



Memorandum In Support

Labor Law Enforcement Parity Act (LLEPA)

Senate Bill: S8852 Ramos | Assembly Bill: A9800 Bronson

April 2024

The National Employment Lawyers Association/New York (“NELA/NY”) submits this memorandum in support of the Labor Law Enforcement Parity Act (S8852 Ramos / A9800 Bronson). This crucial legislation would ensure that all New Yorkers can enjoy the full protections of the Labor Law’s wage theft enforcement provisions—including the ability to enforce their rights collectively in state court.

NELA/NY has more than 350 members and is the New York affiliate of the National Employment Lawyers Association (NELA), the nation’s only professional bar organization comprised exclusively of lawyers who represent individual employees. As attorneys who regularly enforce the Labor Law, we have seen firsthand how state courts have misinterpreted the Labor Law and the CPLR to deny workers their full rights to damages available under the Labor Law.

We support the Labor Law Enforcement Parity Act (LLEPA) because it would remove a substantial barrier to workers seeking to recover stolen wages from employers, by clarifying that classes of workers can recover liquidated damages and statutory damages in state court actions seeking to recover unpaid stolen wages. Without this bill, workers’ practical ability to recover stolen wages is greatly reduced, and employers have less incentive to comply with the Labor Law.

Over the past fifteen years, the Legislature has made many important changes to strengthen the Labor Law’s wage theft protections. Critical changes came in 2009 and 2010, when the Legislature amended the Labor Law’s enforcement provisions. Before those amendments, workers could only recover an amount equal to 25% of their unpaid wages as liquidated damages under the Labor Law. Moreover, the remedy was only available if workers could prove that the underpayment was willful. Because of the 2009 and 2010 amendments, workers can now recover, in addition to their unpaid wages, liquidated damages equal to 100% of their unpaid wages—and it is the employer’s burden to show that they had a good faith belief that the underpayment was in compliance with the law to avoid paying liquidated damages. These changes aligned the liquidated damages available under the Labor Law with those available under the federal Fair Labor Standards Act. *See, e.g.,* Bill Jacket, 2009 A.B. 6963, ch. 372, at 6 (expressing the sponsor’s intent to “conform New York law to the Fair Labor Standards Act”).

In other words, when an individual worker seeks damages for unpaid minimum wages or overtime under the Labor Law, the worker can recover double damages (their unpaid wages times two). Liquidated damages are critical to compensate workers for damages they may have incurred as a

result of not having been paid timely all the wages they legally had earned—damages which are otherwise difficult to measure and prove.

Unfortunately, a lesser-known section of the Civil Practice Law and Rules has been a barrier for many workers seeking to recover unpaid wages, liquidated damages, and statutory damages under the Labor Law through collectively filed class actions in state court. Several New York state courts have ruled that class action plaintiffs enforcing the Labor Law in state courts are not entitled to liquidated damages (which are awarded in individual actions as amounts equal to unpaid wages) due to a restriction in CPLR § 901(b) against recovering “penalties” in class actions. *See, e.g., Divljanovic v. Saks & Co.*, 2018 N.Y. Slip Op. 30236, at *12-13 (N.Y. Sup. Ct. 2018).

This interpretation of CPLR § 901(b) and the New York Labor Law persists despite recognition by numerous federal and state courts that the 2009 amendment to the Labor Law made liquidated damages compensatory rather than penal. For instance, *Rana v. Islam*, 887 F.3d 118, 123 (2d Cir. 2018), and *Vega v. CM & Assocs. Constr. Mgmt., LLC*, 175 A.D.3d 1144, 1146 (1st Dep’t 2019) acknowledged the amendments aimed to align the Labor Law’s liquidated damages provision with the Fair Labor Standards Act (FLSA), emphasizing compensation over deterrence. By contrast, the Labor Law explicitly provides for *penalties* against employers: these are authorized in another section altogether (NYLL § 197) and are recoverable by the Commissioner, not by workers in civil lawsuits.

However, some cases, like *Divljanovic* and *Griffin v. Gregorys Coffee Mgmt. LLC*, 2019 N.Y. Slip Op. 31125 (N.Y. Sup. Ct. 2019), have overlooked the legislative intent to categorize liquidated damages under the Labor Law as compensatory.

Moreover, class-wide claims for statutory damages under the Wage Theft Prevention Act have been disallowed by New York State courts based on their interpretation of CPLR § 901(b), which limits class-wide claims involving statutory minimum recoveries.

This interpretation forces workers pursuing class actions in state court to forgo their right to liquidated damages, effectively losing up to 50% of the damages they are owed. Additionally, it prevents them from making any class-wide claims for violations of the Wage Theft Prevention Act. Conversely, in federal court, such actions allow for the recovery of these damages on a class-wide basis, as seen in *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 413 (2010) and *Vargas v. Howard*, 324 F.R.D. 319 (S.D.N.Y. 2018).

The frequent inability to pursue Labor Law claims in federal court (because there is no basis for federal jurisdiction, such as a federal claim or diversity of citizenship) leaves workers without an effective means to recover liquidated damages for wage theft violations and statutory damages for Wage Theft Prevention Act violations. Many Labor Law class action cases cannot be brought in federal court because they fail to meet the \$75,000 threshold for diversity cases. However, class actions are critical to vindicate these low-wage worker’s rights. Indeed, as the appellate courts of this state have recognized, “a class action is the ‘superior vehicle’ for resolving wage disputes ‘since the damages allegedly suffered by an individual class member are likely to be insignificant, and the costs of prosecuting individual actions would result in the class members having no

realistic day in court.” *Stecko v. RLI Ins. Co.*, 121 A.D.3d 542, 543 (1st Dep’t 2014) (citations omitted); *Ferrari v. Nat’l Football League, Buffalo Bills, Inc.*, 61 N.Y.S.3d 421, 425 (4th Dep’t 2017) (same). However, under the currently-prevailing view of CPLR § 901(b), low-wage workers are deprived of statutory and liquidated damages when they have no alternative but to assert their Labor Law class action claims in state court.

For many of these workers, the status quo disincentivizes them from being able to bring state court class actions—and thus, leads to the Labor Law being underenforced. This underenforcement is a significant reason why employers continue to steal \$3 billion annually from New York workers—and why workers often have no effective remedy to redress these violations when there is no basis for federal jurisdiction.

LLEPA amends Sections 198 and 663 of the Labor Law to clarify that state court plaintiffs seeking class-wide relief for Labor Law violations will have the same rights as those in federal court to seek liquidated and statutory damages.

NELA/NY submits this memorandum in support of LLEPA because it will ensure that the Labor Law is enforced fully and effectively, and that it will be enforced equally in state and federal courts. We urge LLEPA’s swift passage in the Senate and Assembly.