Proskauer

Proskauer Obtains Dismissal of Pay Frequency Claims under New York Labor Law

December 20, 2019

December 20, 2019 (NEW YORK)– International law firm Proskauer recently obtained victories on behalf of client Max Finkelstein, Inc., a leading tire distributor on the East Coast, in two single-plaintiff cases involving alleged pay frequency violations under New York Labor Law (NYLL).

Two former employees alleged in separate cases that the Company's bi-weekly payment of wages violated NYLL, which requires manual workers to be paid weekly, thereby entitling them to liquidated damages for the entirety of their careers, plus interest and attorneys' fees.

In seeking dismissal of the claims, the team argued that (i) the plaintiffs did not have a private right of action to recover liquidated damages under NYLL because they were never "underpaid" and (ii) NYLL did not require wage statements to be provided weekly. The argument was complicated by the fact that a few weeks before filing the motion, the First Department reached a contrary conclusion, holding that the late payment of wages was equivalent to an "underpayment". The Firm argued, relying upon the statute's legislative history and a Second Department decision from 1997, that the First Department's decision was wrongly decided and that the court (which sits in the Second Department) was not bound to follow it.

The Court granted Max Finkelstein Inc.'s motions in full, rejecting the First Department's ruling and adopting the Firm's arguments.

The Proskauer team included partner Harris Mufson and associates Austin McLeod and Margaret Swetman.

Proskauer's leading Labor & Employment group is one of the strongest practices in the world, with lawyers across the U.S., and in London and Paris. We have experience covering every area of labor and employment law and handle the complete range of sophisticated litigation, trial, appellate and counseling, as well as government contractor issues and investigations. Our lawyers handle the complete gamut of litigation matters facing employers, ranging from individual plaintiff lawsuits to highly complex (multistate) class action cases, to EEOC pattern and practice disputes. We consistently receive a top-tier nationwide ranking in Chambers USA and are recognized as leaders by The Legal 500 United States, Benchmark Litigation, among others. We regularly handle our clients' most complex matters and are trusted advisors on everything impacting the workplace.

Related Professionals

- **Austin McLeod**
  Associate
- **Margaret F. Swetman**
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