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# Does New York's Wage Payment Law Have a Gaping Loophole?

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Article 6 of the New York Labor Law (Labor Law §§ 190-199-a) is a fee-shifting statute, the overall intent of which is to protect employees from having their rightful wages kept from them.[1] The statute "reflects the state's 'longstanding policy against the forfeiture of earned but undistributed wages.'"[2] To protect employees and remedy the imbalance of power between employers and employees,[3] it allows prevailing plaintiffs to recover unpaid wages, attorney fees and, unless the employer proves a good faith basis to believe that its underpayment of wages was legal, liquidated damages.[4]

Although passed "to strengthen and clarify the rights of employees to the payment of wages,"[5] Article 6 is poorly drafted, and courts have struggled to discern its meaning.[6]

Two of Article 6's key provisions are Labor Law §§ 193 and 198. Labor Law § 193 prohibits any deductions from an employee's wages unless the deduction is authorized and for the employee's benefit.[7] Labor Law § 198 provides that "All employees shall have the right to recover full wages, benefits and wage supplements and liquidated damages accrued during the six years previous to the commencing of such action[.]"[8]

Some courts narrowly construe § 193 by drawing a purported distinction between deducting and failing to pay wages. These courts also overlook § 198's rights-affirming language. As a result, these courts have concluded that Article 6 does *not* give all employees the right to recover unpaid wages.

The purported distinction between deducting and failing to pay wages is illusory and contrary to Labor Law § 193's text and purpose. Although "deduction from wages" is suggestive of a deduction notation on a pay-stub, the purported distinction between "deducting" and neglecting to pay wages was implicitly rejected by the Court of Appeals in *Ryan v. Kellogg Partners Institutional Services*.[9]

The plaintiff in *Ryan* sued under Labor Law § 193 to recover an unpaid, nondiscretionary $175,000 bonus and attorney fees under Labor Law § 198(1-a). The plaintiff won at trial, and the Appellate Division affirmed, as did the Court of Appeals, which held, *inter alia*, "Since Ryan's bonus…constitutes 'wages' within the meaning of Labor Law § 190(1), Kellogg's neglect to pay him the bonus violated Labor Law § 193…"[10]

Not all courts agree with *Ryan's* holding, however. As a result, there is uncertainty about whether § 193—the law that prohibits employers from taking even a small part of an employee's wages—has a gaping loophole that exempts employers who take *all* of an employee's wages.[11] As detailed herein, Article 6 does not contain any such loophole, gaping or otherwise.

Before exploring whether there is a meaningful distinction between deducting and failing to pay wages, one must ask whether it matters.

## Does It Matter Whether There Is a Distinction Between Deducting and Failing to Pay Wages Under Labor Law § 193?

No. A different section of Article 6, § 198, was amended in 1997 as part of the Unpaid Wages Prohibition Act to include the following rights-affirming or rights-creating language:

> *All employees shall have the right to recover full wages, benefits and wage supplements* accrued during the six years previous to the commencing of such action[.][12]

Why was that amendment necessary? Four years earlier, in *Gottlieb v. Kenneth D. Laub & Co.*,[13] the Court of Appeals concluded that the then-existing version of Labor Law § 198 was not "substantive." *Gottlieb* held that an employee who asserted a common-law contract claim but did not allege a violation of any substantive provision of Article 6, could not collect attorney fees under Labor Law § 198(1–a).[14]

The narrow holding in *Gottlieb* was understandable because § 198's rights-affirming language did not yet exist, and because the plaintiff apparently never invoked Labor Law § 193. But *Gottlieb* caused much confusion by implying in *dicta* that Article 6 does *not* protect the right of employees to receive the fruits of their labor (i.e., the wages owed under their employment agreement) *unless* the plaintiff is covered by § 191, which regulates the frequency of wage payments for certain classes of employees.[15]

That *dicta* was incorrect. With limited exceptions,[16] the earnings (wages) protected by Article 6 are determined by the parties' employment agreement.[17] Thus, a contractual right to the wages at issue is not a *bar* to a Labor Law § 193 claim, but a *prerequisite*.

In its first post-*Gottlieb* amendment to Article 6, the Legislature enacted the "Unpaid Wages Prohibition Act." Among other things, it amended § 198 to make clear that "*All* employees *shall* have the *right to recover* full wages, benefits and wage supplements accrued during the six

years previous to the commencing of such action[.]" McKinney's Labor Law § 198(3) (emphasis added).[18] The Legislature later enacted the Wage Theft Protection Act[19] which, *inter alia*, added "liquidated damages" to the list of things "[a]ll employees shall have the right to recover" in § 198(3).

Since Labor Law § 198(3) is part of Article 6 and mandates full payment of wages, § 198(1-a)'s reference to the "failure to pay the wage *required by this article*" encompasses § 198(3)'s mandate that "[a]ll employees shall have the right to recover full wages, benefits and wage supplements and liquidated damages[.]"

