

Client Alert: Proposed NYLL Amendments Would Refine Statutory Framework for Damages in Wage-and-Hour Cases, by Aaron Solomon, Esq. and Keith Gutstein, Esq., 12-10-2025

The New York State Legislature is considering significant amendments to the state's wage and hour enforcement framework through the proposed New York Labor Law Enforcement Parity Act.

The legislation (S4473/A5000), which passed the New York State Senate, aims to clarify the nature of certain damages available under New York's wage and hour statutes and, in so doing, could potentially expand the scope of exposure for employers facing class action litigation in state courts.

Key Provision: Damages Deemed "Compensatory," Not Penal

Under existing New York Labor Law ("NYLL") provisions —such as NYLL §§ 198 and 663—employees may seek liquidated damages and other statutory remedies for violations such as failure to pay minimum wage, overtime, or final wages. Courts have been divided over whether these damages are "penal," which can limit their availability in class actions, or "compensatory," which supports class-wide recovery based upon the way that the Civil Practice Law & Rules, which govern how civil litigation procedure in New York State courts, operates.

Lawmakers state that the bill is intended to "align the rights of plaintiffs in state court with those in federal court, where class action plaintiffs can claim liquidated and statutory damages for certain wage violations." To that end, the act would amend the NYLL to expressly permit plaintiffs to recover statutory and liquidated damages on a class-wide basis in wage theft actions.

Potential Impact

1. Damages Become Uniformly Recoverable on a Class-Wide Basis:

By defining certain damages as compensatory, the bill would eliminate a defense sometimes raised against class certification. While courts would still determine whether a class should be certified, the clarification would support the availability of liquidated damages on a class-wide basis.

1. Increased Potential Liability Exposure for Employers:

Employers could face increased financial exposure in wage and hour class actions because plaintiffs would have a stronger basis to pursue liquidated damages for all class members—not just individual claimants.

Recommended Next Steps

If enacted, New York employers should consider:

- Auditing wage and hour practices, including timekeeping, overtime calculations, wage notices, and payroll recordkeeping, to ensure strict compliance.
- Reviewing classification decisions for exempt vs. non-exempt employees to reduce risk of systemic violations.
- Updating litigation risk assessments and reserves in anticipation of potentially expanded exposure.
- Working with counsel to evaluate arbitration agreements and class action waivers in light of this prospective change.

Status of the Legislation

S4473/A5000 remains under consideration in the New York Legislature. If passed, it would take effect immediately and apply to all actions concerning labor law violations that occurred within six years prior to this act's effective date. Kaufman Dolowich will continue to monitor developments and provide updates as the bill progresses.

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