

NEW YORK DELIVERS GOOD NEWS TO EMPLOYERS IN BATTLE OVER FREQUENCY OF PAYMENTS LAW FOR MANUAL WORKERS: 4 TOP TAKEAWAYS

Insights
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Businesses with New York employees are breathing a sigh of relief now that the state has finally addressed a hot button (and expensive) issue that has plagued them for nearly six years. A state court first ruled in 2019 that manual workers had the right to sue for frequency of pay claims – and the workers could essentially receive damages equal to half their wages for up to six years. In response to pleas from employers, and after a failed attempt last year, Governor Hochul successfully pushed an amendment through that addresses concerns over the exorbitant damages. The amendments took effect on May 9 and apply to both pending and future cases. Here's what employers need to know.

How Did We Get Here?

- **Weekly Pay for Manual Workers:** New York's [Frequency of Payments Law](#) requires employers to pay "manual workers" weekly, within seven days after the end of the week in which wages are earned. The New York Labor Law defines a manual worker as a "mechanic, workingman, or laborer." Although this definition is vague and out of date, the New York State Department of Labor (NYSDOL) has long interpreted "manual worker" to be any employee that spends more than 25% of their work time engaged in physical labor.
- **Disagreement Among Courts:** There was a split between the First and Second Departments of the Appellate Division as to whether employees had the right to sue in

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court for untimely wage payments, or whether only the NYS DOL could bring an administrative action:

- The First Department **determined** in 2019 that there was a private right of action and calculated damages as liquidated damages equal to the untimely paid wages. So, if a covered worker was paid bi-weekly instead of weekly, the damages would equal the wages paid in the first week.
- In a **January 2024 opinion** in another case, the Second Department disagreed with the First Department, holding that covered manual workers did not have a private right to sue when they were paid all of their wages on a regular biweekly schedule rather than weekly. Notably, this case remains pending before the New York Court of Appeals to decide the department split, but there hasn't been any activity in the case in about a year. Meanwhile, given the long judicial process, employers (and some courts) urged the New York State Legislature to step in.
- **Successful Amendment:** Governor Hochul attempted to address the issue of high damages last year in her executive budget proposal. However, neither the state Assembly nor Senate supported the change, and it was excluded from the final budget draft. This year, despite the Assembly and Senate again rejecting changes to the law in their budget proposals, the governor successfully pushed the amendment through, along with other legislative priorities.

Key Changes

- **New Language Added to NY Labor Law:** The law now includes specific provisions for damages related to violations of **Section 191 (1)(a)**, the paragraph in New York's frequency of payments law applicable to manual workers.
- **Liquidated Damages Limited:** The amendments explicitly state that liquidated damages are **not** available if wages are paid on a regular payday, at least semi-monthly.
- **Permitted Damages:** Employers that pay manual workers on a regular payday at least semi-monthly instead of weekly in violation of NYLL Section 191 (1)(a) are subject to the following damages:



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- **First Violation:** Employers face damages up to 100% of the lost interest found to be due for the delayed wage payment, calculated using a daily interest rate for each day payment is late based on the annual interest rate in effect in New York (currently 16%). For instance, if an employee was supposed to be paid weekly at \$1,000 per week, but was instead paid \$2,000 every two weeks, the employee may be entitled to just above \$3 in interest as damages for receiving half their wages for that period (\$1,000) seven days late, calculated at 16% annual interest. This is a far cry from the \$1,000 in liquidated damages equaling the wages in the first week of any bi-weekly pay period the employee would have sought prior to the amendment.

Related Offices

New York

- **Subsequent Violations:** For violations after May 9, manual workers may recover liquidated damages equal to 100% of the total unpaid wages. These damages are available only if, after May 9, the employer has been subject to one or more previous findings and orders for violations of Section 191 (1)(a), for which no administrative or judicial review is pending, and the time for initiating such proceedings has expired. The violations must relate to employees performing the same work. An “order” is defined as a single final order or determination by the New York Department of Labor commissioner or a court of competent jurisdiction, regardless of the number of employees or the period covered.

Note: NYLL Section 198(1-a) also permits the recovery of attorney’s fees. This was not removed by the legislative amendments. Additionally, employers that do not pay manual workers at least semi-monthly and on a regular pay day, may still be subjected to 100% liquidated damages, as afforded by the First Department’s interpretation that a private right of action exists.

4 Top Takeaways for Employers

1. **These amendments seek to provide a middle ground,** addressing concerns about New York’s frequency of payments law, including employers’ fear of inflated damage awards and attorney’s fees for unintentional violations of a century-old law, while maintaining some penalty for employers that don’t comply.
2. The legislation **significantly reduces potential damages for employers,** allowing for liquidated damages only

when employers are repeat offenders or do not pay wages at least semi-monthly on the regular pay day.

3. The amendments still **do not address the underlying issue as to whether workers have the right to bring a lawsuit for violations**. Indeed, the amendments seem to assume that a private right of action exists and may actually make it more likely that the Court of Appeals will rule that one exists. Moreover, the amendments do not provide any further guidance on who qualifies as a manual worker to begin with.
4. **You should ensure that manual workers are paid on a weekly basis**. If you have not assessed whether you employ any manual workers, changed them to weekly pay, or requested an exemption from the NY Department of Labor, now is the time to make the necessary adjustments. Thankfully, however, the threat of unreasonable damages awards simply for paying employees all they are owed on a bi-weekly, instead of weekly, basis should be mostly a thing of the past.

Conclusion

We will continue to monitor developments on the frequency of pay issue, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions about whether your policies comply with workplace and other applicable laws, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [New York City office](#).