



Class Action Paydays: Managing Wage and Hour Litigations

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Employee Status & Misclassification



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Employee Status & Misclassification

- » New Jersey’s application of the ABC Test has broadened the definition of “employee,” with federal courts and the NJDOL signaling aggressive scrutiny of contractor arrangements
- » Enforcement agencies continue to target industries reliant on gig, logistics, and high-volume 1099 contractor models, viewing them as structurally high-risk for misclassification.

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The New Jersey ABC Test: Expanding “Employee” Status

- » To classify a worker as an independent contractor, the employer must prove all three:
 - » A — **Control**: The worker is free from the employer’s control or direction, both under the contract and in fact.
 - » B — **Usual Course of Business**: The services performed are outside the usual course of the employer’s business or performed outside all the employer’s places of business.
 - » C — **Independent Trade/Business**: The worker is engaged in an independently established trade, occupation, or business.

Hargrove v. Sleepy's LLC, 612 Fed. Appx. 116 (3d Cir. 2015)

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Enforcement & Litigation Trends

» *In re Publishers Circulation Fulfillment, Inc. (2024)*

- » Publishers Circulation Fulfillment (PCF), a major delivery contractor, was investigated by the NJDOL for classifying **newspaper delivery drivers** as independent contractors. The investigation focused on whether delivery work fit within the employer’s usual course of business (ABC Test – Prong B)(“outside the usual course of business”).
- » PCF agreed to a **\$2.75M settlement**, covering unpaid wages and penalties. 2,400 delivery workers were reclassified as employees, with mandated changes to payroll, recordkeeping, and benefits.
- » Signals aggressive, industry-wide enforcement, especially in **last-mile delivery, platform-based services, and gig-style contracting**.

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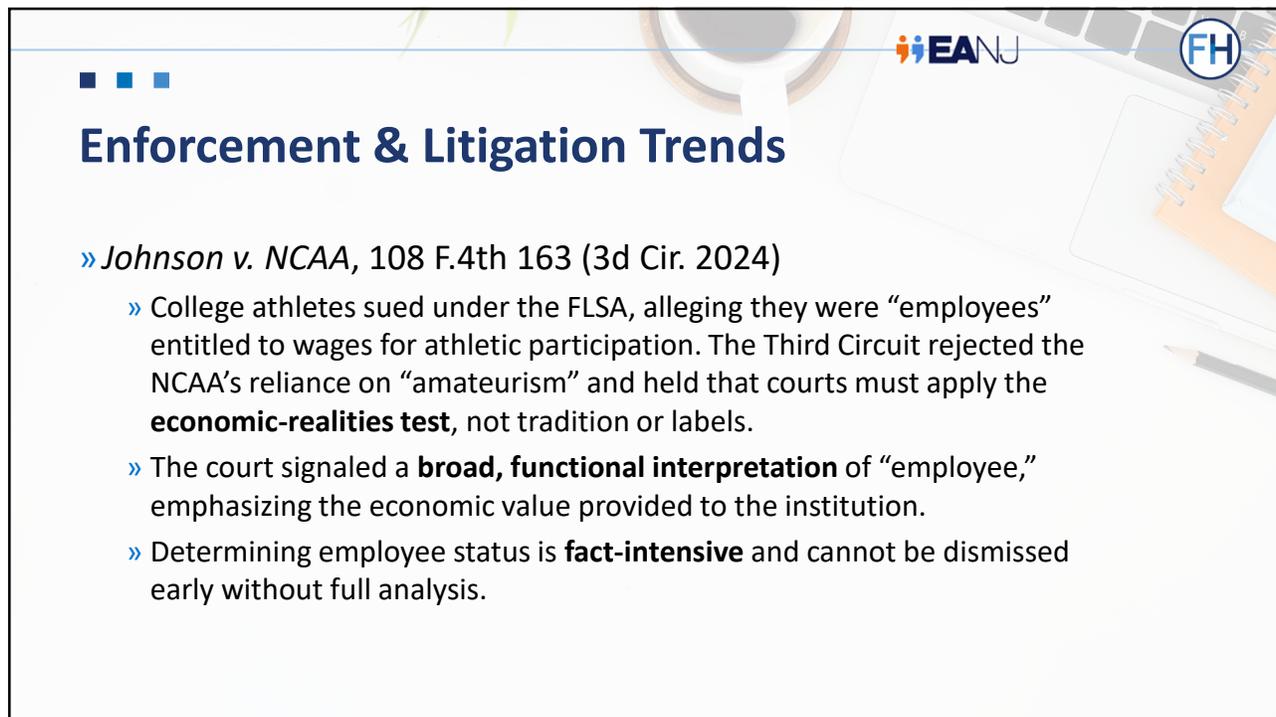
Enforcement & Litigation Trends

