

Thousands Could Reopen Wage Claims Under New Mexico Settlement

By Brenna Goth

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- Class action argued state labor department not enforcing wage laws
- Settlement could let thousands ask state to reconsider claims

Thousands of workers in New Mexico could ask the state's labor department to review wage violation claims it previously closed under a settlement a district judge will consider March 9.

If approved, the agreement marks the end of a yearslong effort by labor groups arguing the New Mexico Department of Workforce Solutions didn't enforce protections for underpaid or unpaid workers. It stems from a class action in the state's First Judicial District Court and applies to a broad group: every person who has experienced a violation of the state's wage laws, regardless of income.

The department also agreed to lift the \$10,000 cap and one-year statute of limitations on wage claims. The state has now implemented the three-year statute of limitations that the state Legislature approved in 2009. That time limitation is indefinite when a violation is part of continuing conduct.

The settlement could be a boon for workers who had claims seeking more than \$10,000, that were more than a year old, or that were otherwise denied under department policies. Worker advocates hope related changes to claims and investigation processes will reduce wage violations in the future.

The federal Department of Labor also accepts wage complaints, but many workers depend on state-level enforcement, which is governed by a patchwork of systems and disparate resources across the country.

In New Mexico, the state labor department's policies that contradicted state law had a broad impact on workers in many jobs and industries, said Elizabeth Wagoner, supervising attorney for workers' rights at the New Mexico Center on Law and Poverty and lead counsel in the case. Hardest hit were those working for the state's minimum wage of \$7.50 an hour or even less, she said.

"The minimum wage laws are only as good as the enforcement behind them," Wagoner told Bloomberg Law.

Lawsuit Argues Claims Wrongly Rejected

The case stems from the wage complaint experiences of people like plaintiff Jose "Pancho" Olivas, who's from the rural community of Gallup in the western part of the state. Several labor groups had been addressing issues with department policies for years, Wagoner said.

Olivas, a member of worker and racial justice organization Somos Gallup, said the burger and wings restaurant that employed him owes him \$15,000 for partial payment. He told Bloomberg Law he "practically lived" at the restaurant while working there 100 hours a week with his wife for seven or eight months, hoping to save for a food truck.

"You can't pay bills with hopes and dreams and promises," he said.

But the state labor department rejected investigating his complaint because he was seeking more than \$10,000 and didn't meet the statute of limitations, Olivas said. The resulting lawsuit challenged a number of department policies plaintiffs say resulted in cases being closed improperly.

Plaintiffs also argued the department didn't hold employers liable for damages and made claimants communicate and fill out forms in English, even if they had limited proficiency.

Some of those policies allowed for wage violations, Wagoner said, because employers knew they wouldn't necessarily be caught. And if they were, businesses only had to pay workers what they originally owed them instead of the extra damages outlined in state law, under state labor department policy, she said.

'Comprehensive Resolution'

Representatives of the New Mexico Department of Workforce Solutions declined to speak with Bloomberg Law. The department said in a statement that it worked in good faith to quickly resolve concerns over policies from previous administrations regarding wage claims.

Many of the procedures outlined in the lawsuit already have been changed, with other changes in the works pending court approval of the settlement. The department maintained that its previous policies and practices followed state law, according to the settlement agreement.

The lawsuit parties, including a coalition of labor groups, also agreed to work together on an investigations manual for department employees and training on those policies. People with limited English proficiency will have equal access to the complaint process.

"The settlement really is a comprehensive resolution," Wagoner said.

2,500 Workers Notified

If the settlement is formally approved, thousands of workers can ask the department to reopen their cases.

The New Mexico Department of Workforce Solutions notified about 2,500 people about the possibility of reopening their wage claims, Deputy Cabinet Secretary Erin Thompson told Bloomberg Law in an email. Each case will be evaluated individually, she said.

The class affected by the settlement is even bigger than that, Wagoner said. Radio ads and other outreach efforts aim to tell as many people as possible about their rights, she said.

Meanwhile, some lawyers say they've already noticed a positive change in the department's processes. Serge Martinez, associate law professor at the University of New Mexico School of Law, who works with a clinical program addressing wage theft, said his team often would bypass the department in favor of court because they knew certain claims wouldn't be investigated.

The settlement may not help everyone who filed a wage claim, Martinez said, and he questioned whether all those affected could be reached. But it's positive for workers moving forward, and the enforcement could discourage wage theft, he told Bloomberg Law.

"Employers realize it's more beneficial to them to just pay their workers," he said.

The case is *Olivas v. NM Workforce Sols.*, N.M. Dist. Ct., No. D-101-CV-2017-00139, settlement hearing 3/9/18.

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