LABOR AND EMPLOYMENT LAW
INFORMATION MEMO
MAY 9, 2025

Finally, New York Provides Relief for Employers Unaware of Weekly Pay Provision in the New York Labor Law

It is common practice across the country for employees to be paid every other week or twice per month, because that imposes much less time and manpower on an employer than running payroll weekly. But such a practice can subject certain employers in New York to liability. Section 191 of the New York Labor Law (NYLL) requires employers to pay employees who fall under the broad definition of "manual worker" to pay such employees weekly. For a long time, there was little to no private litigation against an employer who paid such workers biweekly or semimonthly; such employers would simply pay a penalty if cited by the NY Department of Labor.

That changed in 2019 when New York's Appellate Division, First Department held that a manual worker could bring a suit in court seeking damages for not being paid on a weekly basis. This resulted in a wave of "frequency of pay" litigation claims. The reason is that Section 198 of the New York Labor Law allows individuals to recover liquidated damages up to 100% of the total amount of any unpaid wages. So, for example, a manual worker paid $2,000 biweekly, instead of $1,000 weekly, would seek liquidated damages in the amount of $1,000 for each week not paid weekly—even though the employee received their full pay every other week. Because of New York's long, six-year statute of limitations for such claims, this created a large amount of liability for any employer that did not pay manual workers weekly. An employer with a 200 employee workforce could find themselves subject to a $30 million, bankrupt-the-company lawsuit.

Employers were initially hopeful early last year when the Appellate Division, Second Department came to the exact opposite decision of the First Department, finding that a manual worker could not bring a suit in court for a frequency of pay violation. However, this only created a split among the courts that has not been resolved, and the issue has not yet reached the Court of Appeals. Likewise, talks of a legislative fix last year ultimately fizzled out.

However, both the Governor's office and Legislature took up the issue this year. As we previously reported here, Governor Hochul included legislation amending the damages available under Section 198 of NYLL for frequency of pay violations in her proposed budget for the 2026 fiscal year. On May 7, the Education, Labor and Family Assistance (ELFA) budget bill was published, and while it revised some provisions from the Governor's initial proposal, it still limits the damages of frequency of pay actions.

The bill amends Section 198 of NYLL to clarify that liquidated damages shall not be applicable to violations of the weekly payment requirement for manual workers set forth in Section 191 of NYLL where the employer paid the employee wages on a regular payday, no less frequently than semimonthly. Instead, the bill sets forth that such violations are limited to "lost interest found to be due for the delayed payments of wages calculated at the daily interest rate for each day payment is late based on the annual rate of interest then in effect." The interest rate is set by the Department Financial Services under Section 14-a of the Bank Law and is currently sixteen percent per annum.

Further, for conduct occurring after the effective date of the amendment, liquidated damages may be sought in an amount equal to one hundred percent of the "total amount of wages found to be due" in a Section 191 frequency of pay violation for employers who had been the subject of one or more findings and orders of a frequency of pay violation.

Finally, the bill states that it "shall take effect immediately and shall apply to causes of action pending or commenced on or after such date"—and it was just signed into law on May 9, and is therefore already in effect.

What does this mean? Immediately, for any pending cases, so long as employees were paid their full pay biweekly or semimonthly, the potential liability will drop drastically. For the hypothetical 200 employee employer described above, the potential liability would drop from about $30 million in liquidated damages to less than $100,000 in interest. Of course, were an employer to be found liable for a frequency of pay violation in the future and not fix their weekly pay issue, the next time an employer would face on hundred percent liquidated damages of "the total amount of wages found to be due."

Given the immediate impact this will have on pending cases, it is possible that the law's provision that it will apply to pending causes of action may be challenged.

Bond continues to follow these developments closely and will continue to provide updates as they occur. Please contact a Bond attorney in the labor and employment practice or the Bond attorney with whom you normally work, for questions, concerns and tailored consultation.

BOND SCHOENECK & KING ATTORNEYS