Long Island BusinessNEWS
NOVEMBER 22-28, 2019 | OUR 66TH YEAR | NO. 46 | $2.00 | LIBN.COM

# Recent cases could foreshadow bad things for employers

Adam BROWSER

New York Labor Law requires employers to pay manual workers on a weekly basis. Although this law has been on the books in one form or another for over 100 years, some businesses continue to ignore the law and violate it by paying their manual workers on a less frequent basis than weekly. That needs to change.

Recent legal cases may be a harbinger of a wave of litigation targeting employers, similar to the wage and hour lawsuits that bedevil many companies today. Those employers who continue to ignore this well-established law face potential, and possibly costly, litigation.

The purpose of Labor Law Section 191(1)(a) is to compel prompt payment of wages to manual workers because those workers cannot rely on a fixed, periodically paid salary. The law covers mechanics, laborers, cooks, wait staff, chamber maids and domestic help, among others. Clerical workers and employees whose principal activity is sales are not considered manual workers.

The law is not new, having been enacted in 1966, with similar versions of the weekly pay requirement going as far back as 1890. Despite the law's (or its predecessor's) existence for almost 130 years, there have been about only 70 reported legal cases; many of which were brought by the government, rather than the workers themselves. In the past five years, however, there has been a 400 percent increase in the number of reported cases deciding untimely payment claims, including one decided in September 2019 by the Appellate Division that presides over the counties of Manhattan and The Bronx.

> 'IF BUSINESSES PAY THEIR MANUAL WORKERS BI-WEEKLY, VERSUS WEEKLY, EVEN THOUGH THE DAMAGES INCURRED... ARE SMALL, IT IS A TECHNICAL VIOLATION OF THE LABOR LAW....'

In that recent case, a former employee of a construction management company sued, claiming she was a manual worker but was paid on a bi-weekly basis. The construction management company moved to dismiss the complaint but was unsuccessful before both the trial court and the Appellate Division. The former employee is now able to proceed with her claims, which include liquidated damages and attorneys' fees, both of which are specifically recoverable for violations of the Labor Law.

And therein lies the problem for employers. If businesses pay their manual workers bi-weekly, versus weekly, even though the damages incurred (lost interest) are small, it is a technical violation of the Labor Law, allowing the employee to seek liquidated damages and attorneys' fees, which might possibly even lead to a class action lawsuit.

Employers should also be aware that it is not uncommon for some employment lawyers to solicit former employees in order to bring claims based on wage and hour violations. A claim alleging untimely payment is another avenue for an employment lawyer to exploit. It provides a separate basis for a claim that, while not as potent as unpaid wages, is far simpler to prove. For example, where the number of hours an employee actually worked may be a disputed issue of fact, the frequency of payment should be irrefutable and easy to prove.

Employers and businesses that employ manual workers must make sure they are complying with this law. If not, based on the recent uptick in lawsuits invoking Labor Law Section 191(1), they may be in for an unpleasant surprise.

**Adam Browser is Of-Counsel for Ruskin Moscou Faltischek, P.C., a member of the firm's Litigation and Financial Services, Banking & Bankruptcy Departments, Insurance & Insurance Litigation Group, and its Construction Practice Group.**