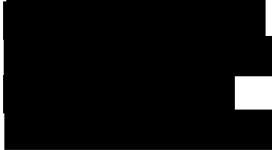




New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

May 10, 2010



Re: Request for Opinion
Wage Deductions
RO-09-0171

Dear [REDACTED]:

This letter is written in response to your letter dated December 3, 2009, in which you request an opinion as to the permissibility of two proposed practices relating to an employer-run cafeteria under Section 193 of the Labor Law. Your letter states that your firm represents an employer that operates a production facility which runs a cafeteria for the benefit of the employees. The employer is seeking to cease handling cash in the cafeteria so as to improve security and accountability therein. Your letter proposes two options for accomplishing that goal, the first being payroll deductions that are authorized by the employees in writing each time the employee purchases food at the cafeteria. The second option proposed by you involves employees using pre-paid debit-like cards wherein cash value can be "loaded" by the employee through pre-payment to the employer with the amount of each purchase being deducted at the point of sale.

Labor Law Section 193 explicitly prohibits deductions from wages except those that are required by law or that are similar to, or one of the specific purposes set forth in Section 193(b)(1).¹ (See, Labor Law §193; See also, *Angello v. Labor Ready*, 7 NY3d 579 [2006]; *Marsh v. Prudential Securities, Inc.*, 1 NY3d 146 [2003].) The New York State Court of Appeals in *Labor Ready* conclusively stated that a payment that goes "directly to the employer or its subsidiary violates both the letter of the statute and the protective policy underlying it." (7 NY3d *supra* at 586.) The Court in *Labor Ready* also provided guidance for the interpretation of the term "similar payment" by noting that the deductions authorized by Labor Law §193(1)(b) are all "monetary or supportive." (*Id.* at 584.) Although the Court did not provide an explicit

¹ Labor Law §193(1)(b) states that such deductions are 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 for any labor organization, and similar payments for the benefit of the employee."

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definition as to the meaning of "monetary or supportive," a simple review of the authorized deductions in light of the Court's guidance reveals their meaning. All the authorized deductions are either "monetary," meaning that they are 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 they are "supportive," meaning that the deducted wages 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.

Your letter cites to two cases from the Industrial Board of Appeals in support of the validity of both options. However, both of those cases, *In the Matter of Bach Farms, LLC*, PR-04-038 (2005) and *In the Matter of Sonnenberg Nursery & Supply, Inc.*, PR-01-007 (2001), were rendered before the decision of the Court of Appeals in *Labor Ready*, which takes precedence over those decisions. The Industrial Board of Appeals has since cited to the decision in *Labor Ready* in holding a number of types of wage deductions to be unlawful under the Section 193. (See e.g., *In the Matter of York Furniture*, PR-06-081 (2009), holding that deductions for cash advances, a bowl, and a haircut were impermissible under Section 193; *In the Matter of NY Harm Reduction Educators*, PR-07-057 (2008), holding that a deduction for money stolen from the employer was impermissible under Section 193; *In the Matter of Valley Equipment Company*, PR-07-033 (2008), holding that deductions for the use of a company car were impermissible under Section 193.) Since this analysis is based on a later decision of the Court of Appeals and is consistent with the Board's subsequent decisions, no distinction needs be made from any inconsistencies contained in those previous decisions.

With regard to the first option, wherein payroll deductions are used as payments for employee purchases in the cafeteria, such a purpose is not authorized by law, nor is it for one of those specifically enumerated in Section 193(1)(b) or is it similar to such a purpose. The deduction of wages as payment for an employee's cafeteria purchases, notwithstanding the employee authorization or benefit, is impermissible under Section 193 of the Labor Law. Furthermore, since such a deduction involves a payment that goes "directly to the employer," it "violates both the letter of the statute [Section 193] and the protective policy underlying it." (7 NY3d *supra* at 586.) Therefore, it is the opinion of this Department that the first option described in your letter violates Section 193 of the Labor Law.

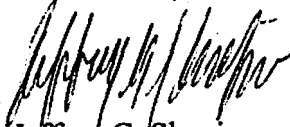
With regard to the second option, wherein employees utilize a pre-paid card for purchases at the cafeteria, it is the opinion of this Department that such an option does not implicate the provisions of Section 193 of the Labor Law since it does not involve a wage deduction. Rather, the practice you describe involves the mere purchase of an employer's goods and services by its employees. Such a purchase is factually indistinguishable, for the purpose of determining the applicability of Section 193, from an employee of a retail establishment purchasing gift cards for future purchases, which is not prohibited by Section 193. However, it is worth noting that such a practice will be considered to be a "separate transaction" under Section 193(2) should the employer coerce or otherwise require its employees to make such purchases or fund such cards through wage deductions. Absent such facts, it is the opinion of this Department that the second option described in your letter is not prohibited by Section 193 of the Labor Law.

This opinion is based on the information provided in your letter dated December 3, 2009. A different opinion might result if the circumstances stated therein change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel

By:



Jeffery G. Shapiro
Associate Attorney

JGS:mp

cc: Carmine Ruberto

