

Deductions from Wages

§ 193 and Part 195

Deductions from Wages

► Which New York State Laws Address Deductions from Worker's Wages?

- New York State Labor Law Section 193
- New York Codes, Rules and Regulations Part 195



By hikingArtist.com



**Department
of Labor**

Division of Labor Standards

Deductions from Wages

Section 193 of the New York State Labor Law

§ 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 including regulations promulgated under paragraph c and paragraph d of this subdivision; or
- b) are expressly authorized in writing by the employee and are for the benefit of the employee, provided that such authorization is voluntary and only given following receipt by the employee of written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made. Whenever there is a substantial change in the terms or conditions of the

► Section 193 found on website: <https://www.labor.ny.gov/formsdocs/wp/ls605.pdf>

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Labor

§ 193. Deductions from wages. * 1. No employer shall make any deduction from the wages of an employee, except deductions which:

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b. are expressly authorized in writing by the employee and are for the benefit of the employee, provided that such authorization is voluntary and only given following receipt by the employee of written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made. Whenever there is a substantial change in the terms or conditions of the payment, including but not limited to, any change in the amount of the deduction, or a substantial change in the benefits of the deduction or the details in the manner in which deductions shall be made, the employer shall, as soon as practicable, but in each case before any increased deduction is made on the employee's behalf, notify the employee prior to the implementation of the change. Such authorization shall be kept on file on the employer's premises for the period during which the employee is employed by the employer and for six years after such employment ends. Notwithstanding the foregoing, employee authorization for deductions under this section may also be provided to the employer pursuant to the terms of a collective bargaining agreement. Such authorized deductions shall be limited to payments for:

- (i) insurance premiums and prepaid legal plans;
- (ii) pension or health and welfare benefits;
- (iii) contributions to a bona fide charitable organization;
- (iv) purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least twenty percent

Deductions from Wages

Part 195 of Title 12 of the Official Compilation of Codes, Rules, and Regulations
of the State of New York (Cited as 12 NYCRR 195)

Promulgated by the Commissioner of Labor Pursuant to the Payment of Wages Article (Article 6 of the
New York State Labor Law)

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



**Department
of Labor**

- ▶ Part 195 also found on website: <https://www.labor.ny.gov/formsdocs/wp/cr195.pdf>

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 the repayment of advancement of salary or wages.

Scope

The regulation applies to all employers (except government agencies) and employees.



§ 195-1.2

Deductions from Wages

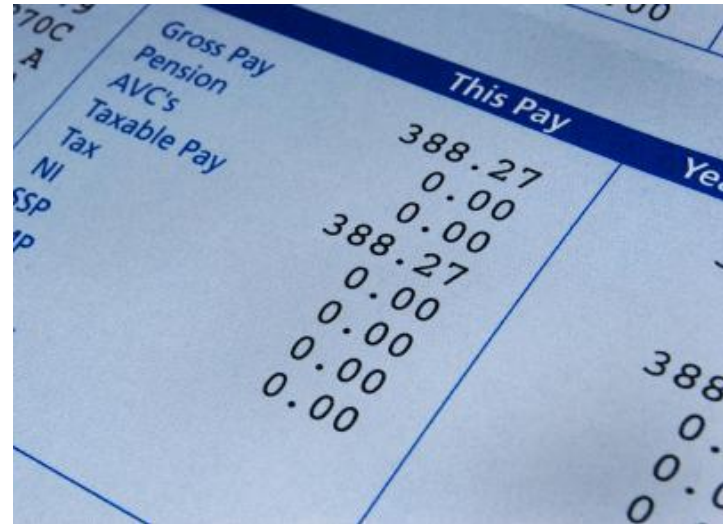
Employers cannot make any deductions from wages, or require an employee to make payments, except those that fall within the following four categories:

- ▶ Deductions that are required by any law, rule or regulation;
- ▶ Deductions specified, or *similar* to those specified, in Section 193 of the Labor Law, which are expressly pre-authorized in writing by the employee *and* are for the benefit of the employee;
- ▶ Deductions for the recovery of overpayments of wages; and
- ▶ Deductions for the repayment of wage advances.

