Wage Deductions to Recover Overpayments Made Due to Clerical Error Policy – New York

In accordance with New York Labor Law Section 193, 1(c) ("Section 193") and New York State Department of Labor Regulations, Subpart 195-5.1 (the “Regulations”), New York University (the “University”) may recover overpayments of wages made to an employee through wage deductions, where such overpayment is due to a mathematical or other clerical error.

Prior to recovering any such overpayment, the University will provide the employee with notice of its intent to commence deductions to recover such overpayment (the “Notice”). Pursuant to the Regulations, the University may only recover by wage deduction overpayments that were made in the eight (8) weeks prior to the issuance of such Notice, and can make deductions to recover such overpayments for up to six (6) years from the date of overpayment.

The Notice to the employee will contain the following information:

- The amount overpaid in total and per pay period;
- The total amount to be deducted;
- The date each deduction shall occur, followed by the amount of each deduction;
- A statement that the employee may contest the overpayment, the date by which the employee may contest the overpayment; and
- The procedure by which the employee may contest the overpayment and/or terms of recovery, or provide a reference to where such procedure can be located.

As per the Regulations, where the entire amount of the overpayment is less than or equal to the net wages earned (after other permissible deductions) in the next wage payment, the University may recover the entire amount of such overpayment in that next wage payment. In this circumstance, the University shall provide the Notice to the employee at least three (3) days prior to the deduction, i.e., at least three days prior to the payday in which the deduction shall commence (“Three-Days’ Notice”).

As per the Regulations, where the entire amount of the overpayment is more than the net wages earned (after other permissible deductions) in the next wage payment, the University may recover up to 12.5% of the gross wages earned in each subsequent wage payment. In addition, such deduction will be made only once per wage payment and cannot reduce the effective hourly wage below the New York State Minimum Wage. In this circumstance, the University shall provide the Notice to the employee at least three (3) weeks prior to the first deduction, i.e., at least three weeks prior to the payday in which the deductions will commence (“Three-Weeks’ Notice”).
If the employee avails him/herself of the procedure to contest the overpayment or deduction (see below under “Procedure to Contest Overpayment or Deductions”), the University will not commence the taking of any deduction to recover an overpayment until at least three (3) weeks after issuing the final determination.

Procedure to Contest Overpayment or Deductions

The University has established the following procedure for employees to dispute or contest the overpayment and/or terms of recovery:

1. The employee will be given an opportunity to respond to the Notice. The employee must respond to the Notice, in writing, within the specified time frame below:
   • Where the employee has received Three-Days’ Notice, the employee must provide his/her response to the University within three (3) days of receipt of the Notice.
   • Where the employee has received the Three-Weeks’ Notice, the employee must respond within one (1) week of receipt of the Notice.
   • Employees should submit their response to NYU PeopleLink, 105 East 17th Street, 1st Floor, New York, NY 10003, or to askpeoplelink@nyu.edu.
   • If the employee does not respond within the applicable timeframe, the University may proceed with the deduction.

2. If the employee submits a response within the applicable timeframe, the University will postpone the scheduled deduction(s) to recover an overpayment and reply within one week of receipt of the employee’s response (“University’s Reply”).
   • The University’s Reply will state whether the University agrees or disagrees with the employee’s position regarding the overpayment and/or terms of recovery, and its reasoning.
   • The University’s Reply will notify the employee that he/she can meet with a representative of the University within one (1) week of receiving the University’s Reply to discuss any disagreements remaining about the deductions.

3. If the employee wishes to take the opportunity and meet with a representative of the University to discuss his/her remaining disagreements about the deduction(s), he/she must schedule the meeting with the University and such meeting must take place within the applicable timeframe.

4. Within one (1) week of the meeting with the employee, the University will issue its final determination regarding the deductions.