

S T A T E O F N E W Y O R K

5786--A

2011-2012 Regular Sessions

I N S E N A T E

June 16, 2011

Introduced by Sens. YOUNG, BRESLIN, KRUEGER, O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Subdivision 1 of section 193 of the labor law, as added by
2 chapter 548 of the laws of 1966, is amended to read as follows:
3 1. No employer shall make any deduction from the wages of an employee,
4 except deductions which:
5 a. are made in accordance with the provisions of any law or any rule
6 or regulation issued by any governmental agency INCLUDING REGULATIONS
7 PROMULGATED UNDER PARAGRAPH C AND PARAGRAPH D OF THIS SUBDIVISION; or
8 b. are expressly authorized in writing by the employee and are for the
9 benefit of the employee[;], provided that such authorization is VOLUN-
10 TARY AND ONLY GIVEN FOLLOWING RECEIPT BY THE EMPLOYEE OF WRITTEN NOTICE
11 OF ALL TERMS AND CONDITIONS OF THE PAYMENT AND/OR ITS BENEFITS AND THE
12 DETAILS OF THE MANNER IN WHICH DEDUCTIONS WILL BE MADE. WHENEVER THERE
13 IS A SUBSTANTIAL CHANGE IN THE TERMS OR CONDITIONS OF THE PAYMENT,
14 INCLUDING BUT NOT LIMITED TO, ANY CHANGE IN THE AMOUNT OF THE DEDUCTION,
15 OR A SUBSTANTIAL CHANGE IN THE BENEFITS OF THE DEDUCTION OR THE DETAILS
16 IN THE MANNER IN WHICH DEDUCTIONS SHALL BE MADE, THE EMPLOYER SHALL, AS
17 SOON AS PRACTICABLE, BUT IN EACH CASE BEFORE ANY INCREASED DEDUCTION IS
18 MADE ON THE EMPLOYEE'S BEHALF, NOTIFY THE EMPLOYEE PRIOR TO THE IMPE-
19 MENTATION OF THE CHANGE. SUCH AUTHORIZATION SHALL BE kept on file on
20 the employer's premises FOR THE PERIOD DURING WHICH THE EMPLOYEE IS
21 EMPLOYED BY THE EMPLOYER AND FOR SIX YEARS AFTER SUCH EMPLOYMENT ENDS.
22 NOTWITHSTANDING THE FOREGOING, EMPLOYEE AUTHORIZATION FOR DEDUCTIONS

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

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1 UNDER THIS SECTION MAY ALSO BE PROVIDED TO THE EMPLOYER PURSUANT TO THE
2 TERMS OF A COLLECTIVE BARGAINING AGREEMENT. Such authorized deductions
3 shall be limited to payments for:
4 (I) insurance premiums[,] AND PREPAID LEGAL PLANS;
5 (II) pension or health and welfare benefits[,];
6 (III) contributions to A BONA FIDE charitable [organizations, payments
7 for] ORGANIZATION;
8 (IV) PURCHASES MADE AT EVENTS SPONSORED BY A BONA FIDE CHARITABLE
9 ORGANIZATION AFFILIATED WITH THE EMPLOYER WHERE AT LEAST TWENTY PERCENT
10 OF THE PROFITS FROM SUCH EVENT ARE BEING CONTRIBUTED TO A BONA FIDE
11 CHARITABLE ORGANIZATION;
12 (V) United States bonds[, payments for];
13 (VI) dues or assessments to a labor organization[,];
14 (VII) DISCOUNTED PARKING OR DISCOUNTED PASSES, TOKENS, FARE CARDS,
15 VOUCHERS, OR OTHER ITEMS THAT ENTITLE THE EMPLOYEE TO USE MASS TRANSIT;
16 (VIII) FITNESS CENTER, HEALTH CLUB, AND/OR GYM MEMBERSHIP DUES;
17 (IX) CAFETERIA AND VENDING MACHINE PURCHASES MADE AT THE EMPLOYER'S
18 PLACE OF BUSINESS AND PURCHASES MADE AT GIFT SHOPS OPERATED BY THE
19 EMPLOYER, WHERE THE EMPLOYER IS A HOSPITAL, COLLEGE, OR UNIVERSITY;
20 (X) PHARMACY PURCHASES MADE AT THE EMPLOYER'S PLACE OF BUSINESS;
21 (XI) TUITION, ROOM, BOARD, AND FEES FOR PRE-SCHOOL, NURSERY, PRIMARY,
22 SECONDARY, AND/OR POST-SECONDARY EDUCATIONAL INSTITUTIONS;
23 (XII) DAY CARE, BEFORE-SCHOOL AND AFTER-SCHOOL CARE EXPENSES;
24 (XIII) PAYMENTS FOR HOUSING PROVIDED AT NO MORE THAN MARKET RATES BY
25 NON-PROFIT HOSPITALS OR AFFILIATES THEREOF; and
26 (XIV) similar payments for the benefit of the employee.

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

42 D. REPAYMENT OF ADVANCES OF SALARY OR WAGES MADE BY THE EMPLOYER TO
43 THE EMPLOYEE. DEDUCTIONS TO COVER SUCH REPAYMENTS SHALL BE MADE IN
44 ACCORDANCE WITH REGULATIONS PROMULGATED BY THE COMMISSIONER FOR THIS
45 PURPOSE, WHICH REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO,
46 PROVISIONS GOVERNING: THE TIMING, FREQUENCY, DURATION, AND METHOD OF
47 SUCH REPAYMENT; LIMITATIONS ON THE PERIODIC AMOUNT OF SUCH REPAYMENT; A
48 REQUIREMENT THAT NOTICE BE PROVIDED TO THE EMPLOYEE PRIOR TO THE
49 COMMENCEMENT OF SUCH REPAYMENT; A REQUIREMENT THAT THE EMPLOYER IMPE-
50 LIMENT A PROCEDURE FOR DISPUTING THE AMOUNT OF SUCH REPAYMENT OR SEEKING
51 TO DELAY COMMENCEMENT OF SUCH REPAYMENT; THE TERMS AND CONTENT OF SUCH A
52 PROCEDURE AND A REQUIREMENT THAT NOTICE OF THE PROCEDURE FOR DISPUTING
53 THE REPAYMENT OR SEEKING TO DELAY COMMENCEMENT OF SUCH REPAYMENT BE
54 PROVIDED TO THE EMPLOYEE AT THE TIME THE LOAN IS MADE.

