



Deducting Money from Workers' Wages

When is it legal and when is it not?

Training for all Agricultural Employers in New York State

Revised as of 2015

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**

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:

1. Mandatory Deductions that are required by any law, rule or regulation;
2. Deductions listed, or similar to those listed, 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;
3. Deductions for the repayment of wage advances; and
4. Deductions for the recovery of overpayments of wages, where the overpayment is due to a mathematical or clerical error by the employer.

Mandatory Deductions Required by Law

Payroll deductions required by law are always okay

Earnings Information	Current	Year to Date
Normal Gross	4,389.30	
Deductions	0.00	
Adjustments	0.00	
Net Pay	0.00	
EARNINGS TOTAL	4,389.30	5,277.30
Pre-Taxable Gross	351.14	418.18
Post-Taxable Gross	3,971.12	4,859.12

Mandatory & Other Deductions	Current	Year to Date
Federal Withholding	311.17	311.17
Additional Federal Withholding	0.00	*****
State Withholding	135.96	135.96
Additional State Withholding	0.00	*****
SDI	0.00	55.06
Medicare	0.00	75.55
Medicare Buyout	62.67	0.00
State Disability Insurance	0.00	0.00
RS	0.00	0.00
	351.14	351.14
	0.00	0.00
	0.00	

For example:

- Federal Tax
- State Tax
- Medicare
- Social Security
- Court-ordered garnishments



Deductions Permitted Only with Employee Consent

Certain deductions that are pre-authorized by, and for the benefit of, the employee are also allowed. These deductions are limited to those specifically listed in Section 193 1(b), and to “similar payments for the benefit of the employee.”

Examples where employee consent is required include deductions for:

- Insurance Premiums
- Retirement Plans or Pensions
- Charitable Contributions
- Fitness Club Memberships
- Child Care



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

A payment benefits the employee if it provides financial or other support for the employee, or his or her family.

To be considered “similar” a payment must fall into one of the following categories:

- health and welfare benefits;
- pension and retirement benefits;
- child care and educational benefits;
- charitable benefits;
- dues and assessments;
- transportation; and
- food and lodging

Some of these categories of benefits are not typically offered to workers in agriculture.
If you believe you provide one of these benefits, please contact the Department of Labor at:
Phone: (877) 466 – 9757 or Email: dipa@labor.ny.gov

What Does Pre-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.

Written 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, *and*
- Be written in easily understood language

Remember: Employers must obtain written employee consent before making the deduction; as well as, prior to any change in the terms of the deduction.



Wage Advances

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

Example: An agricultural employer advances a week's worth of wages to newly-arrived, migrant workers who will live on the farm. They may need money to buy groceries and other supplies that they will need before pay day.

- 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, such as within the temporary employment or growing period. The best practice would be to advance no more than one week's worth of wages.



Deductions for Wage Advances

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

Written Authorization *Cont'd*

Timing and Duration

Timing – The written agreement must describe when the deductions will begin and end, *as well as*

Duration – How long will the deductions last

- No additional advances are allowed until the advance is fully repaid.
- All written authorizations and any disputes that arise from the authorization must be kept on file for at least six years after the worker is no longer employed.



Method of Recovery for Advances

- 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
- Deductions may also be by separate transaction, meaning that the worker can pay the employer by cash, check or money order, but the employer must provide a receipt for monies received.
- 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

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:

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

DATES OF EACH DEDUCTION:

METHOD OF REPAYMENT

- DIRECT DEDUCTION FROM WAGES
 SEPARATE TRANSACTION/PAYMENT

employee 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

EMPLOYEE SIGNATURE & DATE

(DATE)

