEDUCTIONS MAY BE REVOKED IN WRITING AT ANY TIME. THE EMPLOYER MUST CEASE THE WAGE DEDUCTION FOR WHICH THE EMPLOYEE HAS REVOKED AUTHORIZATION 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.

[3.] 4. Nothing in this section shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, [nor] WITH SECTION TWO HUNDRED TWENTY-ONE OF THIS CHAPTER RELATING TO COMPANY STORES OR with any other law applicable to deductions from wages.

S 3. This act shall take effect on the sixtieth day after it shall have become a law and shall expire and be deemed repealed 3 years after such effective date.