

12 NYCRR Part 195 is repealed and a new 12 NYCRR Part 195 is added to take effect on October 9, 2013 and expire upon the expiration and repeal of Chapter 451 of the Laws of 2012, to read as follows:

PART 195
DEDUCTIONS FROM WAGES

(Statutory authority: Labor Law §§ 21(11), 193, and 199)

- Subpart 195-1 Purposes and Scope**
- Subpart 195-2 Prohibited Practices**
- Subpart 195-3 Deductions in Accordance with Law**
- Subpart 195-4 Authorized Deductions for the Benefit of the Employee**
- Subpart 195-5 Deductions for Advances and Overpayments**

SUBPART 195-1
Purposes and Scope

Sec.

195-1.1 Purposes of Part

195-1.2 Scope

§ 195-1.1 Purpose of Part

To establish provisions governing authorized deductions for the benefit of employees, for the recovery of overpayments due to clerical or mathematical errors, and for repayment of advances.

§ 195-1.2 Scope

(a) This regulation shall apply to all employers and each of their employees, where the term employer includes any person, corporation, limited liability company, or association employing any individual in any occupation, trade, business or service, but not governmental agencies, and where the term employee means any person employed for hire by an employer in any employment.

(b) Nothing herein shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, nor with section 221 of the Labor Law relating to company stores or with any other law applicable to deductions from wages.

SUBPART 195-2
Prohibited Practices

Sec.

195-2.1 Prohibited Practices

195-2.2 Company Stores

§ 195-2.1 Prohibited Practices

(a) Wage deductions. No employer shall make any deductions from wages except those that fall within the following four categories:

(1) Any deductions made in accordance with any law, rule or regulation issued by any governmental agency;

(2) Deductions specified by, or similar to those specified by, section 193 of the Labor Law, authorized by, and for the benefit of, the employee;

(3) Deductions for the recovery of overpayments made in accordance with this Part; and

(4) Deductions for the repayment of wage advances made in accordance with this Part.

(b) Separate transactions. 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 this Part or is permitted or required under any provision of a current collective bargaining agreement.

§ 195-2.2 Company stores.

No person engaged in construction of public work under contract with the state or with any municipal corporation either as a contractor or subcontractor shall, directly or indirectly, conduct what is commonly known as a company store if there is any store selling supplies within two miles of the place where such contract is being executed. Charges for groceries, provisions, board, lodging or clothing shall not be a valid off-set in behalf of the employer against wages.

SUBPART 195-3
Deductions in Accordance with Law

Sec.

195-3.1 Deductions in Accordance with Law

§ 195-3.1 Deductions in Accordance with law

(a) Employers may make any deductions from wages that are in accordance with laws, rules, or regulations issued by any governmental agency. Such deductions include, but are not limited to, deductions for recovery of overpayments; for repayment of salary advances, and for pre-tax contribution plans approved by the IRS; wage garnishments and levies for child support and taxes, which may be involuntary as long as they are made in accordance with the statutes and regulations authorizing them.

SUBPART 195-4
Authorized Deductions for the Benefit of the Employee

Sec.

195-4.1 Authorized Deductions for the Benefit of the Employee, Generally

195-4.2 Authorized by the Employee

195-4.3 For the Benefit of the Employee

195-4.4 Listed Payments

195-4.5 Similar payments for the Benefit of the Employee

§ 195-4.1 Authorized Deductions for the Benefit of the Employee

Labor Law section 193(1)(b) allows for certain deductions from wages that are authorized by, and for the benefit of, the employee. Those deductions are limited to the ones that are specifically listed in the statute, and to “similar payments for the benefit of the employee.”

§ 195-4.2 Authorized by the Employee

(a) A deduction shall be authorized if it is agreed to in a collective bargaining agreement between the representative of the employee and the employer or by a written agreement between the employer and the employees that is express, written, voluntary, and informed. An authorization is informed when the employee is provided with written notice of all terms and conditions of the deduction, its benefit and the details of the manner in which deductions shall be made. Such written notice shall be provided prior to the execution of the initial authorization and prior to a deduction being made, any change in the amount of a deduction, or a substantial change in the benefits of a deduction. A substantial change in the benefits includes, but is not limited to, any reduction in the benefit received for the deduction or the details in the manner in which deductions shall be made. The employee, or a person selected by the employee, shall be given an opportunity to review such materials, however the employer is not required to pay or provide the means for such review. When the amount of a deduction increases, such increase shall be presumed to be substantial for purposes of this notice requirement. A single written authorization containing more than one deduction is permissible as long as all the required information is provided. For the purpose of calculating the time frames in this regulation, any reference to “days” shall mean calendar days, not business days. Any reference to a “week” shall mean seven (7) consecutive days.

