



New York State Department of Labor

David A. Paterson, Governor

M. Patricia Smith, Commissioner

February 13, 2009

[REDACTED]

Re: Request for Opinion
Wage Deductions for Cash Advances
R0-08-0023

Dear [REDACTED]:

I have been asked to respond to your letter of February 8, 2008. Please accept my apology for the late response to your request. Your letter states that you represent a company that employs over-the-road truckers. Prior to each trip, the company gives each driver a sum of cash for the payment of fuel, tolls and necessary expenditures. When a driver returns from a trip, he/she turns in his/her receipts and the remaining money from the cash provided by the employer. When the driver has used some of the cash for personal expenses, the employer considers the difference as cash advance of his/her paycheck and deducts the amount used by the driver from the employee's payroll check. Please be advised the practice, as described, is in violation of Section 193 of the New York State Labor Law.

Labor Law Section 193 explicitly prohibits deductions from wages except as required by law or where it is similar to one of the statutory enumerated deductions that has been expressly authorized in writing by and for the benefit of the employee. (See, Labor Law §193; See also, Angello v. Labor Ready, 7 NY3d 579 [2006]; Marsh v. Prudential Securities, Inc., 1 NY3d 146 [2003]; Matter of Valley Equipment Company, Inc. v Commissioner of Labor, PR-07-033 [N.Y. Industrial Board of Appeals, Feb. 29, 2008].) Therefore, under this provision, if an employer contends that an employee inappropriately used business expense money for personal expenses, and if the employee fails or refuses to return such money to the employer, the employer may seek to recover such overpayment in the forum of its choice, in which forum the employer would be required to prove that such overpayment occurred, and the employee would have the ability to introduce any applicable defenses to the employer's allegations. (See, Huntington Hospital v Huntington Hospital Nurses' Association, 302 F. Supp. 2d 34 [E.D.N.Y. 2004].) With the consent of the employee, the employer could also consider the money to have been loaned to the employee and make arrangements for the repayment of the loan through some mechanism other than a deduction from the employee's paycheck.

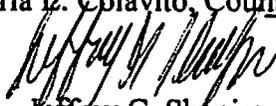
* Labor Law §193(1)(b) states that such deductions are limited to payments for "insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States Bonds, payments for dues or assessments for any labor organization, and similar payments for the benefit of the employee."

In response to the present inquiry, no law requires deductions from wages for the reimbursement of moneys advanced to an employee. Similarly, such a deduction is not, nor is it similar to, one of the deductions enumerated in Labor Law §193(1)(b). Therefore, while the company described in your letter may seek to recover such overpayment in the forum of its choice, the practice of unilateral wage deductions described in your letter is in violation of Labor Law §193.

This opinion is based on the information provided in your letter of February 8, 2008. A different opinion might result if the circumstances outlined in your letter changed, if the facts provided were not accurate, or if any other relevant fact was not provided.

Very truly yours,

Maria L. Colavito, Counsel


By: Jeffrey G. Shapiro
Associate Attorney

cc: Carmine Ruberto