

New Jersey Employment Law and Litigation Mid-Year Update: Key Developments and Emerging Risks for Employers

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Agenda



- New laws, regulations, and agency guidance
- Key New Jersey and Third Circuit decisions
- Litigation trends
- Risk reduction strategies
- What to watch for in late 2026 and beyond

New Jersey Final ABC Test Rules: Key Points

- Adopted May 5, 2026
- Effective Oct. 1, 2026
- The rules do not change the ABC test; rather, they formalize a substance over form approach
- Contractor labels and 1099s do not control



Minimum Wage Increase

Jan. 1, 2026: \$15.92/hour for most NJ workers



NEW JERSEY'S MINIMUM WAGE

Date	Most Employers	Seasonal & Small Employers (fewer than 6)	Agricultural Employers	Cash for Tipped Workers	Wage for Long-Term Care Facility Direct Care Staff
January 1, 2020	\$11	\$10.30	\$10.30	\$3.13	\$11; \$14 as of 11/1/20
January 1, 2021	\$12	\$11.10	\$10.30	\$4.13	\$15
January 1, 2022	\$13	\$11.90	\$11.05	\$5.13	\$16
January 1, 2023	\$14.13	\$12.93	\$12.01	\$5.26	\$17.13
January 1, 2024	\$15.13	\$13.73	\$12.81	\$5.26	\$18.13
January 1, 2025	\$15.49	\$14.53	\$13.40	\$5.62	\$18.49
January 1, 2026*	\$15.92	\$15.23	\$14.20	\$6.05	\$18.92

*Minimum wage may continue to increase each January 1 based on a measure of inflation.

MW-570 (1/26)

Class and Collective Action Trends

- Wage and hour remains the leading class action theory
- Aggregation risk is also growing in pay equity, screening, notice, privacy, and accommodation claims
- Plaintiffs use payroll data, forms, and centralized decisions to argue commonality
- Agency activity can increase settlement pressure
- Early assessment should focus on class scope, data integrity, arbitration, and decisionmakers

Recent Wage and Hour Decisions and Red Flags

- Courts continue testing whether variable practices defeat class treatment
- Common claims include off-the-clock work, rounding, remote work time, regular rate errors, and misclassification
- Strong defenses still depend on accurate records and consistent practice



New Jersey Department of Labor Audits & Investigations: Are You Prepared?



- NJDOL continues to increase proactive audits and enforcement
- **Common requests include:**
 - Employee classifications
 - Payroll, time, and pay records
 - Personnel files
 - Required workplace posters
- **Focus areas**
 - Wage & hour compliance
 - Independent contractor classification
 - Earned Sick Leave compliance
 - Recordkeeping
- **Takeaway:** Conduct regular compliance audits before the NJDOL does

Case Spotlight: Wage and Hour



Martinez v. T. Slack Environmental Services, Inc.



- **NJ Superior Court, App. Div.** (June 29, 2026)
- NJWHL and NJPWA claims may proceed representatively without Rule 4:32 class certification
- The court rejected FLSA style opt-in requirement
- A named plaintiff need not identify every worker at the outset
- Complaint allegations plus discovery were enough to show a similarly situated group
- May increase representative wage claims in NJ Superior Court

Lopez v. Marmic LLC



- **NJ Supreme Court** (Mar. 19, 2026)
- Employer provided a rent-free apartment instead of hourly wages and overtime
- No reliable records of hours worked were kept
- Employee alleged 37 to 60 hours per week
- The Court reversed dismissal of the wage claims

Lopez: Missing Records Increase Wage Risk

- When required records are missing, employees may approximate unpaid hours and wages
- A rebuttable presumption then favors the employee's estimate
- The employer must produce precise records or show the estimate is unreasonable
- Poor recordkeeping makes wage claims much harder to defeat
- Audit timekeeping, classifications, and payroll record retention



Lopez: Additional Takeaways and Action Items

- Undocumented status is not a defense to minimum wage or overtime claims
- Barter arrangements do not avoid wage and hour requirements
- Employers must track hours and pay lawful wages and overtime
- Audit exempt versus nonexempt classifications and timekeeping practices
- Preserve payroll and time records for the required period

Recent Class Action Litigation Involving Resident Assistants

- Wave of class and collective actions filed against NJ colleges and universities under the Fair Labor Standards Act (FLSA) and the New Jersey Wage and Hour Law (NJWHL)
- Plaintiffs allege resident assistants were employees, not volunteers or students receiving financial aid, and therefore entitled to minimum wage and, where applicable, overtime compensation
- Common allegations include: compensation through free or discounted housing, meal plans, or stipends that allegedly fails to satisfy wage requirements



Resident Assistant (RA) Wage & Hour Class Actions

- Required on-call responsibilities, overnight duty, crisis response, administrative tasks, and mandatory meetings without compensation for all hours worked.
- Failure to accurately track hours worked
- Litigation has prompted colleges and universities to reevaluate RA programs, job duties, compensation structures, and timekeeping practices
- **Main Theme:** Employers should review whether all positions satisfy applicable exemptions and ensure compliance with federal and NJ wage and hour requirements, especially for positions not receiving minimum wage (e.g., stipend or housing in lieu of compensation)

Pay Transparency Litigation & Enforcement



- Increased NJDOL enforcement of Pay Transparency Law
- Salary ranges and benefits required in covered job postings
- Promotional opportunity notice requirements
- Internal and external postings receiving increased scrutiny
- Employers should review recruiting templates and hiring practices

Case Spotlight: Discrimination and Retaliation



Case Spotlight: Discrimination

Massey v. Borough of Bergenfield (3d Cir.)