While the much narrower version of Labor Law § 198 in effect in 1993 was purely remedial, i.e., non-substantive, that does not mean the current version is as well. The Court of Appeals has explained that labels such as remedial, substantive, etc. are not very important in construing statutory amendments.[20] Thus, "even so-called 'remedial' statutes may in effect impose a liability where none existed before[.]"[21]

Bearing this in mind, it is hard to imagine a clearer expression of rights-affirming or rights-creating language than "*All* employees *shall* have the *right to recover* full wages, benefits and wage supplements and liquidated damages[.]"[22] It does not really matter what label one attaches to Labor Law § 198, however. Courts must give effect to a statute's "plain meaning,"[23] and § 198(3)'s meaning could hardly be plainer.

Further, statutes are to be harmonized and not interpreted in a way that would leave one section without meaning or force.[24] Labor Law § 198(3)'s rights-affirming language would be left without force unless one or more of Article 6's "substantive" provisions could be harmonized with § 198(3)'s command that "[a]ll employees shall have the right to recover full wages, benefits and wage supplements and liquidated damages[.]" If the "[a]ll employees shall have the right to recover" language of § 198(3) did not create substantive rights, then § 193 would then be left as the *only* "substantive" Article 6 provision through which employees not covered by § 191 could recover unpaid wages. Therefore, excluding the failure to pay earned wages from the universe of "any [unauthorized] deduction" from wages under § 193 would nullify § 198(3)'s guarantee that "*[a]ll employees shall have the right to recover full wages benefits and wage supplements and liquidated damages*"—an unacceptable result.

Although *Gottlieb* was effectively superseded by 1997's Unpaid Wages Prohibition Act, and criticized as "ambiguous" and as having "perhaps unintended" consequences,[25] the confusion it caused was not contained until the Court of Appeals held in *Pachter v. Hodes*[26] that employees are covered by Article 6's provisions except where expressly excluded.[27]

Nonetheless, while some courts now acknowledge Labor Law § 198 as a source of substantive rights,[28] few seem to notice that it now has unequivocal rights-affirming language. And one court that did notice § 198's unequivocal rights-affirming language (*Malinowski v. Wall Street Source, Inc.*[29]) apparently did not realize it was added *after Gottlieb* was decided, and as a result, it cited *Gottlieb* for the proposition that this *post-Gottlieb* statutory language does not mean what it says.[30]

Since there is no telling how long it will take before most courts give effect to Labor Law § 198(3)'s rights-affirming language, one must still explore the purported distinction between deducting and failing to pay wages under § 193—it is the only other Article 6 provision through which employees not covered by § 191 can recover their unpaid wages and liquidated damages.

## The Purported Distinction Between Deducting and Failing to Pay Wages Contravenes § 193's Purpose

"[Labor Law § 193] was derived from former sections 10–13 of the Labor Law (L. 1909, ch. 36, §§ 10–13), which required employers to '*full[y]* and prompt[ly]' *pay earned wages*."[31] "[T]he inequity that the Legislature sought to prevent" in enacting § 193 was employers benefitting from employees' earned wages.[32]

This begs the question: What could be more destructive of Labor Law § 193's purpose than to exempt from liability employers who benefit the most from employees' wages, i.e., those who keep *all* of an employee's earned wages? If one were to accept the purported distinction between deducting and failing to pay wages, the employer in *Ryan* that owed a $175,000 nondiscretionary bonus could be liable for withholding $10, $1,000 or even $174,999 from the bonus paycheck (at least if those sums were noted on a paystub), but *not* for withholding the entire $175,000.

Courts adopting this myopic view of Labor Law § 193 fail to ask the critical question—"*Why?*" As in, "*Why* is it wrong for an employer to make an unauthorized deduction from an employee's wages?" Surely it is not because deducting part of the employee's paycheck is worse than taking the entire paycheck. Rather, it is because an employee's wages represent the fruits of his labor and have been deemed worthy of special protection. The idea that § 193 exempts total wage deprivations is irreconcilably inconsistent with the law's goal of preventing employers from benefiting from employees' wages.

## Mistaking The "Shadow on the Wall of the Cave" for the Real Thing

The purported distinction between deducting and failing to pay wages misapprehends the concept of a "deduction" and the intangible nature of what is being

deducted. As a result, it wrongly assumes a deduction is something that can be seen—like a notation on a paystub.[33] While the phrase "deduction from…wages" in Labor Law § 193 is suggestive of a notation on a paystub denoting a subtraction from wages, a paystub notation is not a "deduction" at all; it is only a *manifestation* of a deduction—a proverbial shadow on the wall of the cave.

Upon further analysis, one can see why deducting and failing to pay wages are really the same thing. "A 'deduction' is literally an act of taking away or subtraction."[34] How are wages taken away or subtracted? To answer that one must answer a more basic question: What are wages?

