PROGRAM BILL # 49

GOVERNOR'S PROGRAM BILL
2012

MEMORANDUM

AN ACT to amend the labor law, in relation to permitted deductions from wages; and providing for the repeal of such provisions upon expiration thereof

Purpose:

This bill would amend Labor Law § 193 to: (1) establish additional categories of permissible wage deductions that may be taken by employers with the consent of employees; (2) provide for use of wage deductions to recapture overpayments of wages due to clerical or mathematical error or for repayment of advances on wages paid to employees; and (3) enact other provisions with regard to deductions.

Summary of Provisions:

Section 1 of the bill would amend Labor Law § 193, subdivision 1 to permit the following:

- Wage deductions related to the repayment of advances and loans on wages and wage overpayments; and
- new permissible wage deductions, with employee consent, including:
  - costs associated with discounted mass transit tickets, passes, or user cards;
  - fitness or health club and/or gym membership dues;
  - cafeteria, vending machine, and pharmacy purchases made at the employer's place of business, and gift shops run by hospitals, colleges and universities;
  - tuition, room, board and fees for nursery, primary, secondary and post-secondary education costs; and
  - daycare, before- and after-school care expenses.

With regard to the use of wage deductions for the purpose of recovering overpayments or for repayment of advances of wages, the bill would require that employers comply with regulations promulgated by the Commissioner of Labor for this purpose, that must include provisions governing: the types of payments that will be covered by this section; the timing, frequency, duration and method of recovery or repayment; limitations on the periodic amount of such recovery or repayment; and notice to employees before commencing the recovery or repayment, including notice of procedures for disputing any overpayments or delaying the start of recovery or repayment.

Section 2 of the bill would add a new subdivision 2 to Labor Law § 193 to clarify that deductions made in conjunction with employer sponsored pre-tax contributions are permissible under Labor Law § 193 (1) (a). It would also renumber Labor Law § 193 subdivision 2 as subdivision 3 and authorize wage deductions permitted or required under a collective bargaining agreement. It would limit deductions for certain items such as payments on purchases made at fundraising events, cafeteria, vending, pharmacy, and covered gift shop purchases, and similar payments by requiring that the aggregate amount of such purchases within a pay period not exceed a maximum amount established by the employer, shall not exceed a maximum limit established by the employee, and not be permitted when they exceed the lower of these two limits. An employer would be obligated to provide an employee with information regarding purchases and a running total of all charges that would be deducted from the employee's wages on the next payday.

With the exception of certain wage deductions, an employee's consent to a wage deduction may be revoked in writing at any time. Upon receipt of an employee's revocation, the employer must cease the wage deduction as soon as practicable, and, in no event, more than four pay periods or eight weeks after the consent has been withdrawn, whichever is sooner. This section of the bill would renumber subdivision 3 of Section 193 of the Labor Law as subdivision 4 and would amend that subdivision to clarify that Labor Law § 193 does not limit the protections available under Article 8 of the Labor Law.

Section 3 provides for the effective date.

Existing Law:

The Labor Law allows employers to make deductions from employees' wages only when the deductions are otherwise allowed by law (e.g., tax withholdings) or when they fall within specific categories of commonly recognized deductions for which employee consent has been given (e.g., insurance premiums, retirement contributions, charitable contributions). Wage deductions are not permitted for the purchase of goods and services provided by employers for the convenience of the employee on items such as gym memberships, purchases at cafeterias, vending machines, and employer operated pharmacies.

Statement in Support:

The law unduly restricts employees from deducting payments from their paychecks for valuable services provided by the employers. This is disadvantageous to both employers and employees. This bill would change these restrictions and would allow an employer, with the employee's consent, to deduct wages from an employee's paycheck to cover specified goods and services. The bill would also allow employers to make arrangements with service providers, including, health clubs, day care centers, and parking vendors for the benefit of employees who wish to utilize such services and pay through a wage deduction system. Further, the bill would ensure that employees are fully informed of the terms associated with all voluntary deductions.

Finally, the inadvertent overpayment of wages due to mathematical or other clerical errors occurs with some frequency. The bill would allow recapture of overpayments pursuant regulations to be promulgated by the Commissioner. Similarly, the bill would provide a regulatory framework in which employers may give employees advances on wages, allowing employees to weather financial setbacks or address unexpected expenses.

Legislative History:

This bill, in a slightly different form, was a Department of Labor Departmental bill in 2011 when it passed the Assembly (A.8465).

Budget Implications:

There are no State fiscal implications.

Effective Date:

This bill would take effect 60-days after enactment and will expire and be deemed repealed three years after it shall take effect.