EMPLOYER NAME _____**EMPLOYER ADDRESS**

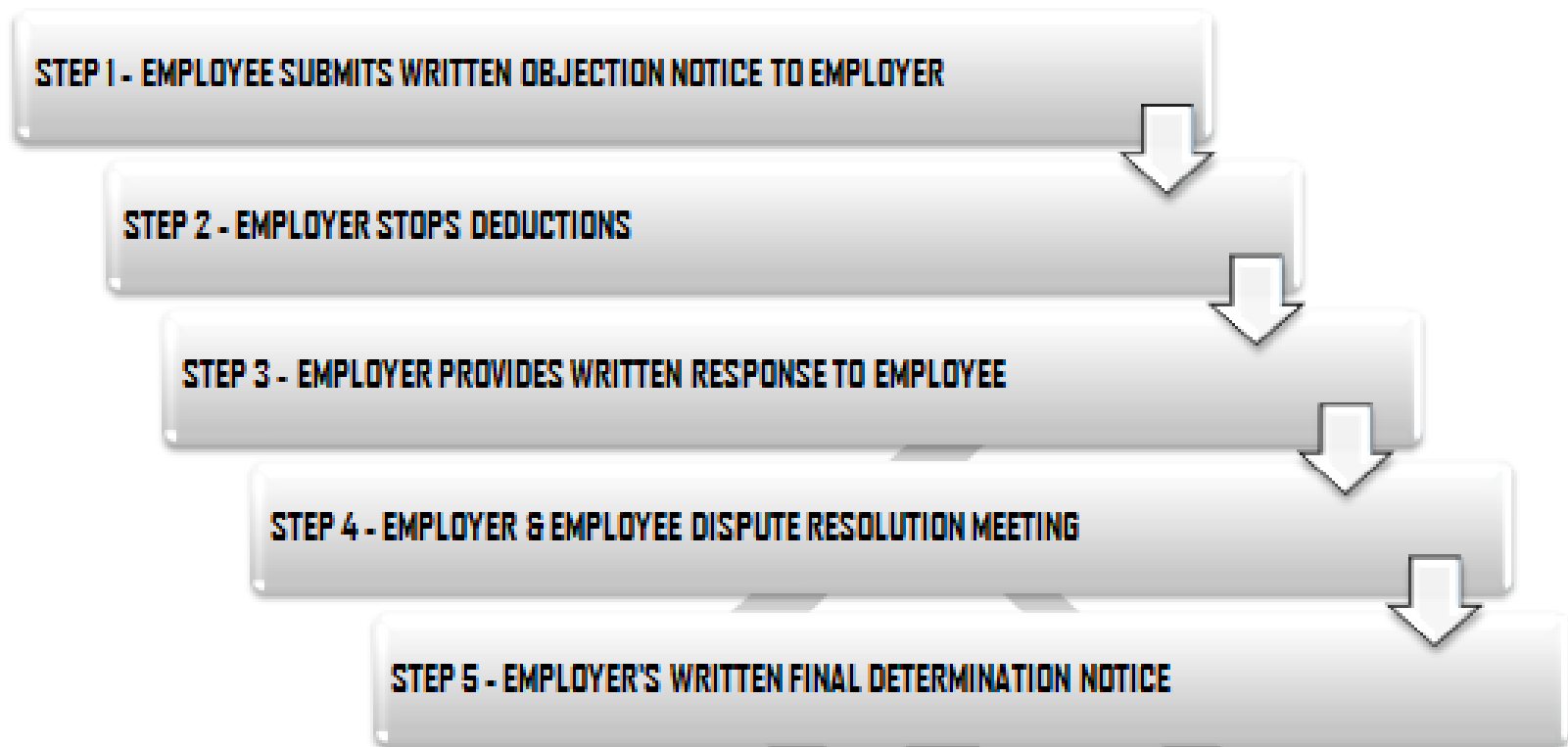
EMPLOYER TELEPHONE NUMBER

EMPLOYER EMAIL ADDRESS

EMPLOYER SIGNATURE & DATE

(DATE)

OVERVIEW OF DISPUTE PROCESS



TERMS OF DISPUTE PROCEDURE

EMPLOYEE'S WRITTEN OBJECTION - The employee may dispute any deduction that is not in accordance with the terms of this agreement. The employee has only one week to submit his or her written objection to the employer.

result, the employer may not start making the deductions until three weeks after issuing the final determination to the employee.

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.

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.

EMPLOYER'S 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.

I, _____ (EMPLOYEE,) have read, understand and agree to the terms of the Dispute Procedure and I understand that I may contest any deduction that is not in accordance with the terms of this agreement.

Employee Signature

Date

Employer Signature

Date

Overpayments to an Employee

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

Example: Payroll accidentally pays out the incorrect # of hours, units or incorrectly factors in overtime at time and a half for agricultural workers.