» *NJ DOL Sues Multinational Retailer*



- » In October 2025, NJDOL sued a multinational retailer alleging misclassification of **delivery drivers** as independent contractors.
- » State claims drivers perform work within the company’s **usual course of business**, failing ABC Test Prong B. Alleged deprivation of wages, overtime, and benefits under NJ Labor and Wage Theft laws.
- » Signals aggressive NJDOL scrutiny of gig-based and last-mile delivery models and reinforces that NJ regulators view delivery and logistics work as **core business functions**.

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Enforcement & Litigation Trends

» *Johnson v. NCAA*, 108 F.4th 163 (3d Cir. 2024)

- » College athletes sued under the FLSA, alleging they were “employees” entitled to wages for athletic participation. The Third Circuit rejected the NCAA’s reliance on “amateurism” and held that courts must apply the **economic-realities test**, not tradition or labels.
- » The court signaled a **broad, functional interpretation** of “employee,” emphasizing the economic value provided to the institution.
- » Determining employee status is **fact-intensive** and cannot be dismissed early without full analysis.

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Joint Employment & Liability

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Joint Employment & Liability

- » Plaintiffs increasingly pursue joint-employer and borrowed-employee theories to reach deeper pockets.
- » Staffing and vendor arrangements remain key plaintiffs' targets.
- » **Courts look beyond contracts—actual practice governs.**




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How NJ Courts Assess Joint Employment (Key Factors)

- » **Control Over Work:** Who directs day-to-day tasks, schedules, supervision, and performance?
- » **Integration Into Business:** Is the worker performing work central to the host employer's operations?
- » **Economic Dependence:** Does the worker rely primarily on one entity for pay or continued employment?
- » **Authority Over Employment Terms:** Who can hire/fire, discipline, set pay rates, or approve time?
- » **Shared Responsibilities:** Overlapping safety, training, tools/equipment, or onboarding processes.




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■ ■ ■ Pantano v. N.Y. Shipping Ass'n, 254 N.J. 101 (2023)

- » A crane operator was injured and sued the New York Shipping Association (NYSA), arguing he was their **borrowed employee**.
 - » NYSA argued on summary judgment that it could not be held liable because it had “relinquished control” over the crane operator’s work to another entity (the Port Authority). NYSA contended that since it no longer exercised day-to-day authority, it was not a “borrowed employer” and therefore owed no duty of care.
- » The New Jersey Supreme Court **rejected** that argument, holding:
 - » Whether NYSA actually relinquished control is a **fact-intensive inquiry**, inappropriate for summary judgment.
 - » A jury must decide the borrowed-employee question based on the **real-world working relationship**, not contract labels or self-serving assertions.

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■ ■ ■ High-Risk Joint Employment Scenarios in NJ

- » Industries & Arrangements Drawing Scrutiny
 - » **Staffing Agency Placements:** Temp-to-perm roles, onsite supervisors, or shared scheduling systems.
 - » **Logistics & Warehousing:** Split control between warehouse operator and third-party labor vendors.
 - » **Construction & Subcontracting:** Layered contractors performing integrated tasks at common worksites.
 - » **Franchise Models:** Brand-mandated policies that influence hiring, training, uniform standards, or discipline.
 - » **Gig / Platform-Based Delivery:** App-driven oversight, route assignments, and productivity metrics.
- » Why These Are High-Risk
 - » Overlapping control, shared supervision, and integrated operations make it difficult to show the worker “belongs” to only one entity.



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Remote Work & Off-the-Clock Exposure




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Remote Work & Off-the-Clock Exposure: Key Risks

- » **Pre-shift / post-shift activities** (security checks, walking time, boot-up/log-in) continue to fuel large class settlements.
- » **Recordkeeping gaps** (untracked remote hours, inconsistent security processes, after-hours communications) are driving new wage claims.
- » **Remote workforces** add venue, jurisdiction, and coverage complications when plaintiffs work across state lines.




