Changes in New York Law Permit Payroll Deductions for Overpayments, Advances, and an Expanded List of Employee Benefits

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The legal needs of healthcare businesses involve many areas of the law and attorneys working with the healthcare industry are often called upon for counsel on a wide variety of topics. Our firm's Healthcare Group consistently works with our Labor and Employment Group for advice on day-to-day operating strategies and best practices for healthcare business management. Earlier this year, the New York Department of Labor (the "NY DOL") promulgated new regulations governing payroll deductions that affect New York healthcare businesses and improve flexibility for employers and employees alike.

The regulatory changes permit employers to make payroll deductions for inadvertent overpayment of wages, advances of future earnings to employees, and an expanded list of employee benefits categories. The changes are the result of 2012 amendments to Section 193 of the New York Labor Law, which governs payroll deductions, and authorizes the NY DOL to issue detailed regulations. The NY DOL proposed the new regulations on May 22, 2013 and issued final regulations on October 9, 2013, which were effective immedietly.

New York employers are now permitted to make payroll deductions to recover inadvertent overpayments to employees due to the employer's mathematical or other clerical error. The regulations, however, set forth detailed procedures that employers must follow before making such deductions. Among the requirements is written notice to the employee of the employer's intent to recover the overpayment that states the amount of the overpayment, the date or dates of the overpayment, the amount to be deducted, the dates of each deduction, and the procedure and deadline for the employee to potentially contest the deduction. The employer's recovery is limited to overpayments occurring in the eight weeks prior to its notice of intent. Furthermore, the regulations proscribe certain limitations on the recovery period and the amount of each deduction per payroll period.

In another change, the new regulations permit employers to make advances of future earnings to employees and thereafter deduct from the employee's wages to repay the advance. Again, the regulations set forth detailed procedures that employers must follow before making such deductions. The requirements include, obtaining the employee's written authorization prior to payment of the advance acknowledging the amount of the advance and the timing and duration of the deductions for repayment. The employee is permitted to revoke the authorization before the advance is paid. After payment, however, the authorization is irrevocable and no further advance may be paid until the existing advance is repaid. Furthermore, the employer must implement a procedure for employees to dispute deductions allegedly not made in accordance with the employee's authorization.

Finally, the new regulations expanded the categories of payroll deductions employers may provide for the benefit of the employee. Prior to the new regulations, payroll deductions were limited to just six categories, including insurance premiums, U.S. bonds, or contributions to charitable organizations. This was the case even where the employee requested and/or authorized the deduction in writing. With the new regulations employees may authorize in writing numerous additional categories of deductions, including fitness club membership dues, child care expenses, tuition, room, and board at educational institutions, and purchases at cafeterias or vending machines, among others. In some cases, however, the regulations proscribe certain limitations and requirements that the employer must follow.

Given the recent payroll deduction regulatory changes, employers may consider updating their policies and procedures to avail themselves of deductions for overpayments and advances. Furthermore, employers may consider coordinating with their human resources and payroll representatives concerning additional categories of deductions it may want to offer employees.