



NEWSLETTERS

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[ABOUT US](#)
[OUR FIRM](#)
[PRACTICE](#)
[ARTICLES](#)
[CLIENTS](#)
[CONTACT](#)

THE PASCHOS LAW UPDATE NEWSLETTER

July, 2013

ARCHIVES

2013

January 2013
February 2013
March 2013
April 2013
May 2013
June 2013

2012

December 2012
November 2012
October 2012
September 2012
August 2012
July 2012
June 2012
May 2012
April 2012
March 2012
February 2012
January 2012

2011

December 2011
November 2011
October 2011
September 2011
August 2011
July 2011
June 2011
May 2011
April 2011
March 2011
February 2011
January 2011

2010

December 2010
November 2010
October 2010
September 2010
August 2010
July 2010
June 2010
May 2010
April 2010
March 2010
February 2010
January 2010

BEST STRATEGIES IN DEFENDING WAGE AND HOUR CLAIM ACTIONS IN NEW JERSEY

New Jersey Wage and Hour Law

New Jersey wage and hour claims are governed by the New Jersey Wage and Hour Law ("NJWHL")¹, The federal law, Fair Labor Standards Act ("FLSA") also applies in some circumstances. Neither statute applies in the same manner to all employees.

The New Jersey Wage and Hour Law governs minimum wages, hours of employment and regulations regarding premium wages and overtime. The statute extends to all "employers" who employ "employee(s)" in the State of New Jersey. The NJWHL broadly defines the terms "employers" and "employees." "Employer" is defined as "any individual, partnership, association, corporation, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee."² "Employees" include "individual[s] employed by an employer."³ The State is not an employer as defined as the NJWHL.⁴

The objective for the plaintiff in a wage and hour claim is to establish that he or she was improperly denied compensation for hours worked or was denied premium compensation for hours worked in excess of 40 hours per week.

Damages Recoverable

The NJWHL permits employees to bring actions in courts of competent jurisdiction for violations of the Act. Plaintiffs who successfully assert that their employers violated the provisions of the state wage and hour laws are entitled to unpaid wages, costs and attorneys' fees.⁵ The New Jersey statute is not as thorough in its remedies for failure to pay overtime as is the Federal Fair Labor Standards Act.

In addition, the Commissioner of Labor is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, for violations of New Jersey's overtime and minimum wage laws.⁶

Defenses

There are several defenses available to employers who are subject to claims under New Jersey's Wage and Hour Act

Minimum Wage Exemptions

The employee filing the claim under the NJWHL may fall into one of the many exemptions provided by statute. The following employees are not covered by New Jersey's state minimum wage law.⁷

1. Full-time college students employed by the institution at which they are enrolled who earn at least 85 percent of the minimum wage;
2. Outside sales people;
3. Motor vehicle sales persons;
4. Part-time employees whose primary duties include providing child care services in the home of their employers;
5. Certain persons under the age of eighteen. However, all employees including those under eighteen years of age shall be compensated at the rate of 1 1/2 times the minimum wage for

hours worked in excess of 40 if they are engaged in: (1) the first processing of farm goods; (2) hotel and motel occupations; and (3) restaurant occupations.⁸ Employers engaged in restaurant occupations who are subject to the FLSA must pay their employees the federal cash wage rate of \$2.13 and demonstrate that the balance of the minimum wage is received by their employees through gratuities. Employers engaged in restaurant occupations who are not subject to the FLSA must ensure that the total wage, including tips, received by their employees totals the State minimum wage;⁹

6. Persons employed at "camps, conferences and retreats operated by any nonprofit or religious corporation or association during the months of June, July, August and September" and
7. Student learners enrolled in School-to-Work Programs¹⁰

Overtime Exemptions

Classifications of exemption are determined by how employees are compensated, their job duties and their job titles. Not all salaried employees are exempt from the overtime provisions of the NJWHL. Generally executive, administrative, and/or professional employees are not entitled to overtime compensation. Similarly, outside salespersons, outside service providers and computer employees are not entitled to overtime compensation.¹¹ The following employees are also exempt from overtime compensation under the NJWHL:

1. Employees employed on a farm;
2. Employees employed in a hotel;
3. Employees of a common carrier of passengers by motor bus;
4. Certain limousine drivers employed by limousine companies; or
5. Employees engaged in labor relative to the raising or care of livestock.

Statute of Limitations

Private causes of action found in New Jersey's Wage and Hour Law have a two year limitations period. If a plaintiff files a claim under the NJWHL outside the two year statute of limitations the case will be dismissed.

Good Faith Defense

To avoid liability for failure to provide compensation in accordance with the NJWHL, an employer must "plead[] and prove[] that the act or omission complained of was [i]n good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval or interpretation by the Commissioner of the Department of Labor and Industry or the Director of the Wage and Hour Bureau, or any administrative practice or enforcement policy of such department or bureau with respect to the class of employers to which [that employer] belonged."¹² Establishment of these criteria is a "complete bar" to any action resulting from the employer's failure to act in accordance with the NJWHL.

Good faith is not present when an employer fails to base its belief in compliance on a written "regulation, order, ruling, approval or interpretation" from a state authority or agency practice.¹³ An employer is also barred from asserting the good faith defense when it merely relies upon industry practice instead of taking affirmative steps to investigate the compensation scheme for compliance with the law.¹⁴

OTHER LAWS

Some other wage and hour claim related laws in New Jersey are the New Jersey Prevailing Wage Act ("NJPWA")¹⁵, New Jersey Wage Payment Law¹⁶ and the Wage Collection Act¹⁷.

