



ACCNJ LEGAL & INSURANCE UPDATE

AUGUST 2025

NJDEP PUBLISHES PROPOSED DIRTY DIRT RULES

In January, the New Jersey Department of Environmental Protection (“NJDEP”) published its long-anticipated proposed rules implementing New Jersey’s Dirty Dirt Law, which cracks down on the illegal disposal and use of contaminated soil and debris and closes regulatory loopholes which gave rise to the misuse of soils and fill materials. Once adopted, the proposal will amend NJDEP’s Solid and Hazardous Waste Licensing and Revocation Rules (N.J.A.C. 7:26-16), Solid Waste Rules (N.J.A.C. 7:26), and Recycling Rules (N.J.A.C. 7:26A).

New Jersey’s A-901 regulations impose strict licensing requirements on individuals and businesses engaged in solid and hazardous waste services. The Dirty Dirt Law was enacted to expand these licensing requirements to include those engaged in soil and fill recycling services (collection, transport, treatment, processing, brokering, storing, transferring, or disposal). As a result, under the proposed regulations, parties engaged in these services must not only register with NJDEP, but also comply with a variety of requirements, including the filing of business disclosure statements that identify all companies in their chain of ownership and personal disclosure statements concerning their officers, directors, and key employees.

Prior to the comment period closing, ACCNJ submitted comments requesting NJDEP to issue further guidance and protocols for testing of soil and fill recyclable materials (restricted vs. non-restricted), and to allow A-901 applicants to operate while awaiting approval. As NJDEP reviews the submitted comments, it remains unclear what, if any, changes will be made. That said, ACCNJ staff will continue monitoring for further information and provide updates accordingly.

DEVELOPMENTS IN COMPENSABLE TIME RULES

Recent developments in State compensable time rules have been triggered by class action litigation. For context, the Portal-to-Portal Act of 1947 is an amendment to the Fair Labor Standards Act (“FLSA”) that helps define “working time” and exempts certain preliminary and postliminary activities from being considered compensable under the FLSA.

In *Vaccaro v. Amazon.com.dedc, LLC*, a putative class action was brought by current and former Amazon employees seeking compensation under the New Jersey Wage and Hour Law (“NJWHL”) for time spent undergoing mandatory post-shift security screenings. Ultimately, a New Jersey federal court determined that the NJWHL does not incorporate the federal Portal-to-Portal Act’s exemptions and, as such, the time spent by the employees undergoing mandatory security screenings at the end of the workday was compensable “working time” under the NJWHL.

In another case, *Beauregard v. Broadway Electric Service Corp.*, a Pennsylvania federal court, relying on a similar PA Supreme Court decision that PA’s minimum wage statute did not include the Portal-to-Portal Act exemptions, allowed a class action to proceed seeking payment for time spent shuttling from an off-site parking lot to the construction jobsite. In addition, the court held an employer and union cannot bargain away minimum statutory wage and hours rights by contractually defining the start of the workday.

These recent rulings signal a shift in how state courts may interpret compensable time, diverging from federal standards under the Portal-to-Portal Act. For employers, especially in

industries such as heavy highway construction, where employees are often required to park in remote locations and shuttled to the job site, these developments underscore the growing importance of reviewing timekeeping and compensation practices. As courts continue to scrutinize what constitutes "working time," employers should remain vigilant, ensuring compliance with both federal and state requirements to mitigate the risk of litigation.

USDOL REVIVES VOLUNTARY SELF-AUDIT PAID PROGRAM

The U.S. Department of Labor (USDOL) has officially reinstated the Payroll Audit Independent Determination (PAID) Program, a voluntary compliance initiative that had been inactive since 2021. Initially introduced in 2018, the PAID Program was created to assist employers in voluntarily identifying and resolving wage and hour violations under the Fair Labor Standards Act (FLSA) and was recently expanded to address Family and Medical Leave Act (FMLA) issues.

The PAID program allows employers to proactively address possible wage and leave violations without the threat of litigation. If a company suspects it has underpaid workers or improperly administered leave, it can initiate a voluntary self-audit and partner with the USDOL to come to a resolution. This process may include reimbursing employees for back wages and revising internal policies as needed.

That said, employers should remain cautious as participation in the PAID Program does not protect against liability under state or local laws. Employees may decline the back wages offered through the program and instead pursue legal action under New Jersey's wage and hour laws. Further, participation in the PAID Program is not anonymous; businesses must apply, identify themselves to the USDOL, and acceptance is not guaranteed. If accepted, they must certify compliance with the FLSA or FMLA, based on the violations. As a result, employers interested in participating in the Program should consult legal counsel before applying.

EMAIL US

WEBSITE



Associated Construction Contractors of New Jersey

Raritan Center Plaza II
91 Fieldcrest Avenue, Suite A19
Edison, NJ 08837
P: 732.225.2265

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