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.*

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.*



Overpayments to an Employee *cont'd*

Amount: The amount an employer may recover for overpayments through wage deductions is limited to the following:

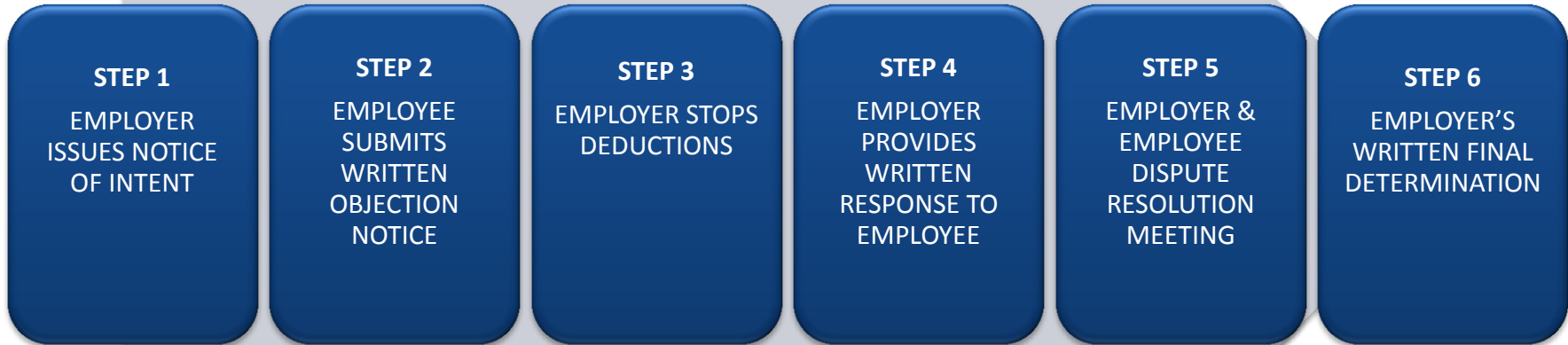
1. Where the entire overpayment is less than or equal to the net wages in the next wage payment, the entire amount of the overpayment may be recouped in the next wage payment; otherwise,
2. Deductions for overpayments are limited to 12.5 percent of the gross wages (provided the deduction does not reduce wages below the minimum wage rate).

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

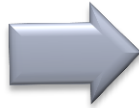
Overview



Dispute Procedure

STEP 1 – Employer’s NOTICE OF INTENT Informs the worker that an overpayment will be repaid through wage deductions.

- 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.



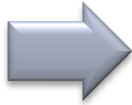
STEP 3 - DEDUCTIONS STOP
The employer **may not** make any deductions during the dispute process.

- 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 **ASAP or in the next paycheck**.

What deductions are not allowed?

Prohibited deductions

- Repayment of employer losses, including spoilage and product damage
- Fines or penalties incurred by the employer through the conduct of the employee
- Employee theft
- The cost of uniforms
- Tools, equipment and clothing *required* for work
- Broken tools or equipment
- Fines, tardiness, excessive leave, misconduct, quitting without notice
- Fees, interest or the employer's administrative costs



What about Housing and Utilities?

Deductions for housing are not allowed; however, you can take an allowance towards the minimum wage.

For workers who are not migrant or seasonal farm workers, you may consider a housing allowance (that includes utilities) towards meeting the minimum wage, as follows:

- \$18.95/week for single occupancy (private room in shared residence)
 - \$12.65/week for multiple occupancy (shared room/dorm arrangement)
- or
- \$5.00/day for an individual apartment
 - \$8.00/day for individual apartment with family

Note: Housing and utilities provided to *migrant and seasonal farm workers* must be free.



How about Cable Television or Premium Channels?

Deductions from an employees wages for Cable Television are not allowed.

The employee should open a cable account in his or her own name. If this is not possible, then the employer can open a cable account for the employer-provided housing, and seek payment of the bill by presenting the bill to the workers, highlighting the coverage period and the total. The employees may then pay the cable company directly.

The bill may not be deducted from the worker's checks, nor by separate transaction.



Can I Deduct for food?

No, Deductions for food are not allowed.

Meal Allowances

If an employer provides prepared meals to workers, (s)he may credit \$1.70 per meal toward the minimum wage if the employee earns more than \$254.00 in a two-week period.

- If the employee earns less, no meal allowance can be counted.
- The meal credit must be clearly listed on the wage statement and cannot be taken for meals not received.





Thank You!

The Division of Immigrant Policies & Affairs

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Email: dipa@labor.ny.gov