Ended NJ's "Background Circumstances Rule," which placed a heightened burden of proof on majority-group plaintiffs.



Case Spotlight: Retaliation

- ***Asay v. NJ Transit (3d Cir.)***: close timing between reporting and termination is not enough to sustain a retaliation claim. Plaintiffs must present concrete evidence that the decision-maker who fired them actually knew about their protected activity.
- ***Steidle v. U.S. Liability Insurance Co., Inc. (3d Cir.)***: *Burlington Northern* Title VII retaliation standard extends to ADA and FMLA retaliation claims; “Receipt of a lower than anticipated bonus and salary increase could certainly dissuade a reasonable worker from engaging in protected activity.”

Case Spotlight: Accommodation and Leave



Papa v. IAT Insurance Group, Inc.



- **D.N.J.** (Mar. 3, 2026)
- Remote NJ employee alleged age discrimination and failure to accommodate
- Claims brought under federal law and NJLAD
- Employer moved to transfer the case to North Carolina
- The court granted the transfer motion

Papa: Why Venue Moved ➡NJ ➡NC

- Court focused on where the challenged employment decisions were made
- Key decision makers and HR personnel were located outside NJ, primarily in North Carolina
- Employee worked remotely from NJ, but that was not dispositive
- Role was not specifically tied to developing the NJ market
- Witness convenience and litigation burden favored North Carolina

Papa: Employer Takeaways ➡

- Remote employee's home state is not automatically proper venue
- Venue analysis may turn on decision making location, witnesses, and nature of role
- Employers should document where key employment decisions are made
- Remote roles tied to a specific state may create a different venue analysis
- Venue strategy should be evaluated early in remote worker cases

Cano and Bonelli v. Cnty. Concrete Corp.



- **NJ App. Div.** (Jan. 28, 2026)
- First published appellate interpretation of NJ Earned Sick Leave Law (ESLL)
- Employer's PTO and leave practices violated ESLL
- Employer did not qualify for construction industry exemption
- Significant damages for named and unnamed workers

Cano: Key Holdings

- ESLL recordkeeping failures create a presumption that required sick leave was not provided
- PTO policies must permit leave for all ESLL-covered purposes
- ESLL violations treated as wage payment violations under NJWHL
- Liquidated damages of 200% may apply
- Claims may proceed for similarly situated workers without class certification

Cano: Employer Takeaways

- Exemptions under the ESLL will be construed narrowly
- Labels and industry assumptions will not control exemption status
- Review PTO, notice, posting, and recordkeeping practices
- Confirm leave can be used for all ESLL required reasons
- Preserve records showing accrual, use, and balances

New Jersey Cannabis Employment Law: *Sanders* Expands Employer Litigation Risk



- **Sanders v. The Levari Group (N.J. App. Div. 2026)**
- NJ Appellate Division held that CREAMMA provides employees and applicants with a private right of action for alleged cannabis-related employment discrimination.
- Employers may now face direct lawsuits—not just regulatory enforcement—for adverse employment actions based on lawful cannabis use.
- Decision departs from the Third Circuit's 2024 prediction that CREAMMA did not create a private right of action.

New Jersey Cannabis Employment Law

- Increased litigation risk for:
 - hiring decisions
 - drug testing practices
 - positive cannabis test results
 - rescinded job offers and disciplinary actions
- **Employer Action Items:** review drug testing and hiring policies
- Train HR and managers on CREAMMA's anti-discrimination protections
- Ensure adverse employment decisions are supported by legitimate, non-discriminatory business reasons

Emerging Risk Area: Remote Work, Technology, and AI

- Remote and hybrid work affect accommodation, overtime, supervision, and performance disputes
- Recruiting, screening, scheduling, and AI tools can create bias and documentation issues
- Monitoring data and metadata are often key evidence
- Employers need governance over inputs, overrides, and record retention
- Core question is whether the employer can explain the decision



Practical Strategies for Minimizing Risk

- Audit wage and hour, complaints, accommodations, pay, and RIF processes
- Update forms, scripts, checklists, and escalation protocols along with policies
- Train managers on retaliation, complaints, timekeeping, leave, and accommodations
- Standardize investigations and decision documentation
- Test whether business units follow the same process consistently



What Employers Should Monitor in the Second Half of 2026 and Beyond



- More transparency obligations in recruiting and pay communications
- Continued wage and hour enforcement and data-driven claims
- More accommodation disputes involving remote work, pregnancy, religion, mental health, and caregiving
- Greater scrutiny of contractor, staffing, and AI related practices

Discussion



- Questions
- Practical issues from your workplaces
- Developments you are seeing in New Jersey now

Thank You

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