

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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Second Department Weighs in on Employees Fully Paid But Who Seek Liquidated Damages for Not Being Paid Weekly: You Can't Get Something for Nothing

On Jan. 17, 2024, the New York State Appellate Division, Second Department decided a pivotal case for employers after years of uncertainty. In *Grant v. Global Aircraft Dispatch, Inc.*, the Second Department decided against following *Vega v. CM & Associates Construction Management, LLC*, a First Department decision that carried steep consequences for employers in New York for violations of New York Labor Law Section 191 (Section 191).

Under Section 191, employers must pay “manual workers” on a weekly basis, within seven calendar days of the week during which the wages are earned. The weekly pay requirement for manual workers applies to all private sector employers, except non-profitmaking organizations, which must pay employees at least semi-monthly.

The law defines a “manual worker” as “a mechanic, workingman or laborer.” The New York Department of Labor (DOL) further specified that employees who spend more than 25% of working time engaged in “physical labor” fit within the meaning of a “manual worker.” The term “physical labor” has been interpreted broadly to include a wide array of physical tasks performed by employees, including heaving, lifting, stocking shelves, unpacking boxes, cleaning and standing or walking for extended periods of time.

Prior to 2019, the potential consequences for Section 191 violation were limited to a penalty assessed by the DOL. Employees could not directly sue their employer for untimely wages under Section 191.

In 2019, the New York State Appellate Division, First Department decided *Vega v. CM & Associates Construction Management, LLC*, which held that manual workers paid in an untimely manner pursuant to Section 191 could bring a private right of action (i.e., directly sue their employers for untimely wages) in contradiction to decades of precedent. This decision permitted employees to sue their employers for significant sums of money (i.e., liquidated damages equal to 100% of the pay they did not receive every other week) despite the fact that they received all wages due. For example, in the worst case scenario, a manual worker who was employed for six years and received pay on a biweekly basis could be entitled to half their pay for the six-year statute of limitations, or three years' worth of pay. That means any employer with manual workers who did not pay them weekly could supposedly be subject to *three years' of the entire manual worker payroll* as damages. As a result, Section 191 litigation skyrocketed following the Vega decision and many federal courts followed Vega's holding, carrying steep consequences for employers.

The Second Department's decision in *Grant v. Global Aircraft Dispatch* is a welcome result that hopefully offers some relief from *Vega*. In *Grant*, the Second Department held that there is no private right of action to recover monetary damages for a violation of Section 191. The Court's reasoning returned to the decades-long understanding that frequency of pay violations are not an underpayment of wages, and therefore employees cannot recover liquidated damages for a frequency of pay violation alone—there must be some underpayment of wages alleged. Additionally, since the Labor Law provides for multiple enforcement mechanisms for violations of Section 191, there is no implied private right of action.

Grant does not definitively determine that employees cannot bring a private right of action for untimely wage claims, but it offers employers a significant defense that was not available when *Vega* was the only Appellate Division case on the issue. With the *Grant* decision, there is now a split among the Appellate Division, and we anticipate the Court of Appeals will decide this issue once and for all within the next year or so. With the well-reasoned decision of *Grant* and years of precedent, it is likely that the Court of Appeals returns to the status quo—that employees are not permitted to sue their employers directly for failure to pay timely wages.

Notably, on Jan. 16, 2024, Gov. Hochul proposed an amendment to the relevant Labor Law provision to specifically exclude violations of Section 191 from a remedy of liquidated damages. If the legislature accepts the Governor's proposal, this would definitively prevent employees going forward from filing a claim for untimely wages in court and receiving a windfall despite being paid all wages due.

For more information on the information presented in this information memo, please contact [Michael Billok](#), [Rebecca LaPoint](#) or any attorney in Bond's [labor and employment practice](#) or the Bond attorney with whom you are regularly in contact.

**Special thanks to Bond Law Clerk Assitan Diakite for assisting with researching and drafting this memo. Assitan is not admitted to practice law.*

