

August 9, 2013

## Second Circuit Says That Overtime Claims Lacking Specificity Fail

On August 5, 2013, the U.S. Court of Appeals for the Second Circuit issued its third opinion since May of this year in *Dejesus v. HF management Services, LLC*, affirming the dismissal of Fair Labor Standards Act (FLSA) claims that lacked specific allegations of 40 hours of work in a given workweek, in addition to some uncompensated time in excess of 40 hours.<sup>1</sup> The plaintiff in *Dejesus* sought unpaid overtime compensation by generally alleging that she “worked more than forty hours per week during ‘some or all weeks’ of her employment...in violation of the FLSA,...[and] was not paid at a rate of at least 1.5 times her regular wage for each hour in excess of forty hours.”<sup>2</sup> The plaintiff also alleged that her employer “failed to include the commission payments in the calculation of [her] overtime pay.”<sup>3</sup> Finding that the plaintiff failed to adequately plead she was an employee entitled to overtime and she actually worked overtime without compensation, the district court granted the employer’s motion to dismiss.<sup>4</sup>

On appeal, the Second Circuit affirmed the lower court’s dismissal of the FLSA claims.<sup>5</sup> The court reasoned that merely restating the language of the statute – alleging a plaintiff “worked more than forty hours per week during ‘some or all weeks’ of her employment...[and] was not paid at a rate of at least 1.5 times her regular wage...” – without more factual context was insufficient to withstand a motion to dismiss.<sup>6</sup> Although the court affirmed the dismissal of the plaintiff’s claims, it seemed to suggest that there is not a bright line rule to pleading FLSA claims. Instead, “[d]etermining whether a plausible claim has been pled is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.”<sup>7</sup> The court recognized that plaintiffs are not required “to keep careful records and plead their hours with mathematical precision.”<sup>8</sup> Yet, the court stated that plaintiffs must provide “some factual context that will ‘nudge’ their claim ‘from conceivable’ to plausible.”<sup>9</sup>

While the Second Circuit case law is now clearer on the degree of specificity required to bring FLSA claims, employers should know that federal courts differ on the FLSA pleading standard. Also, a court’s dismissal of poorly plead FLSA claims does not necessarily relieve employers defending FLSA claims if a plaintiff amends his or her complaint to meet the pleading standard. Thus, employers should carefully consider how they respond to an FLSA complaint.



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<sup>1</sup> No. 12-4565, 2013 WL 3970049, at \*1.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.*

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