



January 25, 2024

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

The Honorable Carl Heastie
Speaker
New York State Assembly
speaker@nyassembly.gov

The Honorable Crystal Peoples-Stokes
Majority Leader
New York State Assembly
peoplec@nyassembly.gov

The Honorable William Barclay
Minority Leader
New York State Assembly
barclayw@nyassembly.gov

Re: Support for the proposed amendment to Section 198 on the frequency of pay

PayrollOrg (PAYO), formerly the American Payroll Association, supports Part K of the Executive Budget Proposal for fiscal 2025 that would provide relief for employers in “frequency of pay” litigation. When payroll managers correctly calculate employees earnings, employment taxes, and legal withholding, it is unfair to require employers to pay liquidated damages merely because distribution was not weekly. This provides a windfall for plaintiffs attorneys and, ultimately, damages the financial health of employers.

About PAYO

PAYO is a nonprofit association representing more than 20,000 payroll professionals throughout the United States. PAYO's Government Relations Task Force partners with government agencies to help payroll professionals with compliance, while minimizing the administrative burden on government, employers, and individual workers. PAYO members are directly responsible for calculating wages and withholding for their employers across all industries and employer types.

Support for Part K

Federal and New York State wage and hour laws that protect employees from wage theft include procedures for challenging employers, including penalties for willful violations. These laws were not intended to penalize employers who follow the law and pay their employees full and fair wages.



PAYO supports the Part K budget proposal because it would amend the Section 198 frequency of pay provisions to protect compliant employers; yet still provide appropriate government agency oversight to determine if employees are receiving fair and full wages.¹

In addition, PAYO supports Governor Hochul's proposal to require distribution of wages for covered employees at least semi-monthly. The requirement that "manual" workers be paid weekly was not sufficiently publicized by the New York Department of Labor and remains largely unknown to employers, especially emerging new and small businesses. Thus, the recent wave of litigation by opportunistic law firms threatens to put needed New York employers out of business, despite lack of harm to employees because they were paid in full. The twice-monthly payroll frequency is a standard payroll practice for most employers in any industry.

This frequency also provides flexibility for processing payroll when delays are caused by factors that employers have no control over. For example, when a bank fails, and the Federal Deposit Insurance Corporation assumes management of assets or when an error occurs in funds distribution at the Automated Clearing House.

With inconsistent interpretation of Section 198 by the courts, PAYO urges the New York State Assembly to adopt Part K.

Sincerely,



Alice P. Jacobsohn, Esq.
Director, Government Relations

For: Government Relations Task Force
State and Local Subcommittee
Chairs Pete Isberg; Carlanna Livingstone, CPP; and Bruce Phipps, CPP

¹ Section 198 of the New York Labor Law would be amended to provide that "... liquidated damages shall not be applicable to violations of . . . section 191 of this article where the employee was paid in accordance with the agreed terms of employment, but not less frequently than semi-monthly."