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Proposed Amendment to New York Labor Law Would Resolve Disagreement Between First and Second Departments

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Consider the following. Irma works as a manual laborer, as that term is defined by the New York Labor Law (NYLL) and her employer regularly pays Irma her wages every two weeks. But Section 191 of the NYLL requires weekly payment of wages to manual workers.

Have Irma's rights under the NYLL been violated? If so, what damages are available to her? Some readers of this space will recognize these (alleged) facts and legal issues from *Vega v. CM & Assocs. Constr. Mgmt., LLC*, 175 A.D.3d 1144, 1145, 107 N.Y.S.3d 286, 288 (1st Dep't. 2019) and New York state and federal cases that followed it. The legislature has now stepped in with an amendment to the statute, which the governor has now signed.

Background and Legal Analysis

First things first: what happened in *Vega*. In short, the First Department held that: Ms. Vega had a private right of action under NYLL §198 for alleged violations of §191; that a cause of action existed not only for non-payment of wages, but for late payment of wages as well; and that liquidated damages were available, even where the employer regularly paid her wages.

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At least until Jan. 17, 2024, federal court decisions routinely followed *Vega's* interpretation of the NYLL. See, e.g., *Ramirez v. Tifaret Disc., Inc.*, No. 22-CV-10489 (KMK), 2023 WL 6318616, at *8 (S.D.N.Y. Sept. 28, 2023) (collecting cases); *Davis v. Banana Republic LLC*, No. 21-CV-6160(KAM)(VMS), 2023 WL 5969597, at *6 (E.D.N.Y. Sept. 14, 2023) (collecting cases).

On Jan. 17, 2024, the Second Department staked out a different position in *Grant v. Glob. Aircraft Dispatch, Inc.*, 223 A.D.3d 712, 204 N.Y.S.3d 117 (2nd Dep't. 2024).

In contrast to *Vega*, the Second Department held that the employee did not have a private right of action under NYLL §198 for alleged violations of §191, and that a late payment claim where a manual laborer is paid every other week is not equivalent to a nonpayment of wages situation so liquidated damages are not available.

The New York Court of Appeals has not resolved the issue. Following *Grant*, most, but not all federal courts continued to follow *Vega*. See, e.g., *Schiller-Egles v. PromptCare Companies*, *Inc.*, No. 23-CV-6790 (KMK), 2025 WL 904331, at *9 (S.D.N.Y. Mar. 25, 2025) (discussing the issue and collecting cases). But see, e.g., *Galante v. Watermark Servs. IV, LLC*, 722 F. Supp. 3d 170, 183 (W.D.N.Y. 2024).

As part of the 2026 budget, NY State Assembly Bill 2025-A3006C (see Part U) proposed resolving the issue by amending NYLL §198(1-a). Governor Hochul signed the amendment into law on May 9, 2025. The amendment distinguishes first time violators of NYLL §191 from repeat violators.

First time violators "where the employer paid the employee wages on a regular payday, no less frequently than semi-monthly" are shielded from liquidated damages, and are subject to damages of "no more than one hundred percent of the lost interest found to be due for the delayed payment of wages calculated using a daily interest rate for each day payment is late based on the annual rate of interest then in effect, as prescribed by the superintendent of financial services pursuant to section 14-a of the banking law for the employer's first violation."

While the amendment does not state this expressly, in the absence of liquidated damages the employee's available damages would appear to be limited to the time-value of the wages that were not paid within the time required by NYLL §191. Nothing in the amendment on its face appears to impact a prevailing employee's (or former employee's) right under NYLL §198 to reasonable attorneys' fees.

However, liquidated damages are available for violations of NYLL §191 by repeat violators.

The amendment provides: "for conduct occurring after the effective date of this paragraph, liquidated damages equal to one hundred percent of the total amount of wages found to be due in violation of paragraph a of subdivision one of section one hundred ninety-one of this article for any employer who, after the effective date of this paragraph, has been subject to one or more previous findings and orders for violations of paragraph a of subdivision one of section one hundred ninety-one of this article for which no proceeding for administrative or judicial review as provided in this chapter is pending and the time for initiation of such proceeding shall have expired and relating to employees performing the same work."

Thus, a "repeat offender" does not appear to include employers subject to findings and orders of the statute prior to its effective date.

However, repeat offenders after the effective date are subject to liquidated damages in addition to the time-value of the wages that were not paid within the time required by NYLL §198, plus reasonable attorneys' fees.

Conclusion

The revisions to §198 create a compromise position between *Vega* and *Grant*. Following *Vega*, the amendment allows employees to pursue claims alleging that they are manual laborers who have not been paid on a weekly basis, as required by NYLL §191.

Successful employees are entitled to recover the lost interest they suffered from the late payment of the wages, plus reasonable attorneys' fees. Repeat offenders are also subject to liquidated damages.

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