

Amendments to New York's Pay Frequency Mandates for "Manual Workers"

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One of the most frequently used tools by plaintiffs' employment attorneys in New York is a claim for unpaid wages under Article Six of the Labor Law. By alleging a violation of Article Six, a plaintiff can pursue not only the recovery of any unpaid wages but also liquidated damages for one hundred percent of the unpaid wages, along with interest and attorney's fees. But what happens when wages are not "unpaid" at all—just paid late, in violation of the frequency of pay requirements set out in Labor Law § 191? In recent years, Plaintiffs' attorneys increasingly have argued that an employer's failure to pay "manual workers" on a weekly basis as required by § 191, in and of itself, triggers liability for both interest and liquidated damages equal to the amount of the delayed wages.

On May 9, 2025, New York Governor Kathy Hochul signed an amendment to Labor Law § 198(1-a) that clarified this issue by changing the scope of damages available for an employer's failure to pay wages to covered employees on a weekly basis in violation of Labor Law § 191. As one assemblywoman stated in support of the amendment, the amended law sought to end "the liquidated damage loopholes that have allowed for frequency-of-pay lawsuits to devastate small employers." Gov. Hochul Signs FY 2026 Budget with Legislation for Education, Small Business, and Mental Health, WKTV (July 1, 2025), https://www.wktv.com/news/education/gov-hochul-signs-fy-2026-budget-with-legislation-for-education-small-business-and-mental-health/article_c9c686a5-52e7-4545-9447-c3465f395489.html (last visited July 29, 2025).

In this article, we will analyze the split in authority that had arisen regarding whether delayed payment of wages allowed plaintiffs to recover liquidated damages under the Labor Law, and analyze how the recent amendment will now govern frequency of pay claims.

Background

Article Six of the Labor Law establishes a comprehensive framework to protect employees' rights to timely and full payment of their wages. Its various provisions govern

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essential aspects of wage payment, including record-keeping, sick leave, permissible payroll deductions, and the frequency with which wages must be paid. Noncompliance can expose employers to significant civil—and in some cases, criminal—liability. For example, Labor Law § 193(1) prohibits employers from making unauthorized deductions from an employee's wages, while § 191(3) requires that terminated employees be paid no later than the regular payday for the final pay period worked. The statute defines “wages” broadly under § 190(1) to include all earnings for labor or services rendered, whether calculated by time, piece, commission, or another method. Within this statutory scheme, recent amendments to Labor Law § 198 have significantly changed the remedies available for violations of the statute's § 191 frequency of pay requirements.

Prior to the recent amendment to § 198(1-a), courts in the First and Second Departments reached divergent conclusions regarding whether violations of the frequency of payment requirements of Article Six could form the predicate for a private right of action under § 198

In *Vega v. CM and Assoc. Constr. Mgt., LLC*, 175 A.D.3d 1144 (1st Dept. 2019) plaintiff alleged that she was a “manual worker” who her employer paid on a biweekly basis in violation of § 191, which required weekly payment of wages. The First Department affirmed the trial court's denial of the employer's motion to dismiss finding that plaintiff had stated a claim for liquidated damages under § 198. The court rejected the employer's argument that § 198 “provides remedies only in the event of nonpayment or partial payment of wages (but not in the event of late payment of wages).” The court held that “the plain language of the statute indicates that individuals may bring suit for any ‘wage claim’ against an employer” reasoning that “[t]he remedies provided by section 198 (1-a) apply to ‘violations of article 6’ . . . and section 191(1) (a) is a part of article 6.” The court further rejected the employer's argument that the claim under § 198 was extinguished by the employer's late payment of the wages due, reasoning that “payment does not eviscerate the employee's statutory remedies.”

In contrast to the holding in *Vega*, the Second Department in *Grant v. Global Aircraft Dispatch Inc.*, 223 A.D.3d 712 (2d Dept. 2024) found that employees suing employers that paid wages at least twice a month *solely* for failing to pay every week, did not have a private right of action in § 198. The *Grant* court disagreed with the reasoning in *Vega*, writing, “[t]he plain language of Labor Law § 198 (1-a) supports the conclusion that this statute is addressed to nonpayment and underpayment of wages, as distinct from the frequency of payment” and the court did “not agree that payment of full wages on the regular biweekly payday constitutes nonpayment or underpayment.”