§ 195-2.1(a)

1. Mandatory Deductions that are required by any law, rule or regulation

- ▶ Federal and State taxes
- ▶ Medicare
- ▶ Social Security
- ▶ Court-ordered garnishments



A close-up photograph of a pay stub, tilted slightly to the right. The document is white with blue and black text. A blue header bar at the top contains the text 'This Pay' and 'Year'. Below this, several rows of data are visible, showing various pay components and deductions. The values are aligned to the right of each label. The visible labels and their corresponding values are: Gross Pay (388.27), Pension (0.00), AVC's (0.00), Taxable Pay (388.27), Tax (0.00), NI (0.00), and SSP (0.00). The 'Year' column shows the number '3'.

	This Pay	Year
Gross Pay	388.27	
Pension	0.00	
AVC's	0.00	
Taxable Pay	388.27	
Tax	0.00	
NI	0.00	
SSP	0.00	

2. Deductions specified by, or similar to those specified by, Section 193 authorized by, and for the benefit of, the employee

Excerpt from the Statute

Such authorized deductions shall be limited to payments for: (i) insurance premiums and prepaid legal plans; (ii) pension or health and welfare benefits; (iii) contributions to a bona fide charitable organization; (iv) 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; (v) United States bonds; (vi) dues or assessments to a labor organization; (vii) discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit; (viii) fitness center, health club, and/or gym membership dues; (ix) cafeteria and vending machine purchases made at the employer's place of business and purchases made at gift shops operated by the employer, where the employer is a hospital, college, or university; (x) pharmacy purchases made at the employer's place of business; (xi) tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions; (xii) day care, before-school and after-school care expenses; (xiii) payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and (xiv) similar payments for the benefit of the employee.

§ 193(1)(b)

What Are Similar Payments for the Benefit of the Employee Under Section 193?

- a) Health and Welfare Benefits
- b) Pension and Savings Benefits
- c) Charitable Benefits
- d) Representational Benefits
- e) Transportation Benefits
- f) Food and Lodging Benefits



§ 195-4.4

What does “Authorized” mean?

For all wage deductions where employee consent is required, the deduction can only be made if it is pre-authorized in writing. Pre-authorized means that there must be a written agreement between the employer and employee before the deduction is made.

Authorization notices must:

- ▶ Be in a written document,
- ▶ Provided to and voluntarily signed by the employee, *and*
- ▶ Contain all the terms and conditions of the deduction, including its benefit to the employee, *and*
- ▶ Detail the manner in which the deductions will be made, including the amount of each deduction and the total cost.

For the Benefit of the Employee

- ▶ In order to be considered a benefit to the employee, the deduction must provide financial support for the employee, the employee's family or a charitable organization.
- ▶ Convenience is not a benefit.
- ▶ Every deduction may provide some generalized *indirect* benefit to employers by helping to attract and maintain a stable and effective workforce. 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.

Prohibited Deductions



- ▶ Employee purchases of tools, equipment and attire required for work
- ▶ Recoupment of unauthorized expenses or theft
- ▶ Repayment of employer losses, including spoilage and breakage, cash shortages, and fines or penalties incurred by the employer
- ▶ Fines or penalties for tardiness, excessive leave, misconduct, quitting without notice
- ▶ Contributions to political activities



§ 195-4.5

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 - ▶ Deductions for the repayment of wage advances.

3. Deductions for Overpayments

Overpayments due to an employer's math or other clerical error may be deducted from an employee's wages, but only if certain conditions and specific steps are taken.

