



# Labor & Employment Issues In Focus

Pitta LLP  
For Clients and Friends  
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## **SECOND CIRCUIT GRANTS REQUEST FOR STAY IN 50A CASE**

The Second Circuit Court of Appeals this week granted New York City law enforcement unions' request for a stay of the federal District Court's order lifting the Temporary Restraining Order (TRO) while on appeal in their lawsuit challenging the City's proposed release of officers' disciplinary records. *Uniformed Fire Officers Association, et al. v. de Blasio, et al.*, 1:20-cv-05441-KPF.

On August 21, 2020, United States Southern District Judge Katherine Polk Failla denied the unions' motion for a preliminary injunction and lifted the TRO which had been preventing the New York Police Department (NYPD) and Civilian Complaint Review Board (CCRB) from releasing pending, as well as exonerated and unsubstantiated, allegations against law enforcement. She stayed her decision until Monday to allow parties to appeal. The unions immediately appealed the Court's order and asked for a stay pending that appeal.

On Wednesday, the Second Circuit granted the request for a stay. The Court set a briefing schedule and will soon set a date for oral arguments. The stay remains in place until then. This stay does not apply to information released before the commencement of litigation.

## **FEMA APPROVES NY APPLICATION TO PROVIDE ADDITIONAL UNEMPLOYMENT PAYMENTS TO NEW YORKERS**

On August 8, 2020, President Donald Trump issued a Presidential Memorandum directing the Federal Emergency Management Agency ("FEMA") to make available up to \$44 billion from the Department of Homeland Security's Disaster Relief Fund ("DRF") for "lost wage assistance to eligible claimants, to supplement State expenditures in providing these payments." More specifically, the Memorandum authorizes FEMA to approve lost wage assistance programs that provide an additional \$400 per week, of which \$300 would come from the federal government and \$100 from the state. The Memorandum provides for assistance through December 27, 2020, unless FEMA expends the \$44 billion sooner or Congress acts to replace the program.

The U.S. Department of Labor later clarified that while it encouraged states to provide the additional \$100, a state's funding obligation could be met with the benefits used to pay regular state unemployment insurance. Thus, in states approved for a grant by FEMA, eligible claimants will receive either \$300 or \$400 depending on whether their state authorizes the additional \$100. Notably, the Memorandum's definition of "eligible claimants" restricts recipients to those receiving at least \$100 per week as part of an individual's regular unemployment insurance award.

On August 23, 2020, FEMA approved New York for a grant under the Lost Wages Assistance ("LWA") program. According to FEMA's press release, "FEMA's grant funding will allow New York to provide \$300 per week -- on top of their regular unemployment benefit -- to

those unemployed due to COVID-19. FEMA will work with New York Governor Andrew M. Cuomo to implement a system to make this funding available to New York residents.” New York will not be providing the additional \$100 that the U.S. Department of Labor encourages states to provide as part of the LWA program; New York State Budget Director Robert Mujica claims the State does not have the resources to provide the additional funds. New York has not started issuing payment to date, but the program will be retroactive to the beginning of August. This is a link to guidance from the New York State Department of Labor on the LWA program: <https://labor.ny.gov/ui/pdfs/lwa-factsheet.pdf>.

### **CALIFORNIA FEDERAL COURT RULES THAT AMAZON DELIVERY DRIVERS CAN AVOID ARBITRATION**

The United States Court of Appeals for the Ninth Circuit in *Rittmann v. Amazon, Inc.*, 9<sup>th</sup> Cir., No. 19-35381 (8/19/20) upheld a Washington federal district court ruling that Amazon drivers could avoid arbitration for claims that Amazon misclassified the drivers as independent contractors. The decision also holds that Amazon owes the drivers unpaid minimum wages and overtime payments.

Judge Milan D. Smith of the Ninth Circuit reasoned that Amazon drivers that made “last mile” deliveries are engaged in interstate commerce and cannot be forced into arbitration even if they have entered into arbitration agreements because of an exemption in the Federal Arbitration Act. “Last mile” is a term in supply chain management planning to describe the movement of goods from a transportation hub to a final destination. The Federal Arbitration Act exempts transportation workers “engaged in interstate commerce.” Amazon argued that these drivers only made local deliveries. The Court was not persuaded by this argument and held that Amazon delivery drivers should be considered part of the flow of goods across state lines.

This decision may have a wider impact for Amazon and other large employers, as they have used arbitration agreements to avoid class action claims. The underlying claim from the Plaintiffs in this case is that Amazon violated the Fair Labor Standards Act. The suit was filed on behalf of as many as 10,000 Amazon delivery drivers. This decision clears the way for the Amazon drivers to move forward with their nationwide class action suit.

**TO ALL OUR FRIENDS AND CLIENTS  
HOPE YOU HAVE A WONDERFUL LABOR DAY!**



**HAPPY  
LABOR  
DAY**

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