Wages are "a specialized type of property"[35] that "belong to the wage earner until they are pledged or committed to another."[36] Labor Law § 190(1) defines "wages" as the "earnings" of an employee for labor or services rendered, and "earnings" means "any economic good to which a person becomes entitled for rendering economic service."[37]

"As a right, claim or interest against the employer, wages yet to be received are intangible property."[38] The question then is: How does one "take away" something with no physical existence?

The word "take" has several meanings, including "to deprive one of the use or possession of; to assume ownership."[39] Since a "deduction" is "an act of taking away or subtraction,"[40] and a "taking" is a deprivation, an employee's earned and due wages are "deducted" when the employee is "deprived" of them.[41]

## The Term "*Any* Deduction" Is Sweeping in Its Scope, and Encompasses "Indirect" and "Constructive" Deductions

Even if one assumes a failure to pay earned wages is an "indirect" rather than "direct" deduction (a dubious assumption), the deductions barred by Labor Law § 193 are not limited to "direct," "specific" or "payroll" deductions. Instead, § 193 applies "*any* deduction from the wages of an employee" except for deductions that are authorized and for the employee's benefit.

As the Court of Appeals has observed, "the word 'any' means 'all' or 'every' and imports no limitation,"[42] and "is as inclusive as any other word in the English language."[43] In this regard, the Second Circuit has concluded:

> [T]he word 'any' has an expansive meaning," and thus, so long as "Congress did not add any language limiting the breadth of that word," *the term 'any' must be given literal effect*.[44]

Since the word "any" generally indicates a legislative "intent to sweep broadly to reach *all varieties of the item referenced*,"[45] it encompasses "indirect" or "constructive" varieties of the items referenced. Accordingly, just as a law concerning "'any payment' is clearly sweeping in its scope and embraces both direct and indirect payments,"[46] the phrase "any deduction" is clearly sweeping in its scope and embraces both direct and indirect deductions.[47]

Further, Article 6's drafters were familiar with the more restrictive term "payroll deductions" because it is found in Personal Property Law Article 3-a, which is referenced in Labor Law § 193(4).[48] But they chose not to use that more restrictive term when drafting § 193's prohibition against "any deduction from the wages of an employee[.]"

In addition, Article 6's substantive provisions should be liberally interpreted in favor of the employee.[49]

Finally, one must give the term "*any* deduction" its plain meaning in order to maintain the consistency of purpose between Labor Law § 193(1) and § 193(3[a]) (formerly subdivision (2)), which was added in 1974 to "prohibit wage deductions by *indirect means* where direct deduction would violate the statute."[50]

## The Idea That a Specific Mental State Must Be Proved to Establish a § 193 Violation

The purported distinction between deducting and failing to pay wages seems to assume that the statute is violated only when the employer is shown to have acted with a culpable mental state[51]—one that apparently can only be shown by a deduction notation on a paystub.[52] However, even employers who prove they acted in good faith are subject to Article 6 liability for unpaid wages and attorney fees (but not liquidated damages).[53]

A wage is either owed or it isn't. Employers have a statutory duty to provide employees with enough information to know what they will be paid for the work they perform.[54] An employer is thus actually or constructively aware that an employee's wages will not be paid unless certain conditions are met, and that ignoring those conditions will cause the employee's wages to be unpaid and the employer to be correspondingly enriched by the fruits of the employee's labor.

Even if Labor Law § 193 had an intent requirement, it is naïve to suppose an employer that enriches itself by keeping the fruits of another person's labor does so with no intent. "[T]he common law rule [is] that a man is held to intend the foreseeable consequences of his conduct,"[55] and it is foreseeable that an employee's wages will not be paid if the employer fails to carefully define, keep track of, and honor its wage payment obligations.

Finally, grafting an intent requirement onto Labor Law § 193 would make § 193 incompatable with Article 6's other provisions which contain no such intent requirement.[56]

## Case Law Outside the Article 6 Context

Case law outside the Article 6 context also casts doubt on the purported distinction between deducting and failing to pay wages. For example, in the due process case of *Sniadach v. Family Finance Corp. of Bay View*,[57] the Supreme Court found an employer's "interim freezing" of wages pursuant to a wage garnishment to be a "taking of one's property [that] is so obvious[.]"[58] If a "taking away" is a "deduction,"[59] and a temporary wage deprivation of indefinite duration is an obvious "taking," then the *permanent* deprivation of one's earned wages is an even more obvious "taking," i.e., "deduction."