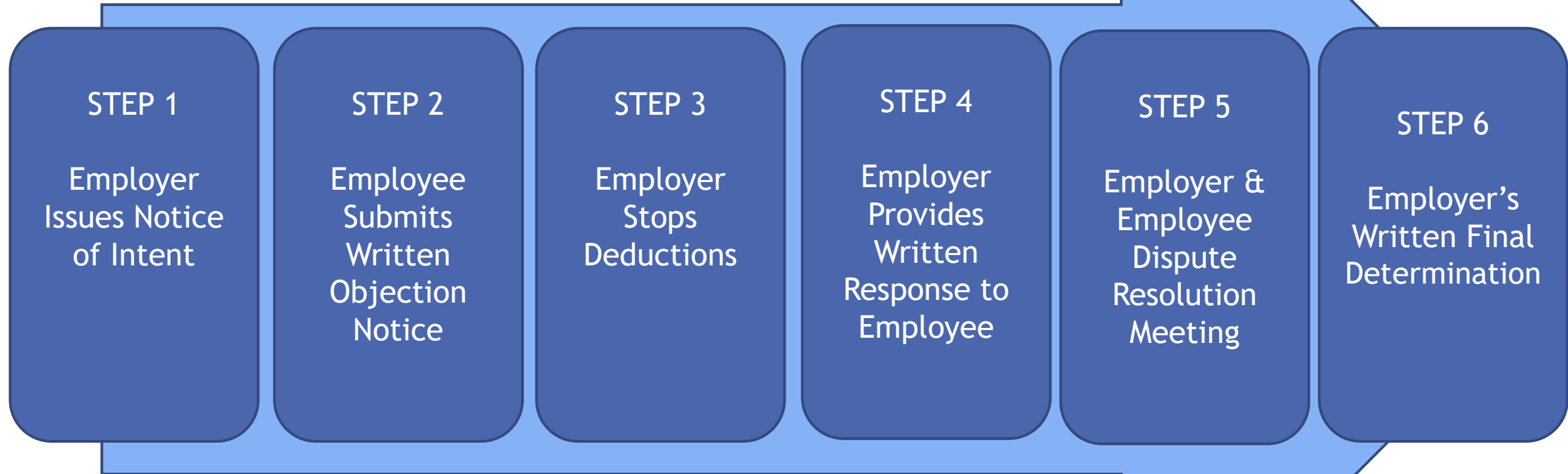
Limits to Timing, Duration, Frequency, and Method:

- ▶ An employer can recover overpayments made within eight weeks before the issuance of a notice of intent to recoup an overpayment. Additionally, an employer may not make wage deductions more frequently than once per pay period.
- ▶ Where the entire overpayment is less than or equal to the net wages in the next wage payment, the entire amount of the overpayment may be recouped in the next wage payment; otherwise,
- ▶ Deductions for overpayments are limited to 12.5 percent of the gross wages (provided the deduction does not reduce wages below the minimum wage rate).

3. Deductions for Overpayments, continued

- ▶ *Notice of Intent*: The employer must provide a 'Notice of Intent' to the employee at least three days before the date of a deduction if the entire deduction will be taken in a single wage payment, OR three weeks prior to the start of deductions that will be taken periodically.
- ▶ *Dispute Resolution*: Employers are required to adopt and notify employees of the procedure to dispute the overpayment and terms of recovery, or seek a delay in the recovery of the overpayment.
- ▶ *Repayments by the Employer*: The employer is required to repay the employee for any deduction found to be improper under the dispute resolution procedure.

Dispute Procedure Overview



Dispute Procedure

STEP 1 - Employer's Notice of Intent:

Informs the worker that an overpayment will be repaid through wage deduction

If the ***entire repayment*** will be taken from the wages, then notice must be given ***three days prior*** to the start of the deductions.

If a ***partial repayment*** will be taken, then the notice must be given ***three weeks prior*** to the deductions.

STEP 2 - Employee's Written Objection: The employee may dispute the overpayment and deductions if he or she disagrees.

