



## On the Horizon for 2024 - More NY Employees Can Bring Wage Theft Claims

Barbara E. Hoey

November 8, 2023

In a move that may have gone under the radar given recent world events, Governor Hochul recently signed S.B. 5572, legislation amending Article 6 of the New York Labor Law (NYLL), limiting the exemption status and expanding the universe of employees who can bring claims for wage theft. Employers should prepare now, as this goes into effect March 13, 2024.

This amendment will permit any employee who makes less than \$1300 a week (approximately \$67,000 a year) to bring wage theft claims in court or before the New York Department of Labor (NYDOL). Previously, only employees who made \$900 a week or less could bring such claims before the NYDOL.

Governor Hochul recently also signed [Senate Bill S2832A](#), the Wage Theft Accountability Act, which amends the penal law to include “wage theft” in the definition of larceny, making this a felony offense encompassing nonpayment or underpayment of wages. Both bills are part of a larger initiative in New York that seeks to protect employees and their wages, resulting in potentially more severe, and even criminal penalties for noncompliant employers.

### What is a ‘Wage Theft’ Claim?

Many of you are asking: what is wage theft? I am not stealing my employees’ wages.

As background, Article 6 of the NYLL regulates how frequently employees must be paid, as well as other aspects of wage payment such as direct deposit. Employers who violate Article 6 are now technically guilty of ‘wage theft.’

For example, New York employers:

- Must pay clerical and other non-exempt workers ‘not less frequently than semi-monthly.’
- Must obtain advance written consent before paying wages via direct deposit.
- Must pay all wages and wage supplements within 30 days after they are due.

Any employer who fails to do these things is potentially guilty of wage theft. Claims for wage theft include those for unpaid wages, illegal deductions, unpaid wage supplements, minimum wage, and overtime pay.

## Who is Protected By Article 6?

Before the new amendment, any employee working in an executive, administrative, or professional capacity making more than \$900 per week, was exempt from Article 6.

Starting March 2024, that group will be much smaller. Employees working in an executive, administrative or professional role and making \$1300 per week or less, (under \$67,000) are covered by Article 6. Put another way, anyone making less than \$67,000 can now sue their employer for wage theft. This new law effectively expands protection to cover even more employees under Article 6, resulting in two key changes:

1. Employees not subject to the exemption can bring wage theft claims with the NYDOL.
2. Employers must obtain employee consent before paying certain workers making below the \$1300 a week threshold through direct deposit.

## What Happens if an Employer Violates Article 6?

The ability to bring a wage theft claim increases liability for employers. For one, an employee may file a complaint at the NY Department of Labor, which can open your company up to a company-wide DOL audit.

Qualified employees may also bring civil action in state court under Article 6. If an employer is found liable for wage theft, there is a potential penalty of between \$500 to \$20,000 per offense, depending on the severity of the violation. And if the employer is found guilty of wage theft, the employee's attorney can recover their legal fees. Wage theft claims are thus popular 'add on' causes of action, often tacked on at the end of a discrimination or wrongful termination claim.

Employers may be found guilty of wage theft, for failing to pay benefits or wage supplements to employees are now potentially guilty of a misdemeanor.

## What Should Employers Do?

Starting in March 2024, New York employers will likely have a larger group of employees who are covered by Article 6 and who can bring wage theft claims at the NYDOL. From an administrative standpoint, employers should proactively work with their payroll, human resources, and other relevant departments to implement any necessary changes to payroll procedures before the law goes into effect. Specifically, employers should obtain written consent for direct deposit for this class of employees by providing a form during onboarding, or prior to March 2024 for current affected employees.

In addition to the payroll component, employers should work with counsel to evaluate whether the composition of their workforce puts them at risk for a potential increase in NYDOL claims. Employers may consider increasing salary for workers who are at the 'edge' of the exemption, to avoid a potential increase in NYDOL claims, but that decision comes at a cost, especially amidst recent increases to the New York minimum wage.

Finally, employers should recognize that the Bill concerns different thresholds than the recently-increased minimum wage and overtime thresholds under Article 19 of the NYLL, though all of these laws warrant special attention to the changing wage payment landscape in New York.

If you have questions concerning wage and hour practice and compliance, please contact a member

of Kelley Drye's Labor and Employment team.