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Hair Cuttery Lawsuit Could Tee Up Coming Battles Over Layoffs Due to COVID-19

The suit, filed Tuesday in federal court in the District of New Jersey, could be a harbinger of a coming wave of litigation related to the mass layoffs in recent weeks at businesses whose operations were disrupted by COVID-19.

By [Charles Toutant](https://www.law.com/njlawjournal/author/profile/Charles-Toutant/) | April 08, 2020 at 04:04 PM



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Hair Cuttery front entrance.

A new wage-and-hour lawsuit claims the Hair Cuttery chain of salons withheld pay from employees when it suspended operations due to the COVID-19 pandemic.

The suit, [filed Tuesday \(https://images.law.com/contrib/content/uploads/documents/399/41589/hair_cutt](https://images.law.com/contrib/content/uploads/documents/399/41589/hair_cutt) in federal court in the District of New Jersey, could be a harbinger of a looming wave of litigation related to a spate of mass layoffs in recent weeks as the novel coronavirus disrupts business operations globally.

The suit says Hair Cuttery's stylists, working at 850 salons in 16 states, were told they would not be paid for their final week of work when the company ceased operations on March 21. Company president Phil Horvath and CEO Dennis Ratner, who are

named as defendants in the suit, said in a video released to employees on April 3 that Hair Cuttery hoped to repay them later if the company gets federal pandemic relief funding or when operations resume, according to the suit.

The suit was brought by stylist Nicole Olsen individually and on behalf of others nationwide who are similarly situated, and brings claims under the Fair Labor Standards Act and the New Jersey Wage Payment Law. Adam Malamut of Malamut &

men and women is completely unfair, unjust and, as alleged by our client, illegal under federal and state law.”

Employment lawyers are beginning to hear from prospective clients with grievances related to the mass layoffs that have accompanied the restrictions on activities necessitated by the coronavirus pandemic in recent weeks. More than **15 million people (<https://www.marketwatch.com/story/another-6-million-workers-likely-filed-jobless-claims-in-early-april-as-record-layoffs-mount-2020-04-08>)** have filed for unemployment since mid-March, and states are struggling to keep up with applications for unemployment benefits.

The mass layoffs have already prompted inquiries to lawyers from people who claim they were picked to be laid off based on factors such as age or race or pregnancy, said Allan Schorr, a labor and employment lawyer with Schorr & Associates in Cherry Hill. And in addition, enhanced unemployment benefits signed into law under the Coronavirus Aid, Relief and Economic Security Act, or CARES Act, on March 27 are giving rise to a new kind of complaint, Schorr says.

The new law provides jobless people \$600 a week on top of the existing unemployment benefits so that low-wage workers will get paid more on unemployment than while working, Schorr said. He has received inquiries from

people who kept their job while others were let go, but would have preferred to be laid off, asking courts to find “wrongful retention” an adverse employment action.

“There’s going to be a flood of litigation with regard to the way that unemployment is being paid. I think the court would see that as a valid cause of action. I think we are going to see a lot of lawsuits coming out of this,” Schorr said.

Leslie Farber, who practices labor and employment law in Montclair, said she and her colleagues are getting calls from workers who are being forced to use benefit time during a COVID-19-related business shutdown. And an employer’s determination as to whether a particular worker is entitled to work from home is another hot-button issue in the current climate, said Farber, who is investigating the case of a worker who was fired over a dispute on that issue.

The Hair Cuttery suit seeks treble damages on behalf of New Jersey employees under the state’s Wage Payment Law. The suit is brought on behalf of employees who worked from March 15 to March 21 and were not fully and fairly compensated for their time. A collective action is appropriate because the employees perform the same or similar job functions, were subject to the same or similar unlawful practices, and have claims that are based on the same or similar factual and legal theories, the suit claims.

Employees at Hair Cuttery are paid through commissions, receiving a percentage of the revenue they generate for the salon in each shift. An employee who does not reach minimum wage under that formula in a given shift is paid minimum wage for that shift, the suit claims.

Horvath and Ratner could not be reached for comment about the suit. Telephones were not being answered Wednesday at the offices of Hair Cuttery and its parent, Ratner Companies, in Vienna, Virginia.

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Charles Toutant

Charles Toutant is a litigation writer for the New Jersey Law Journal.



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