Similarly, courts interpreting federal wage and hour laws generally refuse to distinguish between a deduction and a failure to pay. Typical in this regard is *De Leon-Granados v. Eller & Sons Trees, Inc*.[60] In holding an employer liable for willfully violating federal wage and hour laws, the *De Leon-Granados* court explained that "Department of Labor officials made clear that there was no difference between deducting an expense and failing to reimburse the expense."[61]

Likewise, a California appeals court in *Grier v. Alameda-Contra Costa Transit Dist.* held that "to withhold wages for work actually performed *** constitutes a deduction from wages."[62]

## Examples Showing Why The Distinction Between Deducting and Failing to Pay Wages Is Illusory

To illustrate why the distinction between deducting and failing to pay wages is illusory and leads to uncertain and indefensible results, consider the variations on the following fact pattern:

Joy is hired as a warehouse manager for her employer, Acme Corp., a glassware manufacturer. Acme agrees to pay Joy an annual salary, plus an end-of-year performance-based commission of $1 for each and every crate of glassware she ships from the warehouse. Throughout the year she ships 11,000 crates of glassware. 1,000 of these are later found to have contained broken glassware when they left the warehouse.

### Wage Deprivation 1

Joy's paystub notes the following:

| | |
|---|---|
| Commission: | $11,000 |
| Damaged merchandise deduction: | -$1,000 |
| Wages included in this check: | $10,000 |

### Wage Deprivation 2

Joy's paystub simply notes "Commission: $10,000." In other words, the $1,000 Acme deducted is not noted on Joy's paystub. When Joy asks about the $1,000 shortfall, Acme's owner tells her he "*decided to subtract*" $1 for each crate that contained broken glassware.

While there is no difference to either Joy or Acme in these two examples, the mere absence of a deduction notation on Joy's paystub in Deprivation 2 could lead at least some judges to deny Joy's § 193 claim on the ground that it involves "merely a failure to pay wages."[63]

However, if confronted with Deprivations 1 and 2 side by side, most jurists who believe a failure to pay is not a deduction would presumably retreat to a more "defensible" position, perhaps arguing that Acme's verbal reference to a "subtraction" is the equivalent of a paystub notation.

OK then, let us slightly alter the facts of Wage Deprivation 2. Let us now suppose the following:

### Wage Deprivation 3

Upon being sued for violating § 193, Acme denies the conversation about a "subtraction" ever happened (as it likely would), and falsely claims that Joy's commission was purely discretionary. What then? The jurists who had taken a step away from the wall of the cave and towards the outside world might then retreat back to the safety of the wall of the cave, asserting that "[t]his dispute as to the calculation of the net amount does not reflect a deduction from wages within the meaning of section 193[.]"[64]

But let us suppose some of these jurists would be willing to take another step away from the wall of the cave and towards the outside world, and allow a jury to decide whether Acme's owner mentioned the word "subtract." And let us suppose that at trial it was proved that Acme's owner didn't use the word "deduct" or "subtract," but simply told Joy she "*didn't deserve*" $1 for each crate with broken glassware. Or something vaguer still, like he "*expects more from her*." Where does one draw the line?

Next consider this example:

### Wage Deprivation 4

Acme's owner tells Joy her work is outstanding and that he has chosen to exercise his (alleged) discretion to pay her a $10,000 commission. When Joy points out that she is owed $11,000, Acme's owner says he disagrees. Since Joy's wages (i.e., her right to be paid her earnings) are $11,000, when Joy receives a check for gross wages of only $10,000 can it be said that $1,000 has *not* been deducted from her wages?

If a deduction from wages is something other than a deprivation of the wages due and owing, then what is it? Must there be a deduction notation on a paystub before the employer can be liable for violating Labor Law § 193? If so, why? Must there be some trace of employer rumination about damaged goods? If so, why? What quantum of cognition would be needed? How would that quantum of cognition be verified? What if the employer's disappointment about damaged goods was one of two reasons motivating the employer (or one of three, four, or five reasons)?

What if the employer is not thinking about damaged goods, but simply prefers to keep Joy's earned wages because it can? Even if intent were an issue, isn't the employer's intent to keep Joy's property readily inferable by the employer enriching itself with the fruits of Joy's labor?

Or what if Acme is cash-strapped and promises Joy a $30,000 bonus if she meets certain performance targets. When Acme makes that promise to induce added labor on Joy's part, doesn't it have a duty to ensure it is not making a promise it cannot keep?[65] Next consider this example:

### Wage Deprivation 5

Acme's owner never pays Joy any commission, but issues her a check for $0 and a paystub with the following notations:

$11,000
-$11,000

A deduction, right? So what's the difference if Joy receives the same amount ($0) without receiving the piece of paper? One could argue that pairing the written manifestation of a deduction with a written admission of the wages otherwise due and owing (i.e., a paystub listing both gross pay and the sum deducted) proves the employer's awareness that $11,000 was owed. But even if that were true, it wouldn't make the reverse true, i.e., the absence of an "$11,000" notation wouldn't prove the employer was not aware it owed $11,000.

