



NY Labor Law Watchdog Hit With COVID-19 Overtime Lawsuit Of Its Own

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As we reach the dog days of summer, the Barnes & Thornburg Wage and Hour Practice Group's [COVID-19 related workplace litigation tracker](#) continues to analyze and summarize complaints around the country. We hope that the tracker's interactive functionality allows readers to digest the summaries and see the evolving trends in a number of useful ways.

While we continue to see employment cases related to COVID-19 rise around the country, as well as anecdotal evidence of a rise in workplace class and collective actions generally, we are also seeing unique cases filed that are interesting for reasons unrelated to the overall trends. This week's spotlight shines on one such case, in which employees of a state department of labor allege that their employer, the state department of labor, failed to pay them at the correct overtime rate. The veracity of the allegations are, at this point, untested, but paint a picture of schadenfreude that many employers in New York will no doubt find rich.

In *Spence, et al. v. State of New York*, the plaintiffs, state employees of the New York Department of Labor, allege that they were denied appropriate overtime pay in violation of the Fair Labor Standards Act and New York law. The plaintiffs allege that "the spread of coronavirus throughout New York and the United States led to the massive increase in claims for benefits and [unemployment insurance] by individuals and business owners facing unemployment and economic strain."

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As such, the plaintiffs claim that during the course of the COVID-19 pandemic, “various New York State Executive Branch agencies (including, but not limited to, the [New York Department of Labor]) began offering overtime compensation opportunities to their employees ... to assist the DOL with the massive increase in claims for benefits and Unemployment Insurance.” The complaint alleges that employees were required to work at least 15 hours of overtime per week beginning in May and 7.5 hours of overtime per week in July. The plaintiffs claim that their overtime rate was improperly “computed using a lower rate than their regular hourly rate,” in violation of the FLSA and New York law.

Although this case presents a unique fact pattern, the lesson is broadly applicable. Now, as ever, it is important to ensure compliance with the technical aspects of state and federal wage and hour laws, because if a state wage and hour watchdog can (allegedly) get it wrong, any employer could potentially make the same mistake.

Our thanks to those who joined our webinar this week. Contributors to the COVID-19 Related Workplace Litigation Tracker will continue to present on the trends we are seeing in our monthly webinar, with the next one scheduled for Aug. 26. We will continue to track these trends as they unfold, and will continue to update the tracker each week. As always, stay tuned.