



## *The New York Appellate Division Has Created A New Avenue of Wage and Hour Liability for New York Employers*

*New York State Labor Law has long required manual workers to be paid on a weekly basis and no later than seven calendar days after the end of the week in which the wages are earned. “Manual workers” are broadly defined, by statute, as “mechanics, workingmen or laborers” and has been interpreted to include employees who spend more than twenty-five percent of their time at work performing physical labor.*

*While weekly pay for New York manual workers is a long-standing requirement, what has been uncertain is whether a manual worker can sue his or her employer for untimely paid wages, and if so, the types of damages that are available for the employee to recover.*

*On September 10, 2019, in the case of Irma Vega, etc., v. CM and Associates Construction Management, LLC, (“Vega”) the New York Appellate Division provided clarity regarding an employer’s potential liability for failing to pay manual workers timely. In Vega, the Court established that a manual worker can sue his or her employer for untimely paid wages and that the employee can be awarded liquidated damages.*

*Although the New York Labor Law has always provided the recovery of liquidated damages in the amount of any unpaid wages, in Vega, a New York Appellate Court held, for the first time, that a manual laborer can recover liquidated damages equal to the amount of wages that were paid late. In other words, an employer who may have inadvertently paid a manual worker every two weeks, rather than every week, may now be liable to that employee. Specifically, although the employee already received any and all monies owed, the delayed or untimely payment of even a portion of that amount may result in the employee receiving additional monies. This decision comes at the heels of a New York federal court ruling in the matter of Scott v. Whole Foods Market Group, Inc., which reaches a similar conclusion. These cases show that courts may no longer be inclined to show mercy to an employer who fails to pay wages timely and may even permit employees the opportunity to collect a “windfall” by awarding liquidated damages for late wages. As such, a new avenue of costly liability for New York employers has opened.*

*While employees such as hairdressers, chauffeurs and pizzeria workers have been found to be manual workers, the scrutiny over who may be considered a manual worker is certain to increase. As such, employers should promptly contact experienced employment counsel to analyze and determine whether their employees should be defined as “manual workers,” and to ensure that they are timely paid in accordance with the New York Labor Law.*

*The attorneys at Kaufman Dolowich & Voluck are available to assist employers in properly classifying employees and to determine compliance with the New York Labor Law. For more information about the new legislation, or this alert, please contact Keith Gutstein, Aaron Solomon, or Kaitlin Silletti, by email at [KGutstein@kaufmandolowich.com](mailto:KGutstein@kaufmandolowich.com), [ASolomon@kaufmandolowich.com](mailto:ASolomon@kaufmandolowich.com), [KSilletti@kaufmandolowich.com](mailto:KSilletti@kaufmandolowich.com) or by phone at (516) 681-1100, or any member of Kaufman Dolowich & Voluck’s Labor & Employment Law Practice Group.*