



# **Favorable Court Rulings Mean NY Workers Cannot Bring Wage Notice Claims in Federal Court**

Insights

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A federal judge in New York recently held that workers cannot assert claims for violations of New York's Wage Theft Prevention Act (WTPA) in federal court – a ruling that further helps employers defend against these challenging and costly actions. State law requires New York employers to provide their employees with a “wage notice” at the time of hiring, and also to provide their employees with wage statements each payday. Failure to comply can lead to hefty civil claims and fines that can add up quickly, particularly when WTPA violations are raised in a class action lawsuit – a common tactic with plaintiffs’ attorneys. But a series of recent decisions out of the Eastern District of New York will make it more challenging for employees to successfully pursue remedies for violations of the WTPA, particularly on a class-wide basis. Here’s what employers need to know about these favorable court decisions.

## **Wage Theft Prevention Act Summary**

The WTPA, which took effect in 2011, was enacted to protect employees from wage theft. In part, the law requires employers to give each employee a written notice at their time of hire containing information such as the employee’s rate of pay (including overtime rate of pay if applicable), how the employee is paid (for example, hourly, by shift, day, week, commission, etc.) and regular payday. Additionally, the WTPA mandates that employers give employees a wage statement or paystub each payday that contains, among other things, the dates covered by that pay period, the hours the employee worked, rates of pay, the employee’s gross and net wages, and deductions.

Failure to provide an employee with either their wage notice at time of hire or their wage statement can have serious consequences for employers. Specifically, employers that do not provide their employees with a wage notice upon hire face damages of up to \$50 per day per employee, for each workday that the violation occurred, up to a maximum of \$5,000. Likewise, an employee who does not receive compliant wage statements with each payment of wages may recover up to \$250 for each day that the violation occurred or continued to occur, also up to a maximum of \$5,000. Thus, mere technical violations of the WTPA could lead to damages of up to \$10,000 per employee — and that is not including costs and reasonable attorneys’ fees that could potentially be recovered as well.

## **Judge Chen’s Decisions Bode Well for Employers**

Judge Pamela Chen of the United States District Court of the Eastern District of New York recently issued three decisions on consecutive days that will make it more challenging for plaintiffs to recover damages for technical violations of the law:

- *Francisco v. NY Tex Care, Inc.*, 19-CV-1649 (PKC) (ST) (E.D.N.Y. Mar. 28, 2022);
- *Wang v. XBB, Inc.*, No. 18-CV-7341 (PKC) (ST) (E.D.N.Y. Mar. 29, 2022); and
- *Sevilla v. House of Salads One LLC*, No. 20-cv-6072 (E.D.N.Y. Mar. 30, 2022).

In *Sevilla* — Judge Chen’s most recent of the three decisions — a group of employees brought claims on behalf of a putative class alleging that their employer failed to provide the required wage notice and wage statements, and sought the maximum damages allowable by law. Though Judge Chen noted that the employer “did not provide proper wage notice and statements to Plaintiffs,” she nonetheless held that the workers could not maintain these claims.

In dismissing these claims, Judge Chen noted that the workers could not sustain what’s known as “Article III standing” in federal court because they were technical violations that did not lead to a “tangible injury” or “something akin to a traditional cause of action.” Accordingly, Judge Chen ruled that the court lacked subject matter over the claims. Her decisions in the *Francisco* and *Wang* cases followed this same reasoning.

### **What Does This Decision Mean for Employers Moving Forward?**

Judge Chen’s decision brings welcome relief for employers who fear steep damages in class action lawsuits for technical violations of the law. Section 901(b) of the New York Civil Practice Law and Rules (CPLR) prohibits plaintiffs from bringing claims in state court to recover penalties on a class-wide basis unless a statute specifically authorizes such claims, which the WTPA does not. Accordingly, plaintiffs have already been precluded from bringing WTPA claims on a class-wide basis in state court, and instead, plaintiffs often assert WTPA notice claims on a putative class action basis in federal court.

In light of the Court’s rulings in *Sevilla*, *Francisco*, and *Wang*, however, potential plaintiffs in New York are limited to bringing WTPA claims in state court on an individual basis rather than on a putative class action basis. You should coordinate with your workplace litigation counsel to determine how these decisions will impact your strategy going forward.

We will continue to monitor developments impacting New York employers, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most-up-to-date information. If you have any questions about the WTPA, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [New York City office](#).

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