Against the backdrop of this split in authority, the Legislature amended § 198 to clarify the availability and scope of any remedies for violation of the frequency of payment requirements of Article Six.

Analysis

As amended, § 198 now states that employers who pay employees “on a regular payday,

no less frequently than semi-monthly” will be subject to a claim for damages for their first violation of § 191(a) limited to “no more than 100% of the lost interest found to be due for the delayed payment of wages calculated using a daily interest rate” (§ 198(1-a)(i)). The amendment effectively modified the outcomes of both *Vega* and *Grant*. The amendment modified *Vega* inasmuch as a first-time violator of § 191 would no longer be liable for liquidated damages equal to the amount of the wages that were paid late, but that employer could still be liable for interest and attorney’s fees. The amendment modified *Grant* in the sense that some liquidated damages could be sought by plaintiffs claiming that wages were not paid in conformity with § 191. Furthermore, under the amendment where an employer “has been subject to one or more previous findings and orders for violations of [§ 191(a)]” the law now provides that a plaintiff may claim liquidated damages of “one hundred percent of the total amount of wages found to be due in violation of [§ 191(a)].”

A recent decision by the U.S. District Court for the Southern District of New York illustrates how courts will now apply § 198 as amended. In *Garzon v. Bldg. Servs. Inc.*, 2025 U.S. Dist. LEXIS 126441 (S.D.N.Y. July 2nd, 2025), a plaintiff who worked as a cleaner brought suit against her employer for a variety of Labor Law violations, including failing to pay her wages every week, as was her right as a manual worker, ultimately filing for and receiving a default judgement against the defendant employer after it failed to respond. Nonetheless, the court found that the employer was a first-time violator under the latest iteration of § 198, with no prior findings or suits against them for frequency of pay violations. As such, as damages for its frequency of pay violations the employer was required to pay only interest on payments that it had delayed paying the plaintiff, as well as any missing wages. The court did not provide plaintiff liquidated damages totaling the delayed wages because the court found that the employer was not a repeat offender who was subject to paying those heightened damages. *Garzon* thus confirmed that damages for first time violators were limited to the interest on an employee’s delayed wages and further confirmed that liquidated damages of one hundred percent of delayed wages would be available only in claims against repeat offenders.

Practice Points

Employers may find the requirement of Article Six to pay manual workers on a weekly basis to be administratively burdensome and different from the frequency of payment requirements in place for non-manual workers. For such employers, § 191(a)(ii) does provide a mechanism for employers to legally pay manual laborers biweekly wages by obtaining approval from the Commissioner of Labor. As specified in the statute, such approval may be sought by employers that (1) either employ on average 1000+ individuals in New York or (2) for 1 year employed on average 1000+ individuals in New York and for the past three years employed 3000+ workers out of New York. In order to obtain such approval, employers must submit a written application on a form available on the New York Department of Labor’s website.

In addition to considering employee size requirements, the Commissioner also will

consider the following five factors in granting employers this permission:

- The employer's history meeting its payroll responsibilities in New York state, or if no such history in New York state is available, other financial information;
- Proof of the employer's coverage for workers' compensation and disability;
- Proof that there are no outstanding warrants of the department of taxation and finance or the department of labor against the employer for failure to remit state personal income tax withholdings or unemployment insurance contributions;
- Proof that the employer has a computerized record keeping system for payroll which, at a minimum, specifies (i) hours worked, (ii) rate of pay, (iii) gross wages, (iv) deductions and (v) date of pay for each employee; and
- Consent of any labor organization that represent the employer's manual workers.

Accordingly, employers seeking permission to pay manual workers on a bi-weekly basis should ensure they can show that they satisfy these requirements. They must also carefully maintain compliance as permission can be rescinded if employers are found to no longer meet these responsibilities.

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