

LABOR AND EMPLOYMENT INFORMATION MEMO

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The Constitutionality of New York's Relief for Employers Unaware of Weekly Pay Provision in the New York Labor Law

Under New York Labor Law (NYLL) Section 191, employers are required to pay "manual workers" on a weekly basis. As we previously reported [here](#), there is currently a split among courts as to whether manual workers have a private right of action to pursue pay frequency violations.

NYLL Section 198 was amended in May 2025 to eliminate liquidated damages as a remedy available to employees for an employer's first violation of NYLL Section 191, as long as the employer paid employees on a regular schedule and at least semi-monthly (for more information, please see [here](#)). For first-time weekly pay violations, the penalty is now limited to lost interest based on delayed payment, regardless of whether the violation occurred before or after the amendment.

The constitutionality of the amendment is now being challenged in a Southern District of New York case, *Bryant v. Buffalo Exchange*. In this case, plaintiffs claimed that Buffalo Exchange violated NYLL Section 191 by paying them on a biweekly basis. Consistent with the law in place when the alleged violation took place and when plaintiffs filed the complaint, they sought liquidated damages in the amount of wages that were not timely paid. After the law was amended, Buffalo Exchange filed its second motion for a partial judgment on the pleadings to dismiss plaintiffs' claim for liquidated damages under NYLL Section 191 based on the amendment to NYLL Section 198(1-a).

Plaintiffs opposed the motion on the basis that NYLL Section 198(1-a) is unconstitutional for two reasons: (1) it exceeds the limitations on executive budgeting in the New York Constitution; and (2) it violates the Due Process Clause of the New York Constitution to the extent it applies retroactively to a liquidated damages claim that was filed prior to its enactment. Plaintiffs' first argument challenges the amendment on the basis that it was improperly introduced by Governor Hochul during the budget process. They assert that the governor cannot introduce non-budget-related legislation during the budget process, and that the amendment is non-budget-related legislation because it does not specifically relate to any appropriations in the budget. In their second argument, Plaintiffs assert that the amendment violates the Due Process Clause because there is no rational basis to justify its retroactive application.

On Nov. 14, 2025, the Court certified the question of NYLL Section 198(1-a)'s constitutionality to the New York State Attorney General, who will have 60 days to weigh in. If NYLL Section 198(1-a) is found unconstitutional, employers who paid manual workers on a less-than weekly basis could once again be faced with claims by employees seeking liquidated damages for delayed payments.

We will continue to provide updates regarding this case. If you have any questions regarding these developments, please contact [Nicholas P. Jacobson](#), [Anthony A. Levitskiy](#) or an attorney in [Bond's labor and employment practice](#) or the Bond attorney with whom you normally work.