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Multinational Retailer Sued in District of New Jersey

- » NJ warehouse associates alleged they were required to **arrive early, clear security, walk long distances to workstations**, and undergo post-shift screening — all off the clock.
 - » Plaintiffs relied on detailed badge-swipe data, security-system logs, and walking-distance mapping to demonstrate **systematic unpaid work** across the facility.
- » Company settled for **\$4.6 million**, reflecting courts' willingness to treat minutes of unpaid time as compensable when **aggregated** across a large workforce.




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Khartchenko v. Am. Oncologic Hosp., Inc., 23-CV-23043-ESK-EAP, 2025 WL 3140604 (D.N.J. Nov. 10, 2025)

- » Plaintiff was hired by a New Jersey–based healthcare organization but performed all **duties remotely** from Pennsylvania, including patient coordination and administrative work.
 - » When she brought ADA and wage claims in New Jersey, the employer argued that her work had no **meaningful connection** to NJ—no onsite work, no NJ patients, no NJ supervisors.
- » The court agreed and granted a venue transfer to the Eastern District of Pennsylvania, emphasizing that a remote employee's **physical work location** can outweigh the employer's state of incorporation or headquarters.
- » The decision highlights increasing jurisdictional complexity for remote/hybrid teams, affecting:
 - » Which state's wage and anti-discrimination laws apply;
 - » Where claims may be filed or transferred;
 - » Recordkeeping, time-tracking, and multi-state compliance obligations.




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Pay Equity, Transparency Mandates & Wage Theft Exposure



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■ ■ ■ Pay Equity & Transparency Exposure

- » **NJ Pay Transparency Act (effective June 2025)**
 - » Requires employers to disclose the salary range and a general description of benefits and compensation in all job postings and internal promotional postings
 - » Prohibits asking for a candidate's salary history
 - » Employers should update their job posting templates and training, conduct pay equity audits, and train staff on the new requirements to ensure compliance and avoid penalties
 - » Penalties start at \$300 for a first violation

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■ ■ ■ Pay Equity & Transparency Exposure

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- » **Diane B. Allen Equal Pay Act (treble damages)**
 - » Requires employers to pay employees equal pay for "substantially similar work," considering skills, effort, responsibility, and comparable positions.
 - » To be eligible for treble damages, employees must prove a violation of the act, and the employer cannot use certain exceptions like seniority or merit systems as justification for pay disparities unless they are based on bona fide factors such as training, experience, or production.
 - » The key requirements for employees seeking to enforce their rights are to prove the pay disparity and to understand the narrow exceptions employers can use.

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■ ■ ■ Pay Equity & Transparency Exposure

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- » **New Jersey Temporary Workers' Bill of Rights**
 - » Mandates that temporary workers be paid the same average rate of pay and have the same average cost of benefits as the third-party client's employees performing similar work.
 - » Both the temporary staffing agency and the client have joint and several liability for any pay equity violations.

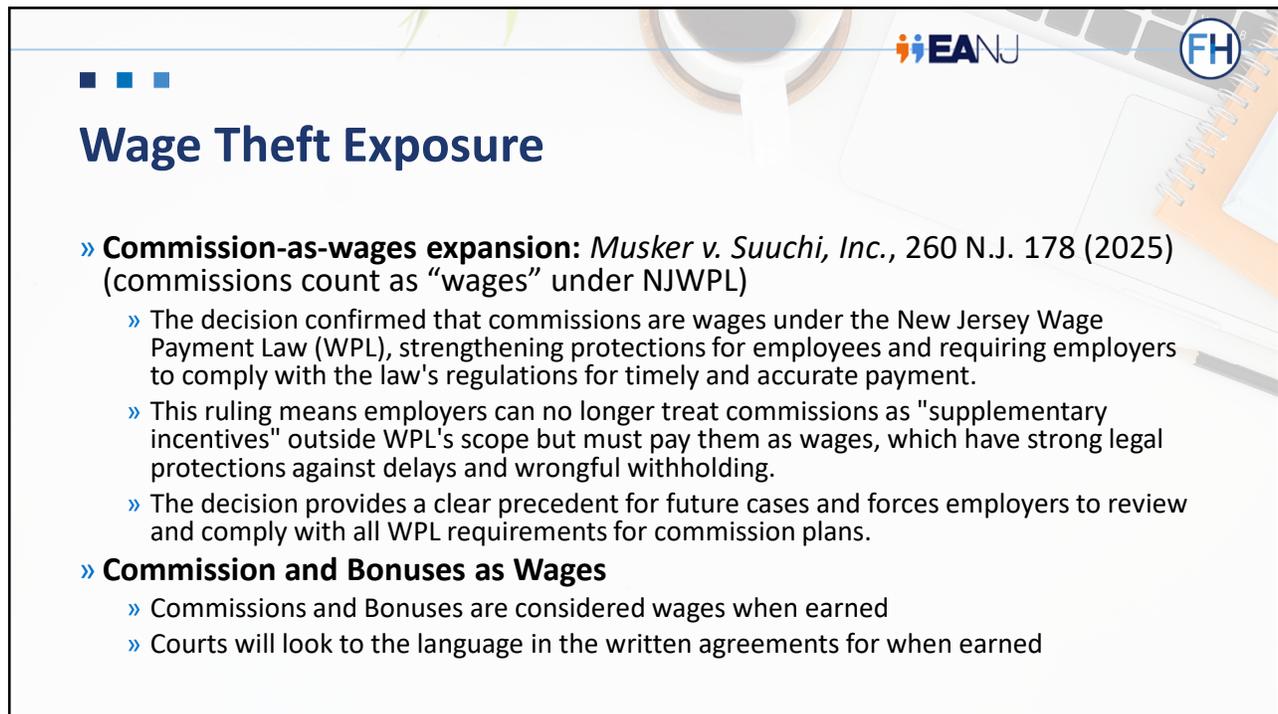
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New Jersey Wage Theft Act

