

# Employee Benefit ■ Plan Review

## New Jersey Supreme Court Decision Explains Requirements to Assert Statutory Good Faith Defense to Wage and Hour Claims

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The New Jersey Supreme Court recently ruled that employers could not rely on determinations made by subordinate employees of the New Jersey Department of Labor and Workforce Development (“Department”) to support a “good faith” exemption from New Jersey’s overtime pay mandates, instead finding such determinations must come from either the Commissioner of the Department or the Director of the Division of Wage and Hour Bureau.

### BACKGROUND

In *Elmer Branch v. Cream-O-Land Dairy*,<sup>1</sup> the plaintiff Elmer Branch, a truck driver, filed a putative class action lawsuit against his employer Cream-O-Land Dairy (“Cream-O-Land” or “the defendant”) for payment of overtime wages under the New Jersey Wage and Hour Law (“WHL”). The plaintiff claimed that he, along with other “similarly situated truck drivers” employed by the defendant, were eligible for overtime pay at 1 1/2 times their regular hourly wage.

Cream-O-Land asserted two principal arguments in defense of the lawsuit: (1) it is exempt from the overtime requirements of the WHL

because it is a “trucking industry” employer (and thus required to pay employees only 1 1/2 times the minimum wage as opposed to 1 1/2 times the employees’ regular rate of pay); and (2) it relied in “good faith” on certain prior determinations made by the Department finding that Cream-O-Land qualified as a “trucking industry employer” under the WHL and, therefore, could invoke a statutory defense exempting it from the claimed overtime payments at issue.

As to Cream-O-Land’s second argument, the WHL provides an absolute defense with regard to certain actions involving minimum wages and overtime based on an employer’s “good faith reliance” on either (i) a “written administrative regulation, order, ruling, approval or interpretation by the Commissioner of the Department of Labor and [Workforce Development]” (“Commissioner”) or by “the Director of the Wage and Hour Bureau” (“Director”), or (ii) a “practice or enforcement policy” of the Department or Bureau concerning the class of employers to which an employer belongs.

Based on these statutory provisions, Cream-O-Land asserted that it relied in good faith on three previous determinations by the

Department concerning driver complaints – one by a hearing and review officer, one by a senior investigator, and one by the Section Chief of the Division of Wage and Hour Compliance. In each of the three matters, the Department had investigated Cream-O-Land’s operations and determined that the company was a “trucking industry employer” and thus exempt from the overtime requirement at issue. None of the determinations, however, were made by the Commissioner or the Director, none were appealed by the complainant drivers, and no further proceedings took place within the Department concerning any of the three matters.

#### THE TRIAL COURT DECISION

Cream-O-Land moved for summary judgment before the trial court, and its motion was granted. The trial court reasoned that although a strict construction of the statutory “good faith” exemption required a decision by the Commissioner or Director, the three prior investigations by the Department “were sufficient to establish an enforcement policy” in Cream-O-Land’s industry, and an employer “should be permitted to rely on such determinations” in asserting a “good faith” defense. The plaintiff appealed, and the appellate court reversed summary judgment in favor of the defendant. Cream-O-Land petitioned the New Jersey Supreme Court for certification, and its petition was granted.

#### THE NEW JERSEY SUPREME COURT RULING

The New Jersey Supreme Court found that the statute provided an absolute defense for compensation matters under the WHL for employers who prove that they acted in “good faith” and in “reliance on” certain actions by the Department or Division. Such reliance, however, must be based on decisions issued by the Commissioner or Director themselves (as opposed to their subordinates), or on a final decision by the Commission following an adversarial proceeding before the Office of the Administrative Law. Thus, the court held that Cream-O-Land’s reliance on the three prior decisions by Department subordinates did not satisfy the statutory defense because the decisions were not made by either the Commissioner or Director. The court also found that the prior determinations did not constitute a “practice or policy” sufficient to meet the “good faith” defense. Accordingly, the court remanded the matter for further proceedings consistent with its opinion.

Notably, in reaching its decision, the New Jersey Supreme Court recognized the predicament facing employers like Cream-O-Land, which had, in fact, won three separate times over a decade on overtime dispute matters before the Department without those matters being reviewed further. To that end, the court suggested that the Department create a procedure for employers to seek an opinion

letter or other ruling from the Commissioner or the Director with respect to an exemption from the WHL’s overtime requirements. The court also suggested that the legislature and the Department determine whether additional statutory or regulatory guidance should be provided regarding the good-faith defense in WHL proceedings.

#### CONCLUSION

For now, employers will need to wait and see if any of the court’s suggestions are implemented and be mindful of relying on decisions by the Department that are outside of the exemption’s requirements. ☁

#### NOTES

1. [https://njcourts.gov/attorneys/assets/opinions/supremela\\_29\\_19.pdf](https://njcourts.gov/attorneys/assets/opinions/supremela_29_19.pdf).

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