Conversely, the written deduction notation by itself does not prove the deduction was from "wages."[66] A deduction notation on a paystub may be helpful, but is by no means necessary, to prove a deduction from wages.

Now let us suppose Acme is determined to withhold 50% of Joy's wages from the next two paychecks. Knowing this, Acme's counsel advises Acme to try to avoid Labor Law § 193 liability by withholding one of the two paychecks altogether. Is that a defensible outcome?

Limiting principles are nowhere to be found in the ill-fated quest to distinguish a deduction from a failure to pay wages. That is because oft-cited examples of unauthorized deductions are only particularized manifestations of the inequity sought to be remedied, namely, employers benefiting from employees' earned wages.

## Conclusion

All courts construing Article 6 should respect the Legislature's command that "[a]ll employees shall have the right to recover full wages, benefits and wage supplements and liquidated damages[,]"[67] and bid farewell to the false dichotomy between deducting and failing to pay wages. Only then will Article 6's goal of protecting earned wages be fully realized.

## Endnotes

1. *In re CIS Corp.*, 206 B.R. 680, 687 (Bkrtcy. S.D.N.Y. 1997).
2. *Dreyfuss v. eTelecare Global Solutions-US, Inc.*, 2010 WL 4058143, at *5 (S.D.N.Y. 2010) (citations omitted).
3. *Chu Chung v. New Silver Palace Restaurants, Inc.*, 272 F. Supp. 2d 314, 317 (S.D.N.Y. 2003) ("The New York Labor law was enacted to protect employees, and to remedy the imbalance of power between employers and employees.") (citation omitted).
4. N.Y. Lab. L. 198(1-a), (3).
5. *Angello v. Labor Ready, Inc.*, 7 N.Y.3d 579, 583-84, 825 N.Y.S.2d 674, 676 (2006), citing, *inter alia*, *Truelove v. Northeast Capital & Advisory,* 95 N.Y.2d 220, 223, 715 N.Y.S.2d 366 (2000) and Mem. of Indus. Commr., June 3, 1966, Bill Jacket, L. 1966, ch. 548, at 4.
6. *Cf. Chu Chung v. New Silver Palace Restaurants, Inc.*, 272 F. Supp. 2d 314, 316 (S.D.N.Y. 2003) (stating that "[some] cases that deal with different provisions of Article [6] … do so narrowly, without looking at other provisions of Article [6] of the New York Labor Law.").
7. N.Y. Lab. L. § 193 (2012); *See also Pachter v. Bernard Hodes Group, Inc.*, 10 N.Y.3d 609, 616, 861 N.Y.S.2d 246, 249-50 (2008) (holding that executives are covered by the provision of Article 6 unless expressly excluded).
8. N.Y. Lab. L. § 198(3) (2010).
9. 19 N.Y.3d 1, 16, 945 N.Y.S.2d 593, 602 (2012).
10. *Ryan*, *supra*, 19 N.Y.3d at 16, 945 N.Y.S.2d at 602 (citation omitted).
11. *See*, *e.g.*, *Gold v. American Medical Alert Corp.*, 2015 WL 4887525, at *2-5 (S.D.N.Y. 2015) (Stating that "Plaintiff has not pled 'any deduction' from wages because the deduction Plaintiff claims is merely the total withholding of wages, which is the essence of the breach of contract claim.").
12. *See* Labor Law—Unpaid Wages Prohibition Act, 1997 Sess. Law News of N.Y. Ch. 605 (S. 5071–C) (McKinney's) (emphasis added); *See also* Labor Law—Wage Theft Prevention Act, 2010 Sess. Law News of N.Y. Ch. 564 (S. 8380) (McKinney's) (adding the words "and liquidated damages" to Labor Law § 198(3)).
13. 82 N.Y.2d 457, 462, 605 N.Y.S.2d 213 (1993).
14. *See Pachter v. Bernard Hodes Group, Inc.*, 861 N.Y.S.2d 246, 250, 10 N.Y.3d 609, 616 (2008) (discussing limitation of holding in *Gottlieb*).
15. *Gottlieb*, 82 N.Y.2d at 462 (implying that agreed upon wages are not "statutory wages" protected by Article 6, and incorrectly stating that some employees are "in all … respects … excluded from wage enforcement protection under … article 6."
16. *See*, *e.g.*, McKinney's Labor Law § 194 (2016) (prohibiting unequal compensation between the sexes for substantially equal work).
17. *See*, *e.g.*, *Hammond v. Lifestyle Forms and Display Co., Inc.*, 2009 WL 10313837, at *3 (E.D.N.Y. 2009).
18. Labor Law—Unpaid Wages Prohibition Act, 1997 Sess. Law News of N.Y. Ch. 605 (S. 5071–C) (McKinney's).
19. Labor Law—Wage Theft Prevention Act, 2010 Sess. Law News of N.Y. Ch. 564 (S. 8380) (McKinney's).
20. *Becker v. Huss Co., Inc.*, 43 N.Y.2d 527, 540-41, 402 N.Y.S.2d 980, 984, 373 N.E.2d 1205, 1209 (1978), citing Judge Cardozo's "penetrating discussion" of the issue in *Berkovitz v. Arbib & Houlberg*, 230 N.Y. 261, 268 130 N.E. 288, 289 (1921).
21. *Anonymous v. Anonymous*, 40 Misc.2d 492, 498, 243 N.Y.S.2d 630, 636-37 (N.Y.Fam.Ct. 1963), citing *Jacobus v. Colgate*, 217 N.Y. 235, 111 N.E. 837 (1916).
22. N.Y. Lab. L. § 198(3) (2010) (emphasis added).
23. *Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 N.Y.2d 577, 583, 673 N.Y.S.2d 966, 968 (1998).
24. McKinney's Cons.Laws of New York, Book 1, Statutes, § 98; *Matter of Albano v. Kirby*, 36 N.Y.2d 526, 530, 369 N.Y.S.2d 655 (1975).

