

The Second Department Departs from the First Department on the Issue of Weekly Pay for Manual Workers

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Under the New York State Labor Law (the “Labor Law”), manual workers are required to be paid on a weekly basis. The antiquated statute defines a “manual worker” as a “mechanic, workingman or laborer.” The New York Department of Labor has said in guidance that an employee who devotes more than 25% of his or her day to “physical tasks” is a manual worker, and the Department of Labor has issued various opinion letters stating that such individuals as cooks, nail salon employees, wait staff, and retail clerks may be “manual workers.” Determining who is a manual worker is a point of serious contention between litigants. The assumption behind the weekly pay requirement is that “manual workers” (which, when the law was first enacted over one hundred years ago, was a surrogate for low-paid workers) cannot budget sufficiently to be able to be paid bi-weekly without hardship.

In the 2019 case of *Vega v. CM & Assocs. Constr. Mgmt.*, the Appellate Division, First Department (which covers Manhattan and the Bronx), held that an employer’s paying manual workers less frequently than weekly constituted a **failure** to pay wages within the meaning of the Labor Law, and, significantly, that manual workers had a private right of action under the statute. Damages for failure to pay wages include the unpaid wage and 100% of the unpaid wage as liquidated damages. Since *Vega*, there has been a proliferation of lawsuits by supposed manual workers claiming a violation of the Labor Law’s frequency of wage payment requirements against employers who unwittingly (or wittingly) failed to pay them on a weekly basis.

In effect, an employer who paid manual workers, e.g., bi-weekly, failed to pay their wages weekly 26 times during a 12-month period. As an example, in view of the six-year statute of limitations for wage claims under the Labor Law, a manual worker earning \$40,000 per year who has been employed by the same employer for six years and was paid bi-weekly instead of weekly can recover \$240,000 (\$20,000 per year in “unpaid wages” and 100% of that amount as liquidated damages for six years), plus attorneys’ fees and interest. If there are 10 similarly situated manual workers at a company, that’s \$2,400,000+; 100 such employees, \$24,000,000+; etc.

However, in a decision of January 17, 2024, the Appellate Division, Second Department (which covers Dutchess, Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Putnam and Orange counties) refused to second the First Department’s decision in *Vega*, and disagreed with it wholeheartedly. In *Grant v. Global Aircraft Dispatch, Inc.*, the Second Department said: “we do not agree that the payment of full wages on the regular biweekly payday constitutes non-payment or underpayment” and held that Labor Law § 198 creates a private right of action only for non-payment or underpayment of wages, not for late payment where wages are paid in full on the employer’s regular payday.

In addition to the issuance of the decision in *Grant*, under Governor Hochul’s recently issued 2025 budget proposal, Section 198 of the Labor Law would be amended to provide that “. . . liquidated damages shall not be applicable to violations of . . . section 191 of this article where the employee was paid in accordance with the agreed terms of employment, but not less frequently than semi-monthly.”

Accordingly, there appears to be some judicial and possibly legislative relief for employers who are facing potentially significant liability under the manual-worker weekly payment requirement, which has resulted in windfalls for employees

and their lawyers, and at a cost that is grossly disproportionate to the “harm” resulting from being paid less frequently than weekly.

Given the split between the First and Second Departments, the New York Court of Appeals will likely end up addressing this issue.

If you have any questions on the topics in this article, please contact Jonathan A. Wexler at jwexler@vedderprice.com or any other Vedder Price attorney with whom you have worked.

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