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New York Amends Labor Law and Expands Coverage for Wage Theft

On August 19, Governor Cuomo signed the No Wage Theft Loophole Act (the Act), which amended the New York Labor Law (NYLL) to make it easier for employees to bring claims against their employers for alleged unpaid wages. The amendments are aimed at closing a loophole crafted over the years by New York courts that have impaired recovery of wages by employees under key provisions of the NYLL designed to ensure employers pay employees all wages owed. In fact, the Legislature's stated purpose with these amendments is to "clarify for the courts once and for all that wage theft remains completely and without exception in violation of [the NYLL] and all employees are entitled to full wages, benefits and wage supplements earned."

The law took effect immediately.

Article 6 of the NYLL

Article 6 of the NYLL is titled "Payment of Wages" and houses the law's provisions on how and when employers must pay wages to their employees and the remedies available to employees when employers violate the article. Critically, two of Article 6's sections—NYLL sections 193 and 198—are impacted by the Act. Specifically, Section 193 sets forth the only permitted deductions an employer may make from an employee's wages. Section 198 provides the remedies for employees aggrieved by violations of Article 6. Employees may recover damages under Article 6 for a six-year period and "shall have the right to recover full wages, benefits and wage supplements and liquidated damages" for that period as well as attorney fees. Accordingly, claims brought for failure to pay wages under Article 6 could be expensive for employers, as they could result in recovery of the unpaid wages, liquidated damages and attorney fees.

The Act's Purpose

Historically, New York courts have held that employees cannot bring claims under Article 6 when an employer withholds ***all*** wages from the employee. As explained in the Act's Justification section, Section 193's prohibition on "deductions ... seems clear on its face to ward against any wage theft, much confusion has arisen over the term 'deduction' and what this could possibly represent." The Justification section continues that a "deduction calls to mind a literal notation on a paystub of wages subtracted" and leaves open a "whole host of scenarios" that do not fall under Section 193's prohibitions, including withholding an employee's wages entirely or simply failing to note the deduction as a line item on the pay stub. The Legislature noted that New York courts have failed to hold that employees may recover under Section 198 when asserting a claim for ***full wages*** and concluded that "New York's Labor Law, then, which should be a model for the rest of the nation in its defense of employee rights, finds itself watered down by a judicially created loophole." The Legislature continued that it is "necessary ... to close this judicially-created loophole once and for all to clarify that employees must be paid what they are owed, no matter what."

Accordingly, the Act amends sections 193 and 198 by adding a singular identical sentence in both sections: ***"There is no exception to liability under this section for the unauthorized failure to pay wages, benefits or wage supplements."***

The Bottom Line for Employers

The Legislature has made crystal clear both that the intent of the Act is to broaden the types of claims that employees can bring under Article 6 and that, thus, they would be subject to Section 198's expansive remedies. Accordingly, employers must ensure that they clearly document compensation arrangements with their employees at the outset of employment, including but not limited to commission agreements, bonus agreements or discretionary compensation. Employers must also ensure it is clear that any amendments to an employee's compensation are in a writing that is signed by both parties. Finally, employers should review their compensation policies to make certain that they do not create any ambiguity about how and when employees are paid.

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