55 S 2. Subdivisions 2 and 3 of section 193 of the labor law, subdivision
56 2 as added and subdivision 3 as renumbered by chapter 160 of the laws of

1 1974 and subdivision 3 as added by chapter 548 of the laws of 1966, are
2 amended to read as follows:

3 2. DEDUCTIONS MADE IN CONJUNCTION WITH AN EMPLOYER SPONSORED PRE-TAX
4 CONTRIBUTION PLAN APPROVED BY THE IRS OR OTHER LOCAL TAXING AUTHORITY,
5 INCLUDING THOSE FALLING WITHIN ONE OR MORE OF THE CATEGORIES SET FORTH
6 IN PARAGRAPH B OF SUBDIVISION ONE OF THIS SECTION, SHALL BE CONSIDERED
7 TO HAVE BEEN MADE IN ACCORDANCE WITH PARAGRAPH A OF SUBDIVISION ONE OF
8 THIS SECTION.

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

14 B. NOTWITHSTANDING THE EXISTENCE OF EMPLOYEE AUTHORIZATION TO MAKE
15 DEDUCTIONS IN ACCORDANCE WITH SUBPARAGRAPHS (IV), (IX), AND (X) OF PARA-
16 GRAPH B OF SUBDIVISION ONE OF THIS SECTION AND DEDUCTIONS DETERMINED BY
17 THE COMMISSIONER TO BE SIMILAR TO SUCH DEDUCTIONS IN ACCORDANCE WITH
18 SUBPARAGRAPH (XIV) OF PARAGRAPH B OF SUBDIVISION ONE OF THIS SECTION,
19 THE TOTAL AGGREGATE AMOUNT OF SUCH DEDUCTIONS FOR EACH PAY PERIOD SHALL
20 BE SUBJECT TO THE FOLLOWING LIMITATIONS: (I) SUCH AGGREGATE AMOUNT SHALL
21 NOT EXCEED A MAXIMUM AGGREGATE LIMIT ESTABLISHED BY THE EMPLOYER FOR
22 EACH PAY PERIOD; (II) SUCH AGGREGATE AMOUNT SHALL NOT EXCEED A MAXIMUM
23 AGGREGATE LIMIT ESTABLISHED BY THE EMPLOYEE, WHICH LIMIT MAY BE FOR ANY
24 AMOUNT (IN TEN DOLLAR INCREMENTS) UP TO THE MAXIMUM AMOUNT ESTABLISHED
25 BY THE EMPLOYER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; (III) THE
26 EMPLOYER SHALL NOT PERMIT ANY PURCHASES WITHIN THESE CATEGORIES OF
27 DEDUCTION BY THE EMPLOYEE THAT EXCEED THE AGGREGATE LIMIT ESTABLISHED BY
28 THE EMPLOYEE OR, IF NO LIMIT HAS BEEN SET BY THE EMPLOYEE, THE LIMIT SET
29 BY THE EMPLOYER; (IV) THE EMPLOYEE SHALL HAVE ACCESS WITHIN THE WORK-
30 PLACE TO CURRENT ACCOUNT INFORMATION DETAILING INDIVIDUAL EXPENDITURES
31 WITHIN THESE CATEGORIES OF DEDUCTION AND A RUNNING TOTAL OF THE AMOUNT
32 THAT WILL BE DEDUCTED FROM THE EMPLOYEE'S PAY DURING THE NEXT APPLICABLE
33 PAY PERIOD. INFORMATION SHALL BE AVAILABLE IN PRINTED FORM OR CAPABLE
34 OF BEING PRINTED SHOULD THE EMPLOYEE WISH TO OBTAIN A LISTING. NO
35 EMPLOYEE MAY BE CHARGED ANY FEE, DIRECTLY OR INDIRECTLY, FOR ACCESS TO,
36 OR PRINTING OF, SUCH ACCOUNT INFORMATION.

37 C. WITH THE EXCEPTION OF WAGE DEDUCTIONS REQUIRED OR AUTHORIZED IN A
38 CURRENT EXISTING COLLECTIVE BARGAINING AGREEMENT, AN EMPLOYEE'S AUTHORI-
39 ZATION FOR ANY AND ALL WAGE DEDUCTIONS MAY BE REVOKED IN WRITING AT ANY
40 TIME. THE EMPLOYER MUST CEASE THE WAGE DEDUCTION FOR WHICH THE EMPLOYEE
41 HAS REVOKED AUTHORIZATION AS SOON AS PRACTICABLE, AND, IN NO EVENT MORE
42 THAN FOUR PAY PERIODS OR EIGHT WEEKS AFTER THE AUTHORIZATION HAS BEEN
43 WITHDRAWN, WHICHEVER IS SOONER.

44 [3.] 4. Nothing in this section shall justify noncompliance with arti-
45 cle three-A of the personal property law relating to assignment of earn-
46 ings, [nor] WITH SECTION TWO HUNDRED TWENTY-ONE OF THIS CHAPTER RELATING
47 TO COMPANY STORES OR with any other law applicable to deductions from
48 wages.

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