

## Changes in Employee Deductions to Start on January 1, 2008

*Sarah S. Pillen, Esq.  
Rembolt Ludtke LLP*

**E**ffective January 1, 2008, a new state law – LB 223 – will impact all employers with 25 or more employees. This law, introduced by Omaha Senator Tom White, requires employers to withhold 3% of an employee's gross wages, minus tax qualified deductions for state income tax, *unless* the employee can prove a lesser amount is justified. The term "tax qualified deductions" is defined to include tax-deferred compensation, and other tax-sheltered items *i.e.* cafeteria plan benefits such as health insurance, retirement, medical and dependent care reimbursement.

This law was passed in hopes of allowing some employees to keep more of their salaries instead of receiving the money back in large refunds. On the flipside, LB 223 may cause some employees to have more money deducted from their paycheck and create headaches for employers. The underlying policy behind LB 223 is to ensure that no one – particularly undocumented illegal aliens – can claim several exemptions to reduce a state income tax withholding so as to avoid paying state income taxes.

Employers will likely encounter some difficulties in determining the proper withholding amounts. The Nebraska Department of Revenue has provided new updated withholding tables that employers can follow. These tables can be found on the Nebraska Department of Revenue web-site at [www.revenue.ne.gov](http://www.revenue.ne.gov). The non-shaded areas of the tables indicate that withholding must be at least 3%. The shaded areas of the tables indicate withholding amounts less than 3%.

Certain employees may qualify for less than a 3% withholding, but only if such employees provides satisfactory evidence that a lesser amount should be withheld. If an employee alleges that he or she qualifies for less than the 3% withholding, the employee must produce evidence to the employer in any of the following forms: birth certificates, Social Security cards, bank/mortgage firm year-end statements, payroll statements or past W-2s. Without such documentation, the employee's withholding must be set at 3% or at some other level within the non-shaded area of the withholding table. If employers do not obtain proper documentation they will be subject to a \$1,000 fine for each employee for whom too little is withheld.

Employers are not required to maintain any of the information that employees produce in support of a less than 3% withholding. However, the Nebraska Department of Revenue recommends that employers develop a summary document that includes a statement signed by the employee that the employee's Form W-4 allowances have been reviewed and have been determined to be reasonable. A sample copy of this type of summary document prepared by the Nebraska Department of Revenue, can be found at [www.remboltludtke.com/asp/legalnews5.asp](http://www.remboltludtke.com/asp/legalnews5.asp).

Although this new law may cause some initial disruption for employers and discontent in the workplace, such issues can be avoided if you are properly prepared. Please contact us if you need any additional information or would like further clarification regarding your legal obligations.

*Sarah Pillen is an associate with the Lincoln-based law firm of Rembolt Ludtke LLP and may be reached at (402) 475-5100 or [spillen@remboltludtke.com](mailto:spillen@remboltludtke.com). This article is provided for general information purposes only and should not be construed as legal advice. Those requiring legal advice are encouraged to consult with their attorney.*

### Employment/Labor Law Practice Group

**David J. A. Barga**  
[dbarga@remboltludtke.com](mailto:dbarga@remboltludtke.com)

**Britt J. Ehlers**  
[behlers@remboltludtke.com](mailto:behlers@remboltludtke.com)

**Mark A. Fahleson**  
[mfahleson@remboltludtke.com](mailto:mfahleson@remboltludtke.com)

**Sarah S. Pillen**  
[spillen@remboltludtke.com](mailto:spillen@remboltludtke.com)

### Rembolt Ludtke LLP Attorneys at Law

**GRAND ISLAND OFFICE**  
**3280 Woodridge Boulevard**  
**Suite 160**  
**Grand Island, NE 68801**  
**308 / 384-6888**

**LINCOLN OFFICE**  
**1201 Lincoln Mall, Suite 102**  
**Lincoln, NE 68508**  
**Fax: 402 / 475-5087**  
**402 / 475-5100**

**SEWARD OFFICE**  
**125 South 6<sup>th</sup> Street**  
**Seward, NE 68434**  
**Fax: 402 / 643-3969**  
**402 / 643-4770**

[www.remboltludtke.com](http://www.remboltludtke.com)

**We find the way®**