25. *Hart v. Dresdner Kleinwort Wasserstein Securities, LLC*, 2006 WL 2356157, at *4 (S.D.N.Y. 2006), *quoting Miteva v. Third Point Management Co., L.L.C.*, 323 F.Supp.2d 573, 581 (S.D.N.Y. 2004); *See also Monagle v. Scholastic, Inc.*, 2007 WL 766282, at *1 (S.D.N.Y. 2007) (observing that "Judge Marrero's scholarly analysis in [*Miteva*], has persuaded most courts that th[e] position [set forth in *Gottlieb*] is incorrect[.]").

26. 10 N.Y.3d 609, 861 N.Y.S.2d 246 (2008).

27. *Id.*, 10 N.Y.3d at 616, 861 N.Y.S.2d at 250.

28. *See*, *e.g.*, *Tini v. AllianceBernstein, L.P.*, 108 A.D.3d 409, 410, 968 N.Y.S.2d 488, 489 (1st Dep't 2013) ("as unpaid salary and commission constitute [w]age' under Labor Law § 190(1), plaintiff has stated a claim under Labor Law § 198.") (citation omitted).

29. 2012 WL 279450, at *2 (S.D.N.Y. 2012).

30. *Id.*

31. *Marsh v. Prudential Securities Inc.*, 770 N.Y.S.2d 271, 274, 1 N.Y.3d 146, 153 (2003) (Emphasis added), citing *Matter of Hudacs v. Frito–Lay, Inc.*, 90 N.Y.2d 342, 347, 660 N.Y.S.2d 700 (1997).

32. *Angello v. Labor Ready, Inc.*, 825 N.Y.S.2d 674, 678, 7 N.Y.3d 579, 586 (2006).

33. *See*, *e.g.*, *Strohl v. Brite Adventure Center, Inc.*, No. 08–CV–259, 2009 WL 2824585, at *9 (E.D.N.Y. Aug. 28, 2009) (dismissing claim where the plaintiff alleged the defendant violated § 193 by adjusting her total hours downward as a penalty for punching in before or after her 8:00 a.m. start time because the "defendants did not 'deduct' any amount from [the plaintiff's] wages, but simply failed to pay her all the wages she had earned.").

34. *Angello v. Labor Ready, Inc.*, 7 N.Y.3d 579, 584 (2006).

35. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 340 (1969).

36. *Epps v. Cortese*, 326 F.Supp. 127, 133 (E.D. Pa. 1971), *vacated on different grounds*, *Fuentes v. Shevin*, 407 U.S. 67 (1972); *see also U.S. v. Larson*, 2013 WL 6196292, at *2 (W.D.N.Y. 2013) ("'wages and benefits pursuant to a labor contract' constitute extortable property" because, *inter alia*, "a contract and contractual rights can be assigned, and therefore constitute something of value that can be exercised, transferred or sold").

37. *Strand v. Hansen Seaway Service, Ltd.*, 614 F.2d 572, 576 (7th Cir. 1980), citing Webster's New International Dictionary, 2d Ed., unabridged 1937.

38. *American Standard Life & Accident Co. v. Speros*, 494 N.W.2d 599, 605, n. 9 (N.D. 1993).

39. *Black's Law Dictionary* (6th ed. 1990) p. 1453; *see also Black's Law Dictionary* (6th ed. 1990) p. 1453 (defining "take" to mean, *inter* alia, "to deprive one of the use or possession of; to assume ownership."); *State v. G.C.*, 572 So. 2d 1380, 1382 (Fla. 1991) ("Deprive is defined as 'to take away'; 'to take something away'; 'to keep from the possession, enjoyment, or use of something.'"), citing *Webster's Third New Int'l Dictionary* 606-607 (1986); *People v. Banks*, 75 Ill. 2d 383, 389, 388 N.E.2d 1244, 1247 (1979) ("*Webster's Third New International Dictionary* 606 (1971) defines 'deprive' as 'to take away: remove, destroy; to take something away from: divest, * * * to keep from the possession, enjoyment, or use of something.'"); *State v. Smith*, 2001 WL 283388, at *5 (Conn. Super. Ct. Mar. 7, 2001) ("*Webster's Third New International Dictionary* defines 'take away' as meaning *** 'to cause deprivation of,' ***.'") (emphasis added).

