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Judge Says NY Labor Law Allows Cases Over Late Payments

By **Caleb Drickey**

Law360 (September 6, 2023, 3:03 PM EDT) -- An auto parts delivery driver may proceed with claims that his employer breached obligations under New York wage law to pay manual workers each week because a federal judge declined to overturn a ruling providing workers with the right to sue for late pay.

On Tuesday, U.S. District Judge Gary R. Brown **declined** Advance Auto Parts' bid to dismiss worker Hugh Birthwright's proposed class action. According to the judge, there was no indication that a state appeals court misinterpreted the New York Labor Law when it ruled in 2019 that workers have a private right to bring claims for weekly wages.

"The court concludes that the New York Labor Law provides a private right of action to enforce the late payment of wages," Brown said. "Accordingly, defendant's motion to dismiss is denied."

Under the NYLL, workers who spend in excess of 25% of their days engaged in physical labor are entitled to receive wages weekly, rather than the biweekly pay guaranteed to most other employees. Although New York state traditionally held sole authority to enforce weekly wage requirements, a state appeals court held in 2019 that workers, too, could sue for late wages.

In [Vega v. CM & Associates Construction Management LLC](#), the First Judicial Department of the New York court system's Appellate Division determined that the language of the NYLL indicated workers may bring suit for any wage claims.

Judge Brown declined Tuesday to find that this ruling was in error. Citing the decisions of other federal district courts in [Georgiou v. Harmon Stores Inc.](#), [Caul v. Petco Animal Supplies Inc.](#), and other weekly wage cases, the judge said that judges have unanimously held that the Vega decision was sound law.

"Defendant fails to present any 'persuasive evidence that the state's highest court would reach a different conclusion' than the First Department in Vega," Judge Brown said. "The court is 'bound to apply the law as interpreted by' ... the First Department."

Judge Brown also held that the fact that Birthwright eventually received his promised wages was no barrier to asserting unpaid wage suits. The judge said he was injured because he was denied the time value of his money, of the opportunity to invest or save and that he missed bill payments because of his allegedly late paychecks.

Those assertions were sufficient to establish a rectifiable injury, the judge ruled.

Representatives for the parties did not immediately respond to requests for comment on Wednesday.

Birthwright is represented by Brian Shaffer and Frank Mazzaferro of Fitapelli & Schaffer LLP.

Advance Auto Parts is represented by Jeffrey Brecher of Jackson Lewis PC.

The case is Birthwright v. Advance Stores Company Inc., case number 2:22-cv-00593, in the U.S. District Court for the Eastern District of New York.

--Editing by Neil Cohen.

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