

March 31, 2025

VIA EMAIL

COMMISSIONER ROBERT ASARO-ANGELO
NEW JERSEY DEPARTMENT OF LABOR
1 JOHN FITCH PLZ
TRENTON, NJ 08611

Re: Withholding Fines Pursuant to the Wage Payment Law

Dear Commissioner Asaro-Angelo:

This office represents the interests of the New York Jets. We write concerning the New Jersey Wage Payment Law and withholdings from employee wages. Specifically, we respectfully request you promulgate, pursuant to N.J.S.A. 34:11-4.4(b)(11), the following regulation: “An employer may, consistent with a provision in a collective bargaining agreement, withhold from an employee’s wages any fines for that employees’ misconduct, provided the collective bargaining agreement provides the employee with a means of appealing that fine” (the “proposed regulation”).

I. The New Jersey Wage Payment Law

Originally enacted in 1965, the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 through -4.15 (“WPL”), governs payments due to employees. The WPL does not include a legislative statement of intent; thus, courts have looked to the context and language of the statute to discern its purpose. See *Musker v. Suuchi, Inc.*, 479 N.J. Super. 38, 42 (App. Div. 2024); *Rosen v. Smith Barney, Inc.*, 393 N.J. Super. 578, 585 (App. Div. 2007), *aff’d* 195 N.J. 423 (2008). The WPL was enacted to “protect an employee’s wages and to assure timely and predictable payment,” *Hargrove v. Sleepy’s, LLC*, 220 N.J. 289, 302 (2015), and to “guarantee receipt of the fruits of [an employee’s] labor,” *Rosen*, 393 N.J. Super. at 585. The statute is remedial in nature and should be liberally construed to effectuate its purpose. *Hargrove*, 220 N.J. at 303.

To that end, the statute provides: “No employer may withhold or divert any portion of an employee’s wages” unless the amounts withheld or diverted are for one of the eleven reasons codified at N.J.S.A. 34:11-4.4(b)(1)–(11). Germane to this request is subsection (b)(11), which provides wages may be withheld for “[s]uch other contributions, deductions and payments as the Commissioner of Labor and Workforce Development may authorize by regulation as proper and in conformity

with the intent and purpose of this act, if such deductions are approved by the employer.”

Thus, the Commissioner may adopt the proposed regulation so long as it is consistent with the purpose and intent of the WPL.

II. Authorized Wage Deductions Under the WPL

The types of deductions codified at N.J.S.A. 34:11-4.4(b) are illustrative of the purpose and intent of that section of the WPL. An employer is authorized to withhold wages from employees for the following:

(1) Contributions authorized either in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement, and profit-sharing plans, and to plans establishing individual retirement annuities on a group or individual basis, as defined by section 408(b) of the federal Internal Revenue Code of 1986 (26 U.S.C. § 408(b)), or individual retirement accounts at any State or federally chartered bank, savings bank, or savings and loan association, as defined by section 408(a) of the federal Internal Revenue Code of 1986 (26 U.S.C. § 408(a)), for the employee, his spouse or both.

(2) Contributions authorized either in writing by employees, or under a collective bargaining agreement, for payment into company-operated thrift plans; or security option or security purchase plans to buy securities of the employing corporation, an affiliated corporation, or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter.

(3) Payments authorized by employees for payment into employee personal savings accounts, such as payments to a credit union, savings fund society, savings and loan or building and loan association; and payments to banks for Christmas, vacation, or other savings funds; provided all such deductions are approved by the employer.

(4) Payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United States Government bonds; payments to correct payroll errors; and payments of costs and related fees for the replacement of employee identification, which is used to allow

employees access to sterile or secured areas of airports, in accordance with a fee schedule described in any airline media plan approved by the federal Transportation Security Administration; provided all such deductions are approved by the employer.

(5) Contributions authorized by employees for organized and generally recognized charities; provided the deductions for such contributions are approved by the employer.

(6) Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided the deductions for such payments are approved by the employer.

(7) Labor organization dues and initiation fees, and such other labor organization charges permitted by law.

(8) Contributions authorized in writing by employees, pursuant to a collective bargaining agreement, to a political committee, continuing political committee, or both, as defined in section 3 of P.L.1973, c.83 (C.19:44A-3), established by the employees' labor union for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office of the State or of a county, municipality or school district or the passage or defeat of any public question, subject to the conditions specified in section 2 of P.L.1991, c.190 (C.34:11-4.4a).