The employee has ***only one week*** to submit his or her written objection to the employer.

STEP 3 - Deductions Stop: The employer may not make any deductions during the dispute process.

Depending on the result, the employer may not start making the deductions until ***three weeks after*** issuing the Final Determination to the employee.

Dispute Procedure, continued

STEP 4 - Employer's Written Response: The employer must address the employee's concerns, in writing, within *one week*.

The employer's response must explain *whether or not he or she agrees* with the employee and *explain why*.

The employer must invite the employee, in writing, to a *resolution meeting within one week* of providing the written response to the worker.

STEP 5 - Resolution Meeting: The employer and employee may discuss any remaining issues at an in-person meeting.

The employer must address the matter in a written, Final Determination within *one week* of the meeting date.

STEP 6 - Final Determination: The employer must consider all of the employee's concerns in the final, written decision.

The employer must wait *three weeks* to begin making deductions, or

Must repay all deductions to the employee *as soon as possible or in the next paycheck*.

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§ 195-2.1(a)

4. Wage Advances

Wage Advances occur when an employer pays an employee his or her wages before they are earned, in anticipation of future earnings.

- ▶ An advance cannot have interest or fees.
- ▶ Advances may be recovered through payroll deductions, with written authorization by the employee.
- ▶ **Note:** The advance amount should be *practical* so that it can be repaid within a reasonable amount of time. The best practice would be to advance no more than one week's worth of wages.

4. Wage Advances, continued

Written Authorization: Before an advance is given, both the employer and employee must agree to the terms, in writing. It must be easy to understand and printed in a legible font, no smaller than 12 pt. This written authorization must describe the timing and duration of the repayment deduction and must include:

- ▶ Total amount of the advance.
- ▶ Amount of each deduction to repay the total advance.
- ▶ The dates for each deduction.
- ▶ Notice that the worker may dispute any deduction that is not in the agreement.
- ▶ A description of the dispute process.

4. Wage Advances, continued

- ▶ No additional advances are allowed until the advance is fully repaid.
- ▶ Only the agreed-upon amounts may be deducted.
- ▶ Deductions may be taken directly from the worker's wages but must be clearly listed on the worker's wage statement.
- ▶ If the employment ends before the advance is fully repaid, an employer may deduct the full remaining balance owed, regardless of the paycheck amount.

Written Authorization for Wage Advances

This form is a template an employer may use to obtain written authorization to make payroll deductions for a wage advance provided to an employee.

An advance is money provided by the employer to the employee based on the employee's future wage earnings. An advance cannot include interest or fees or any repayment that does not match the terms of the Written Authorization for Wage Advances.

I _____ (Employer) agree to advance to _____ (Employee) \$ _____, which will be repaid through wage deductions, according to the terms of this written agreement.

Advance amount \$ _____

Date of advance _____

Total amount to be deducted \$ _____

Amount of each deduction \$ _____

Total number of deductions _____

Dates of each deduction:

Method of repayment

- ☐ Direct deduction from wages
☐ Separate transaction/payment

Limitations

Once an advance is given, no further advance may be given or deducted until any existing advance has been repaid in full.

Wage deductions may not occur more than once per pay period.

If the employee's employment ends prior to full repayment of the advance per this agreement, the employer may deduct the entire remaining balance of the unpaid advance from the employee's final wage payment.

Notice to employee

You may contest any deduction that is not in accordance with the terms of this agreement. Please read the terms and provide your signature indicating that you have read and understand the terms of the Dispute Procedure.

Employee name

Employee address

Employee telephone number

Employee email address

Employer name

Employer address

Employer telephone number

Employer email address

LS 70

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Tools and Resources

- ▶ Part 195 of Title 12 New York Codes Rules Regulations (NYCRR)
- ▶ New York State Labor Law - Section 193
- ▶ Department issued language for Section 193 (LS 605)
- ▶ Template for Written Authorization for Wage Advances (LS 70)