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Wage Theft Exposure

- » **Commission-as-wages expansion:** *Musker v. Suuchi, Inc.*, 260 N.J. 178 (2025) (commissions count as “wages” under NJWPL)
 - » The decision confirmed that commissions are wages under the New Jersey Wage Payment Law (WPL), strengthening protections for employees and requiring employers to comply with the law's regulations for timely and accurate payment.
 - » This ruling means employers can no longer treat commissions as "supplementary incentives" outside WPL's scope but must pay them as wages, which have strong legal protections against delays and wrongful withholding.
 - » The decision provides a clear precedent for future cases and forces employers to review and comply with all WPL requirements for commission plans.
- » **Commission and Bonuses as Wages**
 - » Commissions and Bonuses are considered wages when earned
 - » Courts will look to the language in the written agreements for when earned

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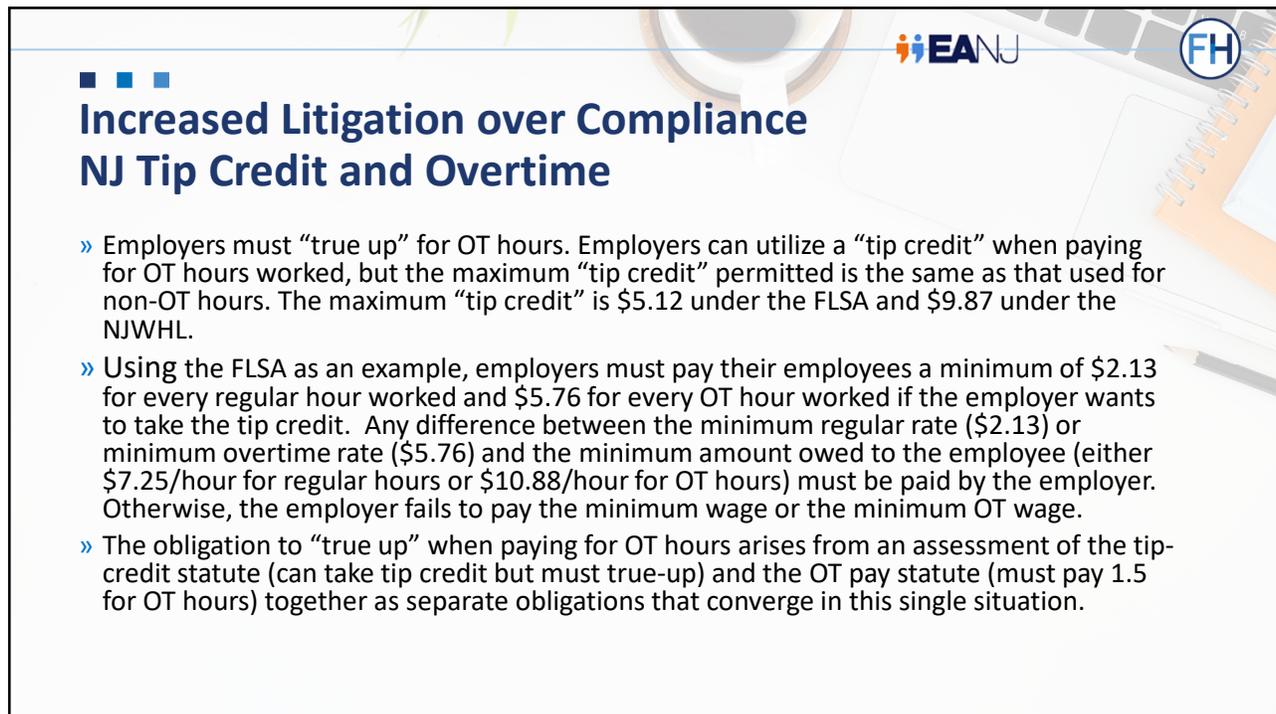
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■ ■ ■ NJ Wage Theft Act – Risks and Compliance

