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# New York Labor Law Amendments Expand Scope of “Deductions” Claims

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New York Governors seem to have a history of favoring employees with Labor Law giveaways as they check out of the Executive Mansion. (Remember the Wage Theft Prevention Act, signed by David Paterson days before he left office in December 2010?) On August 20, 2021, four days before his resignation took effect, former Governor Andrew Cuomo signed the “No Wage Theft Loophole Act” (the “Act”), which amended sections 193 and 198 of the Labor Law to state that “[t]here is no exception to liability [under those sections] for the unauthorized failure to pay wages, benefits, or wage supplements.” The Act was intended to clarify that employees can bring § 193 claims not only for unauthorized “line-item” deductions from wages but also for the wholesale withholding of wages alleged to be owed.

## How We Got Here

Labor Law § 193 prohibits a wide range of “deductions” from “wages,” and § 198 provides a civil right of action for a violation of § 193. For years, litigants have debated whether the failure to pay wages at all—*e.g.*, a bonus that was allegedly owed—constitutes a “deduction” for purposes of § 193. Plaintiffs challenging the non-payment of compensation often invoked § 193, arguing that the wholesale withholding of wages is tantamount to a “100% deduction” from wages. The alleged violation of § 193 triggers a right to sue under § 198(1-a), under which a prevailing plaintiff can recover not only the amounts unlawfully withheld but also attorneys’ fees, prejudgment interest, and (absent good faith on the part of the employer) liquidated damages equal to 100% of the wages found to be due.

Employers have historically (and successfully) defended such claims on the ground that a wholesale withholding of compensation is not a "deduction" within the meaning of § 193—an argument validated by many courts, including the Appellate Division in *Perella Weinberg Partners LLC v. Kramer*, 153 A.D.3d 443 (1st Dep't 2017). As explained by the lower court in *Kramer*, a "deduction" is "understood to [mean] a partial withholding of compensation" for a specific purpose. Other appellate courts have agreed, confirming that to state a claim for a violation of § 193, a plaintiff must allege a specific *deduction* from wages, and not merely a *failure to pay* wages.

The distinction is meaningful, as the only other section of the Labor Law providing a substantive claim for non-payment of wages is § 191, which excludes from its protection employees who work in administrative, executive, or professional capacities and earn more than $900 per week. As employers argued, allowing a plaintiff to sue under § 193 for a wholesale withholding of wages (as opposed to for an improper deduction) would render the limitations of § 191 meaningless, and—as the Court of Appeals noted in *Gottlieb v. Kenneth D. Laub & Co.*, 82 N.Y.2d 457 (1993)—"afford a windfall remedy to [a] litigant[ ] whom the Legislature consciously chose not to afford the protections and benefits of the wage payment regulatory provisions of the Labor Law."

**The No Wage Theft Loophole Act**

The Act was intended to close this so-called "loophole" in the law. As explained by the Assembly in is memorandum in support of the new law:

> [M]uch confusion has arisen over the term “deduction” and what this could possibly represent. For many of us, “deduction” calls to mind a literal notation on a paystub of wages subtracted, which leads to the question: what if the wage theft is not denoted by a line on a paystub? One can imagine a whole host of scenarios, for example, which clearly violate the intent of Section 193 without conforming to this narrow definition of a “deduction.” An employer could withhold wages but simply fail to note the deduction on a paystub, for example. Alternatively, an employer could deny the existence of the full amount of wages owed and claim that the employee’s paycheck that month was a discretionary amount that the employer decided based on the quality of the employee’s work. Or, an employer could choose to withhold the pay entirely, as the statute simply prohibits “ANY” deduction. But does “any” mean “all”? What if the statute does not prohibit the withholding of an entire paycheck?
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> While it may seem obvious that a “deduction” in the context of wage theft is meant to imply the taking of wages, case law on the provisions of Article 6 has painted a much more nuanced and confusing picture.… New York’s Labor Law, then, which should be a model for the rest of the nation in its defense of employee rights, finds itself watered down by a judicially created loophole.
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> It is thus necessary for the legislature to close this judicially-created loophole once and for all to clarify that employees must be paid what they are owed, no matter what. Doing so will help defend the rights of all employees, including low-income employees who are more likely to be subject to wage theft. New York cannot in good faith claim to be one of the most progressive states in the nation when it comes to labor rights if we fail to clarify that wage theft is, and has always been, completely prohibited within our boundaries.

Effective August 20, 2021, Labor Law § 193(5) and § 198(3) now contain the following identical provision: “There is no exception to liability under this section for the unauthorized failure to pay wages, benefits or wage supplements.”

**The Bottom Line**

The amendments open the door for a broader range of employees to assert statutory claims for the failure to pay compensation allegedly owed. Of course, if the compensation is not owed in the first place, there is no remedy under the Labor Law. As the Appellate Division has made clear, an employee "cannot assert a statutory claim for wages under the Labor Law if he has no enforceable contractual right to those wages." Employers should always confirm their compensation arrangements with employees in writing (*e.g.*, in an offer letter or employment agreement), and make clear that no changes to those terms will be effective absent a written agreement signed by the employer. Policies under which employees may be eligible for additional compensation ( *e.g.*, bonus or other incentive plans) should be carefully drafted to ensure that compensation is only deemed earned and payable in the precise circumstances where the employer intends it to be owed. Simple as it sounds, the best defense to any wage claim—whether the claim arises under the common law or a statute—is that documents make clear nothing is owed.

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