(b) Where the nature of the deduction may fluctuate based upon the purchase, such as meals at a cafeteria or merchandise purchased at a gift shop, the notice may provide for deductions in a range where the lowest and highest amount that may be deducted are set forth in the notice. Any deduction made within the range shall not be considered changed or increased deduction requiring additional notice and authorization.

§ 195-4.3 For the Benefit of the Employee

(a) Deductions shall be for the benefit of the employee when the deduction is for one of the items expressly listed in section 193(1)(b) of Labor Law. More generally, deductions are for the benefit of the employee when they provide financial or other support for the employee, the employee's family, or a charitable organization. Such support shall be limited to the following categories: health and welfare benefits; pensions and retirement benefits; child care and educational benefits; charitable benefits; dues and assessments; transportation; and food and lodging.

(b) *Convenience is not a benefit.* Each wage deduction may provide some level of convenience to employees in facilitating payments, but convenience itself is not a recognized benefit for purposes of determining whether any given deduction is for the benefit of the employee. For example, an employer who offers to cash an employee's paycheck may not deduct a fee for providing that service because the convenience of having the paycheck cashed by the employer does not provide any benefit to the employee, but only ease in cashing his or her paycheck.

(c) Every deduction may provide some generalized indirect benefit to employers by helping to attract and maintain a stable and productive workforce. However, deductions that result in financial gain to the employer at the expense of the employee call into question whether the deduction provides a benefit to the employee. Employers are not precluded from making deductions in all cases where there is a benefit to the employer. Employers may make deductions for the sale of their own goods and services to their employees at a discounted rate as long as the deduction is in compliance with section 193 of the Labor Law and this Part. Similarly, where employees are provided the direct benefit of a reduced price for goods or services from an outside vendor, the employer is not precluded from availing themselves of the same benefit of the reduced priced goods or services. Nothing herein shall be construed as permitting an employer to receive a direct payment from an outside vendor as part of the sale of goods and services to the employees *except for deductions made pursuant to section 193(1)(b)(iv) of the Labor Law.*

§ 195-4.4 Listed and Similar Payments

Deductions that are authorized by, and for the benefit of, the employee are only allowed for payments that are specifically listed in section 193(1)(b) of the Labor Law, and for "similar payments for the benefit of the employee." Payments that are for the benefit of the employee and not otherwise prohibited will be allowed as "similar" if they fall within one of the categories of benefits below. The examples provided within each benefit category are not exclusive.

(a) *Health and Welfare Benefits.* The specifically listed deductions in this benefit category are: Payments that are made for health and welfare benefits; insurance premiums and prepaid legal plans; fitness center, health club, and/or gym membership dues; pharmacy purchases made at the employer's place of business; day care, before-school and after-school care expenses; and tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions.

(b) *Pension and Savings Benefits.* The specifically listed deductions in this benefit category are: Payments that are made for pension benefits and United States bonds.

(c) *Charitable Benefits*. The specifically listed deductions in this benefit category are: Payments that are made for contributions to a bona fide charitable organization; and purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least twenty percent of the profits from such event are being contributed to a bona fide charitable organization.

(d) *Representational Benefits*. The specifically listed deductions in this benefit category are: Payments that are made for dues or assessments to a labor organization.

(e) *Transportation Benefits*. The specifically listed deductions in this benefit category are: Payments that are made for discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit.

(f) *Food and Lodging Benefits*. The specifically listed deductions in this benefit category are: Payments that are made for cafeteria and vending machine purchases made at the employer's place of business; housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and purchases made at gift shops operated by the employer, only where the employer is a hospital, college, or university.

§ 195-4.5 Prohibited Deductions

Deductions that are not similar to those listed in the statute and above include, but are not limited to, the following:

(a) Repayments of loans, advances, and overpayments, that are not in accordance with Subpart 195-5;

(b) Employee purchases of tools, equipment and attire required for work;

(c) Recoupment of unauthorized expenses;

(d) Repayment of employer losses, including for spoilage and breakage, cash shortages, and fines or penalties incurred by the employer through the conduct of the employee;

(e) Fines or penalties for tardiness, excessive leave, misconduct, quitting without notice;

(f) Contributions to political action committees, campaigns and similar payments;

(g) Fees, interest or the employer's administrative costs.