- » **NJ Wage Theft Act:**
 - » 6-year Statute of Limitations
 - » Treble damages
 - » Attorneys' Fees
- » **Tip credit compliance:** Evolving landscape post-*Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)(overturning *Chevron*) and recent challenges to DOL's tip rules.



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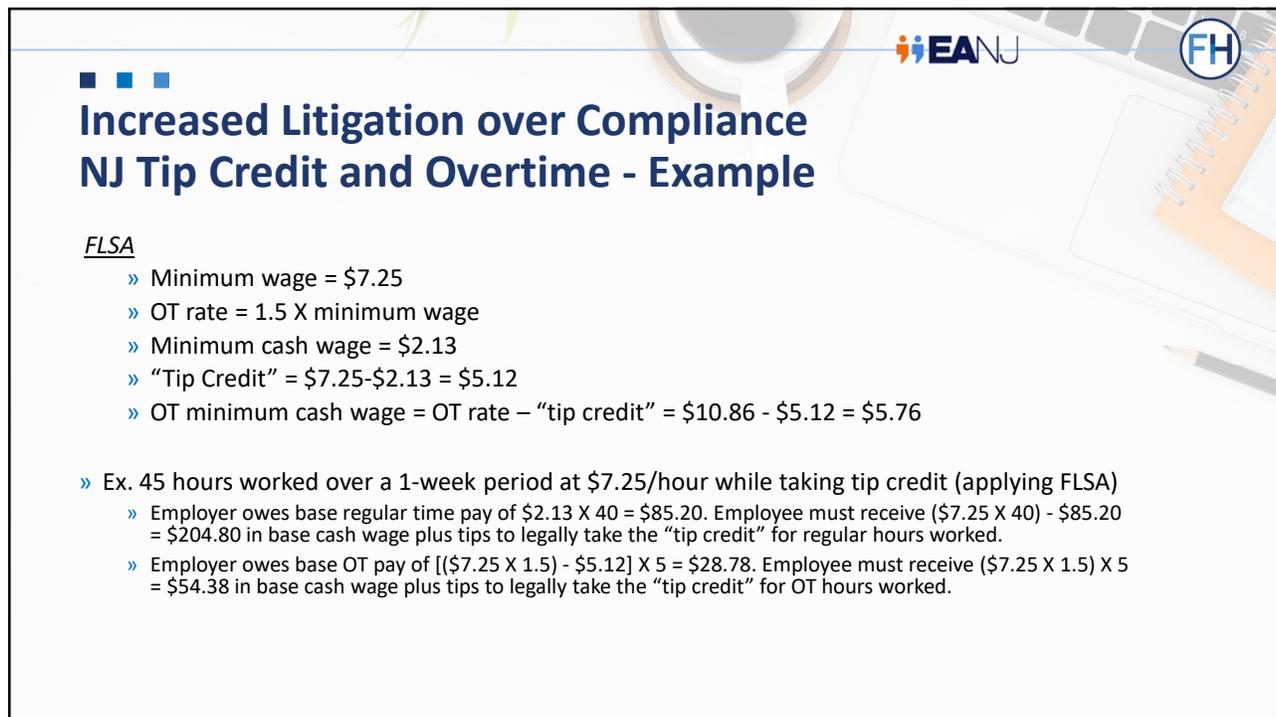


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■ ■ ■ Increased Litigation over Compliance NJ Tip Credit and Overtime

- » Employers must “true up” for OT hours. Employers can utilize a “tip credit” when paying for OT hours worked, but the maximum “tip credit” permitted is the same as that used for non-OT hours. The maximum “tip credit” is \$5.12 under the FLSA and \$9.87 under the NJWHL.
- » Using the FLSA as an example, employers must pay their employees a minimum of \$2.13 for every regular hour worked and \$5.76 for every OT hour worked if the employer wants to take the tip credit. Any difference between the minimum regular rate (\$2.13) or minimum overtime rate (\$5.76) and the minimum amount owed to the employee (either \$7.25/hour for regular hours or \$10.88/hour for OT hours) must be paid by the employer. Otherwise, the employer fails to pay the minimum wage or the minimum OT wage.
- » The obligation to “true up” when paying for OT hours arises from an assessment of the tip-credit statute (can take tip credit but must true-up) and the OT pay statute (must pay 1.5 for OT hours) together as separate obligations that converge in this single situation.

