



# ALERT

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## SECOND CIRCUIT REJECTS STACKED LIQUIDATED DAMAGES IN WAGE & HOUR CASES

By Glenn S. Grindlinger

Finally, some good news for employers. On December 7, 2016, in *Chowdhury v. Hamza Express Food Corp., et al.*, No 15-3142 (2d Cir. Dec. 7, 2016), the U.S. Court of Appeals for the Second Circuit held that successful plaintiffs in wage and hour actions could not stack liquidated damages under New York Labor Law on top of liquidated damages under the Fair Labor Standards Act (FLSA). Thus, in wage and hour violations New York employers are only liable once for liquidated damages and plaintiffs cannot receive liquidated damages on top of liquidated damages.

Under both the FLSA and New York Labor Law, successful plaintiffs can recover the wages that are owed to them plus liquidated damages in an additional amount equal to the wages owed to them (i.e., 100 percent of the back wages owed). Because the FLSA and New York Labor Law run concurrently, plaintiffs often claim that they are entitled to back wages owed, FLSA liquidated damages and New York liquidated damages – in other words, double liquidated damages. This concept is known as “stacking.” New York trial courts were split on whether successful plaintiffs could stack liquidated damages, with some holding that they could and others that they could not.

In *Chowdhury*, the Second Circuit noted that there was “a split among district courts as to whether such ‘cumulative’ or ‘stacked’ liquidated damages are available[.]” The *Chowdhury* court looked to the

legislative history of liquidated damages under New York law for wage and hour violations and noted that such history “suggest[s] an intent in aligning [the New York Labor Law’s] liquidated damages provision with the FLSA.” Because of this, liquidated damages under the FLSA and New York law “are identical in all material respects, serve the same function and redress the same injuries.” Therefore, according to the *Chowdhury* court, liquidated damages cannot be stacked as it would permit a plaintiff to earn a double recovery for the same injury, which the law does not permit.

The *Chowdhury* decision is certainly good news for New York employers. It reinforces the concept that successful plaintiffs cannot earn a double recovery for wage and hour violations. However, such violations can still be costly for employers as the damages that are permitted are significant. Therefore, the best practice for New York employers is to continually review their wage and hour practices and policies to ensure that they remain complaint with the FLSA and New York law.

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