



New Jersey Supreme Court Issues Major Decision Expanding Employer Liability in Unpaid Wage Claims, Emphasizing Importance of Strict Recordkeeping

Client Advisories

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The New Jersey Supreme Court issued a major decision on March 19, 2026, which impacts any employer defending against unpaid wage and overtime claims. In a ruling that underscores the critical importance of employer recordkeeping, the Court in Lopez v. Marmic LLC, 2026 WL 771528 (N.J. Mar. 19, 2026), set a rigorous standard that makes it significantly more difficult for businesses to defeat employee wage claims when accurate time records are missing. Instead of requiring employees to prove their claim for unpaid wages, the Court found it sufficient for an employee to approximate their claim with a “rebuttable presumption” that the employee’s claim for unpaid hours are accurate.

In *Lopez*, a realty management company hired an undocumented individual to work as a superintendent for two of its buildings. Rather than paying hourly wages and overtime, the employer instituted an arrangement where it compensated the superintendent with a rent-free apartment in exchange for his labor.

Crucially, the employer did not keep track of the number of hours the superintendent worked, and neither party maintained written records. After the employee was terminated, he filed a lawsuit under the New Jersey Wage and Hour Law (WHL) and Wage Payment Law (WPL), claiming unpaid wages and overtime for working between 37 and 60 hours each week. Under state law, employers—not employees—have an affirmative legal obligation to make and preserve records of hours worked and wages paid. Notwithstanding, the trial court dismissed the claim since the employee failed to articulate the exact number of hours he worked. The Appellate Division upheld this decision.

However, the Supreme Court reversed, finding that the employee does not need to produce specific evidence of the hours he worked. The Supreme Court ruled that when an employer fails to provide these required records, a

“rebuttable presumption” applies in favor of the employee. The Court adopted the following framework for these disputes:

- **The Presumption:** If an employee proves they performed work for which they were improperly compensated, it is legally presumed that they worked for the period of time and the amount of wages they allege.
- **The Employer’s Burden:** The burden then shifts to the employer to come forward with evidence of the precise amount of work performed, or evidence that proves the employee’s estimates are unreasonable.

Other Key Takeaways: Undocumented Workers and Barter Arrangements

Beyond recordkeeping, the Court clarified two other vital points that employers must recognize:

- **Immigration Status is Not a Defense for Failing to Pay an Employee:** The Court held that federal immigration law does not preempt state wage laws. As such, an employee’s undocumented status does not nullify the employer-employee relationship, nor does it bar them from recovering unpaid minimum wages or overtime. Furthermore, an employee’s use of an invalid Social Security Number on a W-4 cannot generally be used to attack their credibility as to their claim for unpaid wages.
- **Barter Arrangements Do Not Bypass the Law:** The Court explicitly warned that informal “barter arrangements” -- such as exchanging a rent-free apartment for labor -- do not void state wage and hour requirements. While the fair value of food and lodging can, when properly arranged, be deducted from the employee’s wages, the employer still must track the employee’s hours and ensure that it is paying the legal minimum wage and overtime for all hours worked.

What Employers Should Do Now

This decision serves as a stark warning to New Jersey businesses. Any employer faced with a wage and hour claim will be virtually defenseless without comprehensive, accurate time records. Employers are encouraged to reexamine their current practices to ensure compliance:

1. **Employee Classification:** Ensure that employees are properly classified as “exempt” or “non-exempt” from overtime to determine which employee’s hours must be tracked.
2. **Audit Timekeeping Systems:** Ensure that every non-exempt employee is clocking in and out, and that all hours (including overtime) are accurately recorded and preserved.
3. **Review Record Retention:** Ensure your business is preserving payroll and time records for the full duration required by law, which in New Jersey is 6 years.

If you have any questions about this important decision, wage and hour compliance, or auditing your recordkeeping practices, please reach out to **Scott Sears** at ssears@archerlaw.com or any member of our **Labor and Employment Group**.



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