SUBPART 195-5
Deductions for Advances and Overpayments

Sec.	
195-5.1	Deductions for Overpayments
195-5.2	Deductions for Advances
195-5.3	Authorization and Notification

§ 195-5.1 Deductions for Overpayments

Section 193, subdivision 1(c), of the New York State Labor Law permits an employer to make deductions from an employee's wages for "an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer." Such deductions are only permitted as follows:

(a) *Timing and duration.* The employer may only recover such overpayments as were made in the eight (8) weeks prior to the issuance of the notice described in subdivision (e) below. The employer may make deductions to recover overpayments for a period of six (6) years from the original overpayment;

(b) *Frequency.* The employer shall recover overpayments by wage deduction no more frequently than once per wage payment, provided that such deduction complies with this Part.

(c) *Method of Recovery.* Overpayments may be recovered through wage deduction or by separate transaction, as long as the procedures of sections 195-5.1(a) and (d) through (i) are followed. For purposes of this section, payments referenced as "wage deductions" shall include separate transactions.

(d) *Limitations on the Periodic Amount of Recovery.* An employer may recover overpayments by deducting the amount of the overpayment from the employee's wages if the deduction complies with any final determination made in accordance with the procedures required pursuant to subdivision (g) of this section, and as follows:

(1) In such cases where the entire overpayment is less than or equal to the net wages earned after other permissible deductions in the next wage payment, the employer may recover the entire amount of such overpayment in that next wage payment.

(2) Where the recovery of an overpayment exceeds the net wages after other permissible deductions in the immediately subsequent wage payment, the recovery may not exceed 12.5% of the gross wages earned in that wage payment nor shall such deduction reduce the effective hourly wage below the statutory state minimum hourly wage.

(e) *Notice of Intent.* The employer shall provide the employee with notice of the intent to commence the deductions to recover the overpayment. In such cases where the entire amount of the overpayment may be reclaimed in the next wage payment pursuant to paragraph (1) of subdivision (d) above, notice shall be given at least three days prior to the deduction. In all other cases, notice shall be given at least three weeks before the deductions may commence. Such notice shall contain the amount overpaid in total and per pay period, the total amount to be deducted and the date each deduction shall occur followed by the amount of each deduction. The notice shall also provide notice to the employee that he or she may contest the overpayment, provide the date by which the employee shall contest, and include the procedure by which the employee may contest the overpayment and/or terms of recovery, or provide a reference to where such procedure can be located.

(f) *Procedure.* The employer shall implement a procedure by which the employee may dispute the overpayment and terms of recovery, and/or seek a delay in the recovery of such overpayment. Dispute resolution provisions in collective bargaining agreements existing at the time of issuance of these regulations which provide at least as much protection to the employee shall be deemed to be in compliance with this section. Dispute resolution provisions in collective bargaining agreements executed after the issuance of these regulations which provide at least as much protection to the employee and which specifically reference this section shall also be deemed to be in compliance with this section.

(1) The employee may only respond within one week from the date of the receipt of the notice of intent to recover overpayments that is prepared in accordance with subdivision (e) of this section.

(2) The employer shall reply to the employee's response within one week of receipt of the employee's response. Such reply shall address the issues raised by the employee in his or her response, and contain a clear statement indicating the employer's position with regard to the overpayment, including whether the employer agrees with the employee's position(s) regarding the overpayment or disagrees with the employee's position(s) and provide a reason why the employer agrees or disagrees.

(3) The employer shall give the employee written notice of the opportunity to meet with the employer within one week of receiving the employer's reply to discuss any disagreements that remain regarding the deductions.

(4) The employer shall provide the employee with written notice of the employer's final determination regarding the deductions within one week of this meeting. In making a final determination regarding the existence of an overpayment, the employer shall consider the agreed upon wage rate paid to the employee and whether the alleged overpayment appeared to the employee to be a new agreed upon rate of pay. When making a final determination regarding the amount of the deduction to be made per pay period and the date such deduction(s) shall commence, the employer shall consider the issues raised in the employee's request regarding the amount of each deduction.