(9) Contributions authorized in writing by employees to any political committee or continuing political committee, other than a committee provided for in paragraph (8) of this subsection, for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office of the State or of a county, municipality or school district or the passage or defeat of any public question, subject to the conditions specified in section 2 of P.L.1991, c.190 (C.34:11-4.4a); in making a payroll deduction pursuant to this paragraph the administrative expenses incurred by the employer shall be borne by such committee, at the option of the employer.

(10) Payments authorized by employees for employer-sponsored programs for the purchase of insurance or annuities on a group or individual basis, if otherwise permitted by law.

[N.J.S.A. 34:11-4.4(b)(1)–(10).]

These provisions, coupled with the statute's context and purpose, define the acceptable scope of an employer's ability to withhold wages from an employee. The authorized withholding must be consistent the WPL's overall purpose of protecting employees and assuring timely and predictable payments. *Hargrove*, 220 N.J. at 302. Moreover, the consent of an employee is paramount, either through an individual or a collective bargaining agreement. See N.J.S.A. 34:11-4.4(b)(1), (2), (6), and (8). Lastly, the withholdings are either for the benefit of the employee or reasonably related to that employee's work. N.J.S.A. 34:11-4.4(b)(4), (6), and (7).

The proposed regulation is consistent with each of the principles.

III. The Proposed Regulation

Pursuant to N.J.S.A. 34:11-4.4(b)(11), the Commissioner may authorize "[s]uch other contributions, deductions and payments as the Commissioner of Labor and Workforce Development may authorize by regulation as proper and in conformity with the intent and purpose of this act, if such deductions are approved by the employer."

We ask that you promulgate the following regulation: "An employer may, consistent with a provision in a collective bargaining agreement, withhold from an employee's wages any fines for that employees' misconduct, provided the collective bargaining agreement provides the employee with a means of appealing that fine."¹ The proposed regulation is consistent with the purpose and intent of the WPL.

First, the regulation is consistent with the Legislature's goal of protecting employees and promoting timely and predictable payments. The proposed regulation ensures that employees are guaranteed a right to appeal any fine assessed against them. It further provides employers with a consistent and convenient method of assessing fines against employees while ensuring those employees are capable of challenging those assessments.

Second, the proposed regulation ensures the employee consents to the withholdings through a collective bargaining agreement. Indeed, several categories of withholdings are contingent upon employee consent, either through an individual or a collective bargaining agreement. N.J.S.A. 34:11-4.4(b)(1), (2), (6), and (8). The proposed regulation would only allow an employer to withhold fines for misconduct pursuant to a provision in a collective bargaining agreement. The proposed

¹ The District of New Jersey has held that N.J.S.A. 34:11-4.4 is not preempted by the federal Labor Management Relations Act. See *Snyder v. Dietz & Watson, Inc.*, 837 F. Supp. 2d 428, 439 (D.N.J. 2011). Conversely, the Eastern District of New York has held the opposite. See *Levy v. Verizon Info. Servs., Inc.*, 498 F. Supp. 2d 586, 598 (E.D.N.Y. 2016). The Third Circuit has not yet addressed the holding of *Snyder* in regard to its preemption decision.

regulation makes no exception for an individual employee agreeing to have fines withheld; the provision must be negotiated for in a collective bargaining agreement. That requirement is consistent with and further promotes the intent and purpose of the WPL.

Third, the proposed regulation would allow for withholdings directly related to the employees' duties. The withholdings identified in the proposed regulation are strictly for employee misconduct, specifically limited in scope to fines directly related to the employment. The proposed regulation is therefore consistent with the other authorized withholdings in N.J.S.A. 34:11-4.4(b) and conforms to the purpose and intent of the WPL.

IV. Conclusion

In sum, the proposed regulation adequately safeguards the rights of employees through an appeal process, would only apply where the employees—through a collective bargaining agreement—agree to have fines withheld from wages, and only in instances of employee misconduct. The proposed regulation is narrowly defined and consistent with the intent and purpose of the WPL.

We thank you for your consideration and remain available to answer any questions you may have.

Best regards,

Guillermo C. Artiles