



New York State Department of Labor

David A. Paterson, Governor

M. Patricia Smith, Commissioner

August 3, 2009

Joseph A. DeTraglia, Esq.
Getnick, Livingston, Atkinson,
Gigliotti & Priore, LLP
248 Genesee Street
Utica, New York 13502-4628

Re: Request for Opinion
Wage Deductions
R0-09-0006

Dear Mr. DeTraglia:

This letter is written in response to your letter of January 23, 2009 in which you request an opinion regarding the permissibility of wage deductions from an employee's final paycheck to recover unearned salary and/or benefits which have been paid to the employee in advance. Please accept my apology for the late response to your request. Your letter provides a hypothetical example of an employer that pays its employees biweekly paychecks using a 27-pay-period cycle wherein approximately every 11 years "exempt employees" are paid, from time to time, up to two weeks in advance of the date the pay has been earned. Should such an employee be terminated within such a period, he/she may be in receipt of up to two weeks unearned pay. Your letter states that a wage deduction to recover all such unearned pay is permissible under Federal Law, and asks whether such a deduction is similarly permissible under New York State Law. Please be advised that the hypothetical company policy described in your letter would be a violation of New York State Labor Law §193.

Please be first advised that the permissibility of wage deductions under the Fair Labor Standards Act (29 U.S.C. 201 et seq.) has no relevance to the permissibility of wage deductions under the New York Labor Law. The Fair Labor Standards Act expressly provides that states may set standards for the payment of wages that are higher than the standards established by the Act. (See, 29 U.S.C. 218.) Similarly, your characterization of employees as "exempt," presumably under the Fair Labor Standards Act, has no bearing on the permissibility of wage deductions under New York State Law, since Labor Law §193 applies to all "employees" under Article 6 of the Labor Law regardless of their "exempt status under either federal or New York State law. (See, *Patcher v Bernard Modes Group, Inc.*, 10 N.Y.3d 609 [2008]; See also, Labor Law §190(2), defining "employee" as "any person employed for hire by any employer in any establishment.") Additionally, this letter does not constitute an opinion as to the permissibility of