

## Employment Law and Litigation

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### New York Employers May Not Recover Overpayments or Advances by Deductions from Paychecks

In a January 2010 New York Department of Labor (DOL) opinion letter, the DOL clarified the prohibitions under the New York Labor Law that do not permit an employer to make deductions from paychecks to recover overpayments or advances.

Section 193 of the New York labor Law provides, in relevant part, as follows:

- “1. No employer shall make any deduction from the wages of an employee, except deductions that:
  - a. are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency; or
  - b. are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer’s premises. Such authorized deductions shall be limited to 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.
2. No employer shall make any charge against wages, or require any 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.”

The DOL opinion cites the New York State Court of Appeals decision in *Angello v. Labor Ready*, 7 NY 3d 579 (2006), in which the court noted 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.” The DOL opinion, in reliance on the *Labor Ready* decision, notes that the deductions permitted by Section 193(1)(b) are either “investments of money for the later benefit of the employee, such as deductions for insurance premiums, pension or health and welfare benefits and payments for United States bonds” or “are used by someone other than the employee or employer to support some purpose of the employee, such as contributions for charitable organizations or payments for dues or assessments to a labor organization.”

The DOL opinion notes the additional restrictions in 12 NYCRR §195.1, which limits “similar” deductions authorized by Section 193(1)(b) to 10 percent of the gross payments due to the employee in the payroll period.

If you have any questions concerning Section 193 of the New York Labor Law, please contact:

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As set forth above, the DOL opinion makes clear that the DOL views deductions from paychecks for overpayments or for the repayment of loans as violative of Section 193, as are employer-mandated payments by a separate employee payment. Such separate payments are not permitted, according to the DOL opinion, if a refusal to repay by an employee could result in disciplinary or retaliatory action. However, where the employer “merely requests” such a separate payment, such a request will not be a “prohibited transaction” if the employer makes it clear that a refusal by the employee to make such payment will not result in any disciplinary or retaliatory action.

Finally, the DOL opinion notes that an employer may commence a legal action against an employee to recover an overpayment or an outstanding loan balance.

Employers should be cognizant of the restrictions articulated in the DOL opinion, particularly in determining whether to provide loans or advances to employees.

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