40. *Angello*, *supra*, 7 N.Y.3d at 584.

41. *See*, *e.g.*, *Ryan*, *supra*, 945 N.Y.S.2d at 602, 19 N.Y.3d at 16 (employer's neglect to pay nondiscretionary bonus violated § Labor Law 193); *Tuttle v. Go. McQuesten Co., Inc.*, 227 A.D.2d 754, 642 N.Y.S.2d 356, 357-58 (3d Dep't 1996) ("…withheld moneys constituted 'wages' pursuant to Labor Law § 190 and, thus, under Labor Law article 6, defendant was not entitled to withhold these payments as a matter of law.") (citing § 193).

42. *Zion v. Kurtz*, 50 N.Y.2d 92, 104, 687, 428 N.Y.S.2d 199, 205 (1980).

43. *New Amsterdam Casualty Co. v. Stecker*, 3 N.Y.2d 1, 5, 163 N.Y.S.2d 626 (1957); *see also Dep't of Hous. and Urban Dev. v. Rucker*, 535 U.S. 125, 131-32 (2002) ("[T]he word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'").

44. *Jute v. Hamilton Sundstrand Corp.*, 420 F.3d 166, 174 (2d Cir. 2005) (emphasis added; citation omitted).

45. *Cohen v. JP Morgan Chase & Co.*, 498 F.3d 111, 117 (2d Cir. 2007) (emphasis added), citing, *inter alia, United States v. Gonzales,* 520 U.S. 1, 5 (1997).

46. *U.S. v. Lanni*, 466 F.2d 1102, 1108-09 (3d Cir. 1972); *see also Charles v. Diamond*, 47 A.D.2d 426, 430, 366 N.Y.S.2d 921, 926 (4th Dep't 1975) (law conferring jurisdiction over claims for the appropriation of "any real or personal property" extends to a claim arising out of an unconstitutional "*de facto* appropriation of private property") (citation omitted); *Procter & Gamble Co. v. Chesebrough-Pond's Inc.*, 747 F.2d 114, 118-19 (2d Cir. 1984) (phrase "any false description or representation" in Lanham Act embraces false "innuendo, indirect intimations, and ambiguous suggestions"); *Ennabe v. Manosa*, 319 P.3d 201, 212, 168 Cal.Rptr.3d 440, 453, 58 Cal.4th 697, 714 (Cal. 2014) ("Use of the term 'any' to modify the words 'transaction' and 'consideration' demonstrates the Legislature intended the law to have a broad sweep and thus include both indirect as well as direct transactions."); *U.S. v. Quong*, 303 F.2d 499, 503 (6th Cir. 1962) ("The term 'any interest' must be defined in the broadest sense and includes any interest whatsoever, direct or indirect."); *Grogan v. Hillman*, 930 So.2d 520, 523 (Ala.Civ.App. 2005) ("Given its natural and plain meaning, the term 'any possession' includes 'constructive possession.'"); *State v. Bradley*, 782 N.W.2d 674, 679, 2010 S.D. 40, ¶ 15 (S.D. 2010) (phrase "any custody" includes "constructive" custody), citing *Murphy v. United States,* 481 F.2d 57, 61 (8th Cir.1973); *Harris v. New Castle County*, 513 A.2d 1307, 1309 (Del. 1986) (phrase "any recovery" includes "indirect" recovery of damages from a third party).

47. *See*, *e.g.*, *Martinez v. Alubon, LTD.*, 111 A.D.3d 500, 501, 978 N.Y.S.2d 119, 121 (1st Dep't 2013) ("The protections of section 193 extend not only to completed deductions, but also to 'attempted wage deductions' that would violate the statute if consummated.") (citations omitted).

48. *See* Personal Property L. §§ 46.2 and 48-d. Personal Property Law Article 3-a is referred to in Labor Law § 193(4), which means that § 193's drafters were presumably familiar with the more restrictive term "payroll deductions" and chose not to include it in § 193(1).

49. *See*, *e.g.*, *Samiento v. World Yacht Inc.*, 10 N.Y.3d 70, 78, 854 N.Y.S.2d 53 (2008) ("[Section 196-d] should be liberally construed in favor of the employees."); *Martinez v. Alubon, LTD.*, 111 A.D.3d 500, 501, 978 N.Y.S.2d 119, 121 (1st Dep't 2013) ("The protections of section 193 extend not only to completed deductions, but also to 'attempted wage deductions' that would violate the statute if consummated.") (citations omitted).