Prevailing Wage Act

The New Jersey Prevailing Wage Act ("NJPWA") was enacted in 1963 and is applicable to all public works projects which are not otherwise specifically excluded.¹⁸ The NJPWA establishes a minimum wage that must be paid to workers engaged in public works.¹⁹ The NJPWA applies to all "contracts in excess of \$14,187.00 awarded ... by a municipal public body and to every subcontract" entered into as a result thereof.²⁰ It also applies to all contracts of \$2,000.00 or more awarded by a non-municipal public body and all subcontracts stemming from those contracts.

In an action in which a violation of the Prevailing Wage Act is asserted, the objective of the plaintiff is to prove that he or she was not paid the prevailing wage, even though engaged in public works. A violation of the NJPWA will be found to have occurred when an

employer: (a) "willfully hinders or delays the Commissioner in the performance of his or her duties;" (b) fails to make and maintain any requisite records; (c) falsifies any records; (d) refuses to make records available to the commissioner upon demand; (d) "refuses to furnish a sworn statement of such record"; (e) "pays or agrees to pay wages at a rate less than [the prevailing wage] or otherwise violates any provision of this Act"; or (f) discharges or otherwise discriminates against a worker who complains that he or she was paid less than the prevailing wage rate.²¹

Some defenses are: (a) the Prevailing Wage Act is inapplicable to the contract in dispute, (b) the plaintiff was compensated in accordance with the terms of the Act; or (c) the complainant is not a covered employee under the provisions of the Prevailing Wage Act.²²

Claims brought by an employee under the New Jersey Prevailing Wage Act are subject to a six-year statute of limitations.²³

New Jersey Wage Payment Law.

The New Jersey Wage Payment Law ("NJWPL") regulates the manner, mode, and time of payment; the conditions for withholding wages; and permissible deductions from employees' wages.²⁴ The NJWPL requires employers to pay employees the full amount of wages that they are entitled to at least twice each calendar month on regularly scheduled pay days. There are some exceptions: railroad employees, executives, terminated or suspended employees and deceased employees.

A plaintiff asserting a violation of the New Jersey Wage Payment Law must prove that: (a) the timing or mode of payment was improper; or (b) the employer improperly deducted, diverted, and/or withheld compensation. A defendant should defend claims under the statute by establishing that the timing and mode of payment, as well as all deductions and withholdings, were proper.

Wage Collection Act.

The purpose of the Wage Collection Act is to provide a mechanism by which employees may recover any overdue wages.²⁵ The Wage Collection Act permits employees either to file a claim with the Commissioner of Labor or to pursue remedies in the Superior Court.

1. N.J.S.A. §§ 34:11-56a1-56a38.↔

2. N.J.S.A. § 34:11-56a1(g)↔

3. N.J.S.A. §34:11-56a1(h)↔

4. *Allen v. Fauver*, 327 N.J.Super. 14, 742 A.2d 594 (2000), *aff'd* 167 N.J. 69, 768 A.2d 1055 (2001)↔

5. N.J.S.A. § 34:11-56a25↔

6. N.J.S.A. § 34:11-56a22.↔

7. N.J. Admin. Code § 12:56-3.2(a)(1) – (a)(6)↔

8. N.J. Admin. Code §§ 12:56-11.2, 11.3, 13.1-13.3, 14.2, 14.3.↔

9. N.J. Admin. Code § 12:56-14.4(b).↔

10. N.J. Admin. Code § 12:56-18.1-18.2.↔

11. N.J. Admin. Code §§ 12:56-7.1-7.6.↔

12. N.J.S.A. § 34:11-56a25.2; *Brooks v. Ridgefield Park*, 185 F.3d 130, 137 (3d Cir. 1999)↔

13. *Keeley v. Loomis Fargo & Co.*, 183 F.3d 257, 262 (3d Cir. 1999) cert. den., 528 U.S. 1138 (2000)↔

14. *Id.* at 272↔

15. N.J.S.A. §§ 34:11-56.25 et. seq.↔

16. N.J.S.A. §§ 34:11-4.1-4.14↔

17. N.J.S.A. §§ 34:11-57-67↔

18. N.J.S.A. § 34:11-56.26(5).↔

19. N.J.S.A. § 34:11-56.25 →

20. N.J. Admin. Code § 12:60-1.4 →

21. N.J.S.A. § 34:11-56.39. →

22. N.J.S.A. §§ 34:11-56.25 et. seq. →

23. The Appellate Division held in *Troise v. Extel Communications, Inc.*, 345 N.J. Super. 231 (App. Div. 2001), that private employee claims under the PWA are for economic harm and, therefore, are akin to breach-of-contract claims subject to a six-year statute of limitations (and are not akin to claims for personal injury subject to a two-year statute of limitations). →

24. N.J.S.A. §§ 34:11-4.1-4.14 →

25. N.J.S.A. §§ 34:11-57-67 →

Copies of the full text of any of the cases discussed in this Newsletter may be obtained by calling our office. The articles contained in this Newsletter are for informational purposes only and do not constitute legal advice.

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