

New York Second Department Holds No Private Right of Action for Pay Frequency Claims

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On January 17, 2024, New York’s Appellate Division Second Department held that “manual workers” under the state labor law do not have a private right of action to pursue alleged violations of the labor law’s weekly pay requirement. The decision marks a deviation from a 2019 Appellate Division First Department decision, which held that a private right of action does exist for pay frequency claims, and resulted in a flood of “manual worker” pay frequency litigation.



Quick Hits

- The New York Appellate Division Second Department held that a private right of action under New York Labor Law 198(1-a) does not extend to frequency of payment claims under Section 191.
- The decision creates a split between appellate departments over whether a private right of action exists under New York law.

In *Grant v. Global Aircraft Dispatch, Inc.*, the Appellate Division Second Department affirmed the trial court’s decision dismissing the claim of an alleged “manual worker” asserting a violation of Section 191(1)(a) of the New York Labor Law for being paid on a biweekly, rather than weekly, basis. The employee had sought to recover liquidated damages, prejudgment interest, and attorneys’ fees under Labor Law Section 198(1-a) for the 191 violation. Section 198(1-a) provides a private right of action for employees to pursue claims for the nonpayment or underpayment of wages, but does not explicitly address timely payments.

The Second Department found that Section 198(1-a) does not apply to such pay frequency claims under Section 191, and expressly declined to follow the First Department’s 2019 holding in *Vega v. CM & Associates Construction Management, LLC*, to the contrary. The decision marks a turning point for employers in defending against such claims.

Holding

Section 191 of the New York Labor Law, entitled “Frequency of payments,” generally requires that “manual worker[s]” are to “be paid weekly and not later than seven calendar days after the end of the week in which wages are earned.”

In *Vega*, the First Department ruled that the provision of a private right of action for the nonpayment or underpayment of wages under Section 198(1-a) applies to a failure to pay wages timely under Section 191, thereby providing plaintiffs an avenue to seek liquidated damages in the full amount of the “untimely” wages. The First Department reasoned that the failure to pay wages timely is the equivalent to an underpayment of wages because the “moment that an employer fails to pay wages in compliance with section 191(1)(a), the employer pays less than what is required.”

In *Grant*, the Second Department disagreed with the First Department’s holding, finding that no express private right of action exists for a violation of Section 191. In reaching this holding the court concluded that the legislative history of Section 198(1-a) indicated that it only applies to a failure to pay the required amount of wages, not a failure to timely pay them. The court further stated that it did not “agree that payment of full wages on the regular biweekly payday constitutes nonpayment or underpayment”; again, a departure from the First Department’s decision in *Vega*.

The court also noted that after the *Vega* decision, the New York Court of Appeals (New York’s highest court), in *Konkur v. Utica Academy of Science Charter School*, held that a violation of Section 198-b (prohibiting wage “kickbacks”) did not constitute a “wage claim” under Section 198(1-a) such that the court could imply a private right of action thereunder. The Second Department noted that “the mere fact that a violation of the Labor Law had the effect of reducing employees’ wages (even permanently) did not bring that Labor Law violation under the auspices of” Section 198(1-a). The Second Department raised the Court of Appeal’s decision in *Konkur* for purposes of calling into question the First Department’s reasoning in *Vega*.

Next Steps

The Second Department's ruling in *Grant* creates a conflict between two New York appellate courts on the issue as to whether Section 198(1-a) provides for a private right of action for claims alleging a violation of the pay frequency provisions of Section 191. The *Vega* ruling opened the floodgates for litigation over frequency of pay violations. The *Grant* decision is a meaningful shift back in the right direction for employers, and could result in the New York Court of Appeals considering the issue, which would provide finality on whether Section 198(1-a) provides for a private right of action for violations of Section 191, absent future legislation.

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