

In the Second Circuit, Unpaid Overtime Claims Must Allege Specifics

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Earlier this month, the United States Court of Appeals for the Second Circuit, in [Dejesus v. HF Management Services, 2013 U.S.App.LEXIS 16105 \(2d Cir. August 5, 2013\)](#), held that plaintiffs cannot rely solely on vague allegations in asserting claims for unpaid overtime. In this case, the plaintiff alleged that her former employer had failed to pay her overtime, but her Complaint lacked details such as the amount of overtime she had allegedly worked. Instead, it simply parroted the language of the [Fair Labor Standards Act \(“FLSA”\)](#). Affirming dismissal of the Complaint, the Second Circuit agreed with the district court that the allegations failed to state a claim. This decision makes it more difficult for plaintiffs who lack a basis for an unpaid overtime claim to file a lawsuit in the hope of finding one during discovery.

Ramona Dejesus (“Dejesus”) worked for HF Management Services, LLC (“Healthfirst”), a company providing administrative and support services to healthcare organizations. Dejesus alleged that she had worked more than forty hours per week for “some or all weeks” of her employment, but that Healthfirst had failed to pay her time and a half for the hours she worked over forty. The Complaint did not indicate the number of overtime hours Dejesus had worked, her rate of pay or an estimate of the unpaid wages.

Dejesus filed the lawsuit in the United States District Court for the Eastern District

of New York, alleging violations of the FLSA and the [New York Labor Law \(“NYLL”\)](#). Both the FLSA and NYLL require an employer to pay non-exempt employees at an hourly rate of at least one and a half times their regular rate for each hour that the employees work in excess of forty hours in a workweek. Healthfirst filed a Motion to Dismiss the Complaint arguing, among other things, that the vague allegations in the Complaint failed to state a claim for unpaid overtime. The district court granted the motion. Dejesus appealed and the Second Circuit affirmed.

In reaching its decision, the Second Circuit quoted the U.S. Supreme Court, which stated in [Ashcroft v. Iqbal, 556 U.S. 662, 678 \(2009\)](#), that, in order to state a claim, a Complaint must contain more than “[t]hreadbare recitals of the elements of a cause of action ... supported by mere conclusory statements.” According to the Second Circuit, a plaintiff asserting an overtime claim must allege that he or she worked more than forty hours in a week without receiving the required compensation. The Court indicated that “an approximation of overtime hours” is helpful, but not necessarily required in every case. The Court further indicated that courts should consider the allegations in context and on a case by case basis to determine if they are sufficient.

The Second Circuit concluded that the allegations in Dejesus’ Complaint “did not plausibly allege that she worked overtime without proper compensation.” The Court observed that Dejesus “did not estimate her hours in any or all weeks or provide any other factual context or content.” The Court further observed that her Complaint “was devoid of any numbers to consider beyond those plucked from the [FLSA].” According to the Court, Dejesus “was required to do more than repeat the language of the statute.” The Court explained that the Complaint “tracked the statutory language of the FLSA, lifting its numbers and rehashing its formulation, but alleging no particular facts sufficient to raise a plausible inference of an FLSA overtime violation.”

The Court emphasized that plaintiffs are not required to “keep careful records and plead their hours with mathematical precision.” However, the Court explained, plaintiffs must “draw on” their “memories and experience” in order to provide “complaints with sufficiently developed factual allegations.” The Court affirmed the dismissal of Dejesus’ Complaint.

In recent years, employers have faced a wave of wage and hour lawsuits. In many instances, it seems that plaintiffs pursue these actions – particularly class or collective actions – without any real knowledge of wage and hour violations but in the hope of finding them during the litigation. The Dejesus decision is a welcome development for employers in the Second Circuit, because it requires plaintiffs, before filing a lawsuit, to at least come up with factual allegations supporting their claims.

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