

Chat Questions - Live Webinar Training - Wage Deductions - 11/05/2015

1. **Question:** Why do we here in NY have to pay unemployment insurance on our H2A workers? They are not eligible.

Answer: Under the NYS Unemployment Insurance law, an agricultural employer is: Liable (1) as of the first day of the calendar quarter in which they pay cash remuneration of \$20,000 or more to persons in agricultural labor; (2) as of the first day of the calendar year in which they employ 10 or more persons in agricultural labor on at least one day in each of 20 different weeks during that year or the preceding calendar year; or (3) as of the first day of the calendar quarter in which they pay any remuneration in this state to persons in agricultural labor if the employer is liable under Federal Unemployment Insurance Tax Act (FUTA), with respect to agricultural labor.

For more information, please see the Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax NYS-50, available online:

<https://www.tax.ny.gov/pdf/publications/withholding/nys50.pdf>

2. **Question:** How can we request a deduction consent form? Will there be a template created for deductions taken due to a payment error that covers the dispute procedure?

Answer: The Written Authorization for Wage Advances form is currently available here:

<http://www.labor.ny.gov/immigrants/wagedeductions.shtm>

The NYS DOL will also create an Overpayment Deduction Form to satisfy the requirements for the Notice of Intent that an employer must issue to an employee before making deductions to recover overpayments. This form will also be made available online upon its completion.

3. **Question:** How can I view this presentation again? Is this webinar recorded so that it can be viewed online at a later date? Will this slideshow be available in PDF?

Answer: Yes, both the recorded webinar and a Pdf version of the PPT will be available on the NYS DOL website: www.labor.ny.gov/wagedeductions

4. **Question:** Are 9-10 month apprentices considered seasonal workers?

Answer: The NYS DOL's definition of a *migrant seasonal employee* is an individual whose employment is not on an all-year basis and who is housed in a farm labor camp as defined in section 212-c(3) of the Labor Law.

For more information about apprentices and to register an apprenticeship program, please visit:

<http://www.labor.ny.gov/apprenticeship/general/sponsorregistration.shtm>

5. **Question:** Can an employer give a car loan to an employee and legally deduct payments as long as she has a written agreement? Also, how about a mortgage? The employee requested payroll deductions from his wages as payment and it's in the legal document.

Answer: Employers are not permitted to issue auto and mortgage loans directly to employees and make payroll deductions to repay those loans. Section 193 of the NYS Labor Law does allow employers to issue pre-authorized wage advances, **with no interest or fees**, to employees. It is the Department's recommendation that the amount of the advance must be *practical* so that it can be repaid within a temporary growing/employment season.

6. **Question:** What does a credit towards minimum wage mean? Could you please present an example of how you can take an allowance for housing towards minimum wage?

Answer: Allowances are limited amounts of money that an employer can charge to an employee and the allowance can be taken directly from the wages. In this way, they are similar to deductions but they differ in that these allowances count as wages, can be taken before taxes, and can be credited towards the minimum wage rate. Allowances for meals, lodging and utilities are described in the Minimum Wage Order for Farm Workers Part 190-3. For lodging and utilities, the allowances are:

- \$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

An employer can only take a meal allowance for migrant seasonal farm workers if they earn at least \$254.00 in a two-week period. The allowance amount can be no more than \$1.70 per meal and can only be credited for meals actually received by the employee. For more details, please see: <http://www.labor.ny.gov/formsdocs/wp/cr190.pdf>

For example, please see the sample wage statement below that shows how these allowances must appear on a wage statement given to the worker with each payment of wages.

Wage Statement (pay stub): Required Information under Section 195.3

1. Employer name, address, and phone number

2. Employee name

3. Dates covered by payment

	ABC Apple Orchard, Inc. 1 Main Street Anytown, NY 10000 Ph: 518-457-9000 Employee: John Doe	Pay Period: 4/10/16 - 4/16/16 Pay Date: 4/19/16 No: 0001							
4. Basis of payment (hourly, salary, etc.)	Rate: Hourly Piece Rate	Hours Regular	Units Produced	Allowance/Credit	Gross Current	Gross Year to Date	Deductions Current	Deductions Year to Date	Net Pay
5. Rates paid	\$1.00	20	200		200.00	\$200.00			
6. Hours worked	\$1.00/BU						FICA -33.36 Fed WT -44.80 NY WT -23.44	-100.08 -134.40 -40.32	
7. Allowances or Credits	Lodging & Utilities (B)			2.00/Day	-50.00	-336.00			
8. Gross wages	Meals (C)			1.20/Meal	-6.50	-51.00			
9. Any deductions from wages									
10. Net wages					315.50	1,893.00	-91.60	-274.80	\$223.90

This sample wage statement shows the basic requirements of 195.3 for an agricultural employee, paid by the hour and by piece rate, as well as covered by Part 190 Minimum Wage Order for Farm Workers. Please note that there may be additional requirements based upon the specific pay agreement and/or wage order coverage.

