



New Jersey Employers Will Soon Learn When They Can Use “Good Faith” Defense In Wage Claims

Insights

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The New Jersey Supreme Court just agreed to review whether the “good faith” defense is available to employers that rely upon determinations made by employees of the New Jersey Department of Labor and Workforce Development. In a case of first impression, the Supreme Court’s action on December 5 means it will soon make clear when you can take advantage of this defense, which is a complete bar to wage and hour claims.

In *Branch v. Cream-O-Land Dairy*, an employee brought a class action lawsuit against Cream-O-Land Dairy alleging a failure to pay overtime wages in violation of New Jersey Wage and Hour Law. Cream-O-Land took the position that, not only had it properly paid overtime as a trucking industry employer at one-and-a-half times the state minimum wage for overtime hours, but that the state had approved their pay practices on three separate occasions. In response to three earlier employee complaints about wages, Department of Labor (DOL) officials examined Cream-O-Land’s method of calculating overtime pay. And on each of those three occasions, the officials sided with the employer. Specifically:

- In July 2007, a DOL hearing and review officer concluded Cream-O-Land was a trucking industry employer and was only required to pay its drivers one-and-a-half times the state minimum wage for overtime hours;
- In June 2014, a DOL senior investigator sent Cream-O-Land an email which stated: “It’s been determined that [Cream-O-Land] falls under the Federal Trucking guidelines of overtime exemption”; and
- In April 2017, the DOL’s Division of Wage and Hour Compliance section chief sent another email which stated: “The inspection report indicated that [Cream-O-Land] is considered a transportation company rather than a dairy” and found that the employee complainant was properly paid overtime.

The trial court ruled in the Cream-O-Land’s favor, finding its reliance on the investigations and determinations by the DOL were sufficient to establish an “enforcement policy” with respect to its industry and that the claims were barred by the “good faith” defense. Under New Jersey state law, the good faith defense provides that “no employer shall be subject to any liability or punishment for or on account of the failure to pay minimum wages or overtime compensation under this act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in

reliance on any written administrative regulation, order, ruling, approval or interpretation by the Commissioner of the [DOL] 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 he belonged.”

The employee appealed the trial court’s decision, and Cream-O-Land added to the case a fourth instance where the DOL signaled they were operating in compliance of the law – a January 2006 opinion letter from the then-Director of the Division of Wage and Hour Compliance which set forth the formulas used to determine compliance with the Wage and Hour Law for non-exempt employees and trucking industry employees.

But the State did not believe the good faith defense should apply. The Attorney General filed a brief and participated in oral argument to articulate the State’s position that the DOL determinations relied upon by the Cream-O-Land did not meet the requirements for establishing the good faith defense because they were “not high-level final determinations that carry the imprimatur of the agency head.”

The Appellate Division agreed with the Attorney General and reversed the trial court. It sent the case back to the trial court for further discovery to determine whether the Cream-O-Land met the definition of a “trucking industry employer.” In its opinion, the Appellate Division largely deferred to the Attorney General’s interpretation of the good faith statute. It held that the three “discrete determinations or communications by DOL officials regarding complaints by individual employees, which are subject to further administrative appeal, do not constitute an ‘administrative practice or enforcement policy’ and are insufficient to invoke the good-faith defense.”

Cream-O-Land asked the state Supreme Court to review the Appellate Division’s determination that it cannot rely on the good faith defense to bar the plaintiff’s lawsuit, and the Supreme Court decided it will review the decision. While we can’t yet predict how the Supreme Court will decide, the fact that it accepted the case for review is a good sign. The court has no obligation to accept cases for review, and in fact only agrees to render decisions in a small percentage of cases brought to its attention.

Once the Supreme Court renders its decision, New Jersey employers will have a clear indication as to the scope of the good faith defense. In the meantime, you should evaluate any pay practices to determine whether they are guided solely by prior DOL determinations or communications with the DOL to ensure that they are consistent with the New Jersey Wage and Hour Law. If you have any questions regarding compliance with New Jersey’s wage and hour laws, contact any attorney in the [Fisher Phillips’ New Jersey office](#) at (908) 516-1050.

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