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Increased Litigation over Compliance NJ Tip Credit and Overtime - Example

FLSA

- » Minimum wage = \$7.25
- » OT rate = 1.5 X minimum wage
- » Minimum cash wage = \$2.13
- » “Tip Credit” = \$7.25-\$2.13 = \$5.12
- » OT minimum cash wage = OT rate – “tip credit” = \$10.86 - \$5.12 = \$5.76

» Ex. 45 hours worked over a 1-week period at \$7.25/hour while taking tip credit (applying FLSA)

- » Employer owes base regular time pay of $\$2.13 \times 40 = \85.20 . Employee must receive $(\$7.25 \times 40) - \$85.20 = \$204.80$ in base cash wage plus tips to legally take the “tip credit” for regular hours worked.
- » Employer owes base OT pay of $[(\$7.25 \times 1.5) - \$5.12] \times 5 = \$28.78$. Employee must receive $(\$7.25 \times 1.5) \times 5 = \54.38 in base cash wage plus tips to legally take the “tip credit” for OT hours worked.

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NJ Wage Law and Class Actions

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Class Action Defense Playbook

Key strategies:

- » Prior to Litigation to Prevent Class Claims
 - » Use arbitration agreements
 - » Ensure compliance with most updated laws and regulations – these are changing regularly, so it is important to work with counsel that is familiar with the landscape
- » When a Class Claim is Filed
 - » Attack class definitions
 - » Highlight individualized differences to destroy common policy arguments

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LIFECYCLE OF A CLASS/COLLECTIVE ACTION INVOLVING FEDERAL AND STATE WAGE CLAIMS
A simplified roadmap for employers

This Class Action Life Cycle Chart is also Available on our Course Materials Website.

This roadmap is designed to help employers—especially those less familiar with class or collective litigation—understand the key stages of this type of wage and hour lawsuit. These cases often involve a combination of federal claims under the Fair Labor Standards Act (FLSA), which proceed as “collective actions” requiring employees to opt in, and state law claims, which typically proceed as “class actions” under Rule 23 and include all employees unless they opt out. Because these two systems follow different rules and timelines, the process can be confusing. This guide provides a step-by-step look at what to expect, helping you navigate each stage more confidently and make informed decisions along the way.

SETTLEMENT Can Occur at Any Point But Must Be Approved by the Court	STAGE	DESCRIPTION
←	STAGE 1	<ul style="list-style-type: none"> Lawsuit Filed: Plaintiff alleges wage/hour violations and seeks collective action. Conditional Certification Motion: Court decides whether to allow notice to potential opt-ins. Notice & Opt-in Period: Eligible employees are notified and may join the lawsuit.
←	STAGE 2	<ul style="list-style-type: none"> Discovery Phase: Exchange of documents and depositions to assess similarity among opt-ins.
←	STAGE 3	<ul style="list-style-type: none"> Motion for Decertification: Employer argues collective members are not similarly situated for FLSA claims. Motion for Certification on State Law Claims: Plaintiff argues for class certification for State Law Claims. Outcome: If decertified, only original plaintiffs proceed. If not, case continues collectively for federal and state claims.
←	STAGE 4	<ul style="list-style-type: none"> State Law Class Action: Parallel claims under state law may proceed via Rule 23 (opt-out class).
←	STAGE 5	<ul style="list-style-type: none"> Summary Judgment: Parties may seek resolution without trial. Trial: Case proceeds, often with representative or individualized evidence. Damages Phase: If liability found, court determines wages, damages, and attorney fees.

Total Lifecycle Approximately 3 - 8 Years

TIPS FOR EMPLOYERS

- **Stay Engaged:** Provide payroll and job duty info promptly.
- **Preserve Records:** Retain timekeeping and compensation documents.
- **Be Realistic:** Many cases settle before trial.
- **Consult Counsel:** Legal guidance is essential throughout the process.

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QUESTIONS?



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