7. Question: If we have an outstanding loan (advance with interest) to an employee from three years ago, we still can't deduct even \$50 per week to repay the loan even with the employee's permission?

Answer: That is correct. Employers are prohibited from charging any interest or fees for wage advances. Any interest or fees that an employer has collected from the loan made to the employee must be repaid to the employee. Without a Pre-authorized, Written Agreement, such loan is impermissible and all deductions, including the \$50 per week, must cease immediately. An employer cannot create a Written Authorization for Wage Advances and apply it retroactively to a loan made in the past. Any remaining balance of the original loan amount can be pursued by the employer in civil or small claims court.

Example: The employer loaned \$5,000 with 6% interest to the employee and has been deducting \$50 per week from the employee's wages. The employee has already repaid \$4,000 through wage deductions, including \$320 in interest, and still owes \$1,000.

The employer must stop all deductions immediately and shall repay the \$320 in interest to the employee. The remaining \$1,000 can be pursued in civil or small claims court. The employer may be subject to a civil penalty for the violation of section 193 of the Labor Law.

8. Question: May we estimate hours worked weekly and adjust the following week's paycheck for correct hours?

Answer: No. Employers are required to maintain true and accurate records of all hours worked for all employees and pay them accordingly.

9. Question: For housing deductions, you mentioned apartments. What deduction can be taken for a furnished farm house with multiple rooms occupied by a family? What if more than one family member works for the farm in that case? Can more than one deduction be taken for that same house from each employee's pay?

Answer: For a furnished farm house with multiple rooms occupied by a family, a housing allowance of \$8.00 per calendar day (\$56.00 per week) can be applied to (deducted from) *only one* of the worker's wages.

10. Question: Did you say the dispute procedures need to be given in writing for wage advances? Can you include a template for this with the wage advance template available in December?

Answer: Yes. A description of the dispute procedure is included in the template for Written Authorizations for Wage Advances that will be available online by December 1, 2015.?

11. Question: Are any deductions allowed for H2A workers? Specifically for taxes?

Answer: For information regarding taxes and H-2A workers, please visit:
<https://www.irs.gov/Individuals/International-Taxpayers/Foreign-Agricultural-Workers>

12. Question: For clarification, for cable/phone/internet bills in the employer's name the expectation is the employee will be given a copy of the bill and then the employee mails a money order to the company to pay for the bill?

Answer: Yes, that is correct.

13. Question: In the event that an employee, who makes more than minimum wage, leaves without providing proper notice of his or her resignation, is it permissible for the employer to drop the employees rate of pay to minimum wage in the final check?

Answer: No. That would be considered wage theft. An employee's wages are confirmed in writing in the written notice and work agreement that must be provided to him or her upon hire. Failure of an employer to pay the employee the agreed rate of pay after they have been earned violates Article 6 of the Labor Law, which relates to payment of wages and protects the rights of a worker to receive the wages earned. It also assures payment of wages in full on regular pay days. Please note that New York State is an "employment-at-will," state. If there is no contract to restrict firing (like a collective bargaining agreement) an employer has the right to discharge an employee at any time for any reason. This also protects the employee's right to resign. An employer may fire an employee for "no reason." An employer may also fire an employee for a reason that might seem arbitrary and unfair. The employee is equally free to quit at any time without needing to explain or defend that decision.

There are a few exceptions to "employment-at-will." The most significant of these are laws, enforced by the New York State Division of Human Rights, which prohibit discrimination based on:

- Race
- Creed
- Age
- Disability
- Gender
- Sexual orientation
- Marital status

For more information about how the New York State Division of Human Rights proceeds against unlawful forms of discrimination, go to [their website](#).

Other exceptions to the doctrine of "employment-at-will" exist under § 201-d and § 215 of the New York State Labor Law:

Section 201-d prohibits an employer from firing an employee for:

- political or recreational activities outside of work
- legal use of consumable products outside of work

Section 215 states that no employer shall penalize any employee for making a complaint to the employer, to the Commissioner of Labor, or to the Commissioner's representative, about any provision of the Labor Law (Violation of § 215 can bring a civil fine and separate civil action by the employee.)

14. Question: An employer deducts money from employee wages for uniforms and lunches. Is there any legal way for the employer to get reimbursed from employees for these expenses?

Answer: No. The cost of uniforms, including costs for laundering uniforms, cannot be deducted from an employee's wages. The NYS Department of Labor recommends that any such deductions that have been made by an employer be repaid to the employees. For meals provided to employees in the future however, an employer may take a meal allowance as described in Question #6.

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