



# Litigation Seeking Unpaid Wages From Employers Impacted By COVID-19 Has Arrived

Insights

5.07.20

COVID-19 has had the unprecedented impact of shuttering many businesses throughout the country and leading to record-high unemployment. For some businesses whose operations were hit particularly hard by the pandemic, meeting their financial obligations – including payroll – has been a struggle. While the federal CARES Act was enacted to aid employers in this regard, it does not necessarily provide the immediate funds that some employers need to meet their payroll obligations for work performed *prior* to COVID-19 shutdowns.

One recent class and collective wage and hour lawsuit filed in a New Jersey federal court highlights the risks employers face should they fail to pay their employees in accordance with the law. In *Olsen v. Ratner Companies L.C. d/b/a Hair Cuttery, et al.*, a former hair stylist seeks to recover wages that she claims remain unpaid for work performed prior to the COVID-19 shutdowns, on her own behalf and on behalf of other employees of the salon. This is likely among the first of many such lawsuits that will be filed as businesses struggle to navigate through their legal obligations while faced with significant operational and financial challenges. What can your business learn from this claim?

## The Allegations

Nicole Olsen alleges that she was employed as a hair stylist at a hair salon doing business as Hair Cuttery. The hair salon closed its doors on March 21, 2020 in response to the COVID-19 pandemic, in the middle of a pay period. According to the complaint, Ms. Olsen and all other employees were supposed to be paid on April 7, 2020 for the work they performed during the beginning of the pay period between March 15, 2020 and March 21, 2020.

However, she claims they were never paid for this time. Ms. Olsen alleges that Hair Cuttery instead informed its employees that they would not be paid for the work they performed until it received federal funding or the company restored its operations.

Soon after, Ms. Olsen filed a complaint on behalf of herself and all similarly situated employees of Hair Cuttery, alleging a violation of the federal Fair Labor Standards Act (FLSA), which requires employees to be paid at least minimum wage for all hours worked. The claim also alleges a violation of the New Jersey Wage Payment Law (NJWPL), which requires full payment of wages due at least twice a month or on regular paydays designated in advance by the employer. The complaint seeks an award of unpaid wages, liquidated damages, civil penalties, reasonable attorneys' fees, and costs.

## **Employers' Obligations Under Federal And State Wage Laws Remain Despite COVID-19**

The FLSA requires non-exempt employees, such as hair stylists, to be paid at least minimum wage for all work performed during a given workweek. If an employer fails to pay an employee minimum wage, the employee may seek recovery of the unpaid wages, an equal amount in liquidated damages, and attorney's fees and costs.

New Jersey law similarly requires that employees be paid at least minimum wage for work performed. The [NJWPL](#) also requires employers to "pay the full amount of wages due to his employees at least twice during each calendar month, on regular pay days designated in advance by the employer." If an employer fails to pay the full amount of wages due, the employee may recover the full amount of unpaid wages, liquidated damages equal to not more than 200% of the wages due, plus reasonable attorneys' fees and costs. Many other states throughout the country have their own wage protection laws.

While the CARES Act provides loans to businesses to cover payroll costs, it does not provide any protections for employers who failed to meet their payroll obligations prior to receipt of the loan. Therefore, whether you applied for or received federal funds under the CARES Act does not absolve your obligations under the FLSA and state law to timely pay its employees' wages.

### **What Should Employers Do?**

While you are not obligated to pay employees who are not performing work due to the COVID-19 shut downs, you are required under both federal and state law to pay your employees on their designated payday for work that was previously performed. To the extent you do not have sufficient financial resources to do so, you risk liability under both federal and state law. Before taking any action in the face of such a dilemma, you should coordinate with your employment counsel to discuss all possible options.

To the extent your business requires assistance in applying for and navigating the federal loan process, the [Fisher Phillips' SBA Loans Task Force](#) is available to help you apply for a federal loan in order to assist with payroll and other financial needs. In the meantime, we will continue to monitor the *Olsen* litigation and report on any developments that may impact companies who are experiencing similar difficulties in paying employees for work already performed in light of COVID-19. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the author, or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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*This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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