



New York State Department of Labor
Elliot Spitzer, Governor
M. Patricia Smith, Commissioner

June 1, 2007



Re: Request for Opinion
Wage Deductions - Labor Law §193
File # RO-07-0052

Dear [REDACTED]:

I have been asked to respond to your letter of May 9, 2007 to [REDACTED] in which you provide a copy of [REDACTED] new PTO policy for management (hereinafter referred to as "Policy") and ask for comment. Please be advised that implementation of Item 7 of the Policy would constitute a violation of New York State Labor Law §193

New York State Labor Law §193 states, in full:

§ 193. Deductions from wages. 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; 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 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.

3. Nothing in this section shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, nor with any other law applicable to deductions from wages.

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Labor Law §190(1) defines "wages," as:

the earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is determined on a time, piece, commission or other basis. The term "wages" also includes benefits or wage supplements as defined in section one hundred ninety-eight-c of this article, except for the purposes of sections one hundred ninety-one and one hundred ninety-two of this article.

Labor Law §198-c(2) defines "benefits or wage supplements," as: "includes, but is not limited to, reimbursement for expenses; health, welfare and retirement benefits; and vacation, separation or holiday pay."

Item 1 of the Policy defines "PTO" (paid time off) as "vacation time, holidays, bereavement, sick days, etc." This PTO constitutes a benefit or wage supplement as defined in Labor Law §198-c(2), and therefore is part of an employee's wages pursuant to Labor Law §190(1).

Item 7 of the Policy proposes to deduct earned PTO from an employee for violation of the Labor Law. In other words, the Policy proposes to make a deduction from an employee's wages. Such a deduction would not be made in accordance with any law, rule or regulation as permitted by §193(1)(a), nor would such a deduction be made for either one of the purposes specified in §193(1)(b) or for any similar purpose.

Therefore, implementation of Item 7 of the Policy would be a violation of Labor Law §193 as such Item proposes to make impermissible deductions from employee wages.

This opinion is based on the information provided in your letter of May 9, 2007. A different opinion might result if the facts provided were not accurate, or if any other relevant fact was not provided.

Very truly yours,

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