



# Top 5 Wage And Hour Tips For Reopening New Jersey Non-Essential Businesses

Insights

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After nearly three months of stay-at-home orders and the shutdown of non-essential retail businesses, New Jersey is slowly starting to reopen. Non-essential construction projects resumed, non-essential retail businesses have reopened with curbside pickup options, and Governor Murphy recently announced that non-essential in-person retail, outdoor dining, and daycares and summer camps can reopen as early as June 15, and salons and barbershops can reopen June 22.

As these and other businesses begin to reopen, there are important wage and hour considerations that should be at the forefront of employer's reopening plans. This is especially true given the significant penalties for wage violations that were enacted in August 2019, which made New Jersey's wage and hour laws among the toughest in the country.

## 1. **You Must Notify Employees Of Reductions In Pay Before Making Any Changes**

While businesses may be reopening, it may not be at the same scale in terms of the size of the workforce, the hours of operation, or the business revenue coming in. To the extent you intend to decrease the compensation of your employees as a result, you must provide notice before any changes can be made. No changes can be made to an employee's pay with respect to work already performed.

## 2. **You Cannot Delay Wage Payments To Employees**

Employees in New Jersey must be paid their wages at least twice during each month on regular, designated pay days. There are no exceptions under federal or state law to timely paying your employees – even if your company does not have sufficient funds due to circumstances related to COVID-19. As your business reopens, it is important to take into consideration whether it is financially feasible to bring back each employee at either their prior or a reduced salary. If you fail to pay your employees their wages when due, you can be held liable for lost wages in addition to other damages, discussed below. There is no “COVID-19 defense” to these claims.

## 3. **Failure To Pay Wages Can Lead To Substantial Damages – And Criminal Penalties**

In August 2019, New Jersey significantly increased the damages and penalties associated with failing to pay wages. Now, in addition to recouping unpaid wages, employees are entitled to liquidated damages of 200% in addition to the payment of wages owed to an employee.

However, there is an affirmative defense available to employers to avoid liquidated damages, which is designed to avoid penalizing innocent errors of first-time offenders. In order to take advantage of the affirmative defense, an employer must: (1) demonstrate that it acted in good faith with reasonable grounds for believing that the action was not a violation; (2) admit the violation; and (3) pay the amount owed within 30 days' notice of the employee's claim.

Absent a good faith defense and the payment of wages due, a wage and hour violation in New Jersey carries exposure to unpaid wages, liquidated damages, attorneys' fees, and costs. In addition to these damages owed to the employee, any employer who knowingly and willfully fails to pay wages as required by law, or who engages in retaliation, is guilty of a disorderly persons offense. The associated fines are \$500 to \$1,000 for a first offense, \$1,000 to \$2,000 for subsequent violations, and/or imprisonment. Repeat offenders may also be found guilty of a newly created crime of the third degree for a pattern of wage non-payment.

#### **4. Employers Must Be Mindful Of Retaliation**

Under New Jersey law, it is a disorderly persons offense to take retaliatory action against an employee who made a complaint, instituted an action, or informed another employee about their rights under the wage and hour laws. Employers act at their peril when they take adverse action against an employee who makes a complaint to the Commissioner of Labor and Workforce Development or files a lawsuit because, under the strengthened wage theft protection laws that went into effect in August 2019, there may be a presumption of retaliation.

If you are looking to reduce hours or terminate some of your workforce due to a COVID-19-related decline in business or otherwise, be mindful of these anti-retaliation provisions. Be sure that there is a valid, defensible reason for terminating an employee who has raised a concern about the payment of their wages.

#### **5. Continue Keeping Records**

When reopening your business, the last thing on your mind may be recordkeeping. However, it is more important than ever for employers to ensure they are maintaining accurate records of hours worked and wages paid to employees for two reasons.

First, these records are critical to defend against any potential litigation. They also mitigate against the significant potential damages and penalties that are assessed against employers who fail to timely pay wages, as discussed above.

Second, you should keep these records so that you are able to produce them upon request to the New Jersey Department of Labor and Workforce Development. Under the recently strengthened wage protection laws, if an employer fails to provide sufficient records during an investigation, there is a rebuttable presumption that the employee actually worked for the period of time and amount of wages alleged in a wage claim.

## Conclusion

While many things will be different when non-essential businesses reopen their doors, one thing that has not changed is the strict requirements of New Jersey's wage and hour laws. There is no "COVID-19 defense" for employers who fail to comply with the wage and hour laws because of the financial and/or operational impact experienced as a result of this global pandemic. It is important to continue to comply with the wage and hour laws to avoid costly litigation and even criminal penalties.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. 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, any attorney in our [New Jersey](#) office, 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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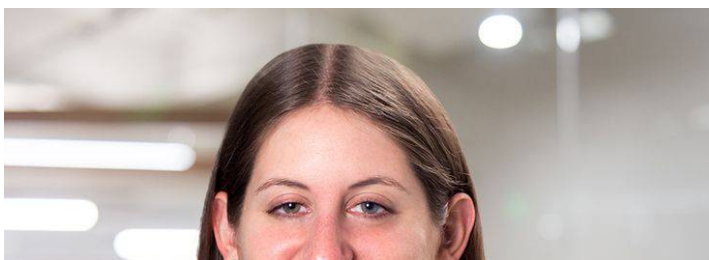


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