50. *Angello v Labor Ready, Inc.*, 7 N.Y.3d 579, 585, 825 N.Y.S.2d 674 (2006) (emphasis added; citations omitted).

51. *See*, *e.g.*, *Gold v. American Medical Alert Corp.*, 2015 WL 4887525, at *4 (S.D.N.Y. 2015) (conceding that § 193 "is plausibly susceptible to a broader interpretation" that encompasses an employer's failure to pay earned wages, but rejecting that "broader interpretation" because it "would include an employer withholding the entire amount of a salary because it contends, as here, that it fired an employee for good cause").

52. *See*, *e.g.*, *Strohl v. Brite Adventure Center, Inc.*, No. 08–CV–259, 2009 WL 2824585, at *9 (E.D.N.Y. Aug. 28, 2009) (dismissing an improper deduction claim where the plaintiff alleged the defendant violated § 193 by adjusting her total hours downward as a penalty for punching in before or after her 8:00 a.m. start time because the "defendants did not 'deduct' any amount from [the plaintiff's] wages, but simply failed to pay her all the wages she had earned.").

53. N.Y. Lab. L. § 198(1-a).

54. *See* N.Y. Lab. L. § 195.

55. *Radio Officers' Union of Commercial Telegraphers Union, A. F. L. v. N. L. R. B.*, 347 U.S. 17, 45 (1954) ("This recognition that specific proof of intent is unnecessary where employer conduct inherently encourages or discourages union membership is but an application of the common law rule that a man is held to intend the foreseeable consequences of his conduct."); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 583, n.6 (2010) ("If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent."). In *Jerman*, the Supreme Court approvingly cited W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 110 (5th ed. 1984) for the proposition that "[I]f one intentionally interferes with the interests of others, he is often subject to liability notwithstanding the invasion was made under an erroneous belief as to some...legal matter that would have justified the conduct[.]" 559 U.S. at 583. *Jerman* also approvingly cited the Restatement (Second) of Torts § 164, and Comment *e* (1963–1964) for the proposition that the intentional tort of trespass can be committed despite the actor's mistaken belief that she has a legal right to enter the property. *Id.*

56. *See, e.g., People v. Vetri*, 309 N.Y. 401, 406 (1955) (construing predecessor to § 191) (citations omitted); *Polyfusion Electronics, Inc. v. Promark Electronics, Inc.*, 108 A.D.3d 1186, 1187-88, 970 N.Y.S.2d 651, 652-53 (4th Dep't 2013) (construing Labor Law § 191-c). Section 194 is also a strict liability statute because it is analyzed under the same standards as the federal Equal Pay Act. *Belfi v. Prendergast*, 191 F.3d 129, 135 (2d Cir. 1999).

57. 395 U.S. 337 (1969).

58. *Sniadach, supra*, 395 U.S. at 342.

59. *Angello v. Labor Ready, Inc.*, 7 N.Y.3d at 584.

60. 581 F. Supp. 2d 1295 (N.D. Ga. 2008).

61. *Id.*, 581 F. Supp. 2d at 1315; *see also Arriaga v. Florida Pacific Farms, L.L.C.*, 305 F.3d 1228, 1236 (11th Cir. 2002) ("there is no legal difference between deducting a cost directly from the worker's wages and shifting a cost, which they could not deduct, for the employee to bear.").

62. 127 Cal.Rptr. 525, 532, 55 Cal.App.3d 325, 335 (Cal.App. 1976).

63. *See Kane v. Waterfront Media, Inc.*, 2008 WL 3996234 (Sup. Ct., N.Y. Co. 2008) ("The court rejects plaintiff's contention that defendants' reduction of the commission percentages to which she was entitled under the contract supports a claim under Labor Law § 193. At most, plaintiff only alleges a failure to pay wages. To state a claim for violation of Labor Law § 193, a plaintiff must allege a specific deduction from wages and not merely a failure to pay wages.") (citation omitted).

64. See Kletter v. Fleming, 32 A.D.3d 566, 567, 820 N.Y.S.2d 348, 349-50 (3d Dep't 2006).

65. *See, e.g., Polyfusion Electronics, Inc. v. Promark Electronics, Inc.*, 108 A.D.3d 1186, 1187-88, 970 N.Y.S.2d 651, 652-53 (4th Dep't 2013) (imposing double damages against manufacturer under § 191-c where, due to financial difficulties, it failed to pay earned commissions within five days of the date the parties' contract was terminated).

66. *See, e.g., Pachter v. Bernard Hodes Group, Inc.*, 861 N.Y.S.2d 246, 252, 10 N.Y.3d 609, 618 (2008).

67. N.Y. Lab. L. § 198(3).

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