(g) Should employees avail themselves of the procedure set forth in subdivision (f) above, the employer may not commence taking the deduction until at least three weeks after issuing the final determination. Where the entire overpayment may be reclaimed in the next wage payment after the overpayment, the employee shall provide their response to the employer within the two days of receipt of the notice set forth in subdivision (e) above to postpone the deduction while the procedure set for in subdivision (f) above is followed. The employer is required to repay the employee for any deduction found to be improper no later than the time period provided for payment of wages earned on the day of that determination, and is permitted to make the repayment immediately.

(h) The failure of an employer to afford this process to the employee will create the presumption that the contested deduction was impermissible.

(i) Nothing in this section shall be construed as abridging the rights of the employer or employee to seek redress in any other forum, including with the Department of Labor.

§ 195-5.2 Deductions for Advances

Section 193, subdivision 1(d), of the New York State Labor Law permits an employer to make deductions from an employee's wages for repayment of advances of salary or wages made by the employer to the

employee. An “advance” is the provision of money by the employer to the employee based on the anticipation of the earning of future wages. Any provision of money which is accompanied by interest, fee(s) or a repayment amount consisting of anything other than the strict amount provided, is not an advance, and may not be reclaimed through the deduction of wages. Deductions made in repayment of an advance are only permitted as follows:

(a) *Timing and Duration.* The employer and employee must agree to the timing and duration of the repayment deduction in writing before the advance is given. Once an advance is given, no further advance may be given or deducted until any existing advance has been repaid in full. Any money given by the employer to the employee in excess of the amounts and durations permitted to be deducted pursuant this Part shall not be recoverable through wage deductions.

(b) *Frequency.* The employer shall recover advances by wage deduction no more than each wage payment, provided that such deduction complies with this Part.

(c) *Method of Recovery.* Advances may be recovered through wage deduction or by separate transaction, as long as the procedures of Sections 5.2(a) and (d) through (i) are followed. For purposes of this Section, payments referenced as “wage deductions” shall include separate transactions.

(d) *Limitations on the Periodic Amount of Recovery.* The amount recovered through deduction per wage payment shall be determined by the written terms of the advance authorization, and may include total reclamation through deduction of the last wage payment should employment end prior to the expiration of the other terms of the written advance authorization.

(e) *Authorization.* Prior to the advance being given to the employee the employee shall give written authorization for the deduction(s) to be made to repay the advance. Such authorization shall contain the amount to be advanced, the amount to be deducted to repay the advance in total and per wage payment and the date(s) when each such deduction shall be taken. This authorization may only be revoked prior to the actual provision of the advance by the employer. The authorization shall also include notice to the employee that he or she may contest any deduction that is not in accordance with the terms of the written advance authorization.

(f) The employer shall implement a procedure by which the employee, after receiving the advance, may dispute the amount and frequency of deductions that are not in accordance with the terms of the written advance authorization. An employee receiving such an advance shall be given written notice of this procedure. Dispute resolution provisions in collective bargaining agreements existing at the time of issuance of these regulations which provide at least as much protection to the employee shall be deemed to be in compliance with this section. Dispute resolution provisions in collective bargaining agreements executed after the issuance of these regulations which provide at least as much protection to the employee and which specifically reference this section shall also be deemed to be in compliance with this section.

(1) The employee shall be able to provide written notice of the employee’s objection to the deduction.

(2) The employer shall reply in writing to the employee’s objection as soon as practical. Such reply shall address the issues raised by the employee’s objection, and contain a clear statement indicating the employer’s position with regard to the deduction, including whether the employer agrees with the employee’s position(s) regarding the deduction or disagrees with the employee’s position(s) and provide a reason why the employer agrees or disagrees.

(g) Should an employee avail themselves to the procedure set forth in subdivision (f) above, the employer shall cease deductions until such reply has been given and any appropriate adjustments made. Any delay in

repayment caused by this procedure shall extend the authorized time frame within which the employer may recover the advance through deductions.

(h) The failure of an employer to afford this process to the employee will create the presumption that the contested deduction was impermissible.

(i) Any provision of money by the employer to the employee that does not comply with Section 193 of the Labor Law and this Part shall not be considered an “advance” and may not be reclaimed through wage deductions.

(j) Nothing in this section shall be construed as abridging the rights of the employer or employee to seek redress in any other forum, including with the Department of Labor.

§ 195-5.3 Authorization and Notification

Any authorizations, notices, responses, replies or determinations required to be given under this Part may be given in writing or through email or other electronic means. Statements given to an employee shall use ordinary language readily understood and shall appear in a font size no smaller than a 12-point font. The employer shall keep a record of any such authorization for at least six years after such employee’s employment ends.

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