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New York Manual Workers Who Are Not Paid Weekly Can Bring an Action for Damages

The Bottom Line

- *New York employers should review and assess their pay practices in light of the recent interpretation of New York Labor Law's frequency of pay requirements.*
- *Violation of the frequency of pay requirements may result in significantly monetary liability for liquidated damages, attorneys' fees, costs, costs and interest.*

A federal court in New York recently held that a class of manual workers may pursue claims against their employer for failing to pay them on a weekly basis in accordance with the New York Labor Law (the NYLL).

The court, in Scott v. Whole Foods Market Group, Inc., decided that the NYLL allows a private cause of action for violations of the law's frequency of pay requirements, which could expose employers to significant monetary liability for liquidated damages, attorneys' fees, costs and interest.

New York's Frequency of Pay Requirements

Section 191 of the NYLL sets forth specific requirements for how frequently New York employers must pay certain employees. Most employees (including clerical workers) need to be paid on at least a semi-monthly basis (with the exception of employees who are exempt under the NYLL's executive, administrative or professional exemptions). In contrast, manual workers must be paid on a weekly basis within seven calendar days of earning their wages, though non-profit employers may pay them on at least a semi-monthly basis. The NYLL defines a manual worker as a "mechanic, workingman or laborer," and the New York Department of Labor has opined that a "manual worker" includes an individual who spends more than twenty five percent of their working time engaged in "physical labor." Whether an individual is a "manual worker" who performs physical tasks under the NYLL ultimately depends on the work they are doing, but mail room personnel, janitorial staff and food service workers, among others, might be "manual workers" who are entitled to be paid weekly.

There are also specific frequency of pay rules for railroad workers and commissioned salespersons.

The *Whole Foods* Case

The plaintiffs in *Scott v. Whole Foods Market Group, Inc.* were two former employees of Whole Foods who claimed to be manual workers. The employees sought to bring a class action on behalf of other manual workers due to Whole Foods having paid them on a bi-weekly basis, instead of weekly as required under the NYLL. The plaintiffs sought liquidated damages, attorneys' fees, costs and pre-judgment and post-judgment interest under Section 198 of the NYLL (the statute's remedial provisions). Whole Foods moved to dismiss the case, arguing that the NYLL does not provide a private cause of action based on a violation of Section 191's frequency of pay requirements.

The Court's Decision

The court denied Whole Foods' motion to dismiss, holding that although Section 191 does not expressly provide for a private cause of action, the New York Court of Appeals and other courts have implicitly assumed (without directly addressing the issue) that employees could pursue a cause of action under Section 198 for substantive violations of Section 191. The court further found that there is an implied cause of action for Section 191 violations because the plaintiffs were members of the class designed to be protected by the law, and allowing a private cause of action would promote the law's legislative purpose and is consistent with the legislative scheme. Finally, the court rejected the employer's argument that the plaintiffs did not suffer any damages for its violations even though the employees were ultimately paid all of their wages. According to the court, the employees' injury was the very delay in receiving the pay, and accepting Whole Foods' argument would leave employees with no recourse and would permit employers to violate Section 191 perpetually by merely paying the employee in full after a delay.

Next Steps

Based on this recent decision, New York employers should review and assess their pay practices to ensure that they are paying their manual workers weekly in accordance with New York Labor Law. This analysis is especially important for companies in the hospitality, retail and construction industries where their employees may be more likely to qualify as manual workers, but it is also important for all employers as many office and other work environments have employees who must be paid weekly. In addition, the reasoning of the *Scott* decision can easily be applied to non-exempt clerical workers being paid on a monthly basis (instead of at least semi-monthly, as required by law), and New York employers should ensure that their non-exempt clerical workers are being paid on at least a semi-monthly basis.

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