SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2560-21

HMH HOSPITALS CORP.,

Plaintiff-Appellant,

v.

STEPHANIA WARREN,

Defendant-Respondent.

Submitted January 19, 2023 – Decided February 22, 2023

Before Judges Accurso and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-3442-21.

Greenberg Traurig, LLP, attorneys for appellant (Wendy Johnson Lario, of counsel and on the brief; Scott Humphreys, on the brief).

Respondent has not filed a brief.

PER CURIAM

This case requires that we determine whether paid time off (PTO) accrued by an employee pursuant to an employer's policy constitutes wages subject to

the payment requirements of the New Jersey Wage Payment Law (WPL), N.J.S.A. 34:11–4.1 to –4.14, where the employee does not satisfy the policy's conditions precedent for payment. We conclude that, because an employer has no statutory obligation to offer or provide PTO in the first instance, accrued PTO does not constitute wages under the WPL and is not otherwise payable until the employee satisfies the conditions precedent to payment as set forth in the policy.

I.

HMH Hospitals Corp. (HMH) employed Stephania Warren as a certified nurse's assistant for more than three years before terminating her employment following a disciplinary action based on Warren's admitted misconduct. After her termination, Warren sought payment from HMH for PTO hours she had accrued under HMH's "Time Off with Pay: PTO" policy.[1]

The PTO policy provided a formula for the accrual of PTO hours based on an employee's hours worked, years of service, and job classification. The policy also provided for payment of accrued PTO to employees leaving HMH's employment "with proper notice of at least three weeks." Pertinent here, the

[1] As we explain, the evidence before the trial court showed there were two PTO policies in effect during Warren's employment. The policy provisions pertinent to this appeal are identical in each.

policy also expressly declared "PTO . . . will not be paid to a team member whose employment is terminated in connection with a disciplinary action."

HMH denied Warren's request for payment for accrued PTO hours because her employment was terminated as the result of a disciplinary action. Warren filed a claim with the Wage Collection Section, Division of Wage and Hour Compliance, of the New Jersey Department of Labor and Workforce Development (DOL), which assigned the matter to a wage collection referee, who conducted a hearing.[2] Warren testified at the hearing. HMH counsel appeared and presented evidence, including HMH's April 1, 2019 PTO policy.

The referee issued a written decision finding HMH employed Warren from October 8, 2016, to October 14, 2019, when it terminated her employment due to a disciplinary action based on misconduct. The referee noted Warren's claim she accrued 105.86 PTO hours during her employment and explained Warren sought payment for those hours at her $16.22 hourly rate. The referee found the PTO policy HMH presented during the hearing became effective on

[2] The record on appeal does not include a transcript of the hearing. See N.J.S.A. 34:11–63 (providing in part that on an appeal from a Wage Collection Division determination, "[t]he wage collection division shall then prepare a transcript of the record to be filed in the Superior Court"). The absence of the transcript does not interfere with our ability to dispose of this appeal because HMH presents only legal issues for resolution.

April 1, 2019; the policy stated accrued PTO would not be paid to an employee whose employment was terminated due to a disciplinary action; and the policy was in effect on October 14, 2019, the day HMH terminated Warren's employment.[3]

The referee gave effect to HMH's April 1, 2019 PTO policy, determining Warren is not entitled to any accrued PTO hours "for the period after the . . . policy was in place" and concluding Warren is not entitled to monies for the accrued PTO hours extant on her termination date because her employment ended as the result of a disciplinary action. Thus, the referee implicitly rejected the claim accrued but unpaid PTO hours constituted wages under the WPL since HMH's policy provided an employee terminated due to a disciplinary action is not entitled to pay for accrued PTO hours.

The referee awarded Warren pay for PTO hours that accrued prior to the effective date of the April 1, 2019 policy based on the apparent assumption there was no policy in effect before that date providing an employee terminated as the

[3] The referee also noted that an August 23, 2019 HMH email sent two months before Warren's termination, stating no vacation or other time off would be approved due to staffing shortages, rendered Warren unable to use the accrued PTO hours. The record on appeal lacks any evidence Warren would have otherwise taken accrued PTO time during the period following the email and prior to the termination of her employment on October 14, 2019.

result of disciplinary action is not entitled to payment for accrued PTO hours. The referee "approximate[d]" Warren accrued seventy hours of PTO prior to April 1, 2019, and awarded her $1,135 based on her $16.22 hourly rate.[4] The referee did not make any findings of fact supporting her approximation of the PTO hours Warren accumulated prior to April 1, 2019.

HMH timely appealed from the referee's decision to the Law Division pursuant to N.J.S.A. 34:11–63.[5] The court heard oral argument and considered additional evidence presented by the parties, including HMH's PTO policy in effect from August 2014, to April 1, 2019, which also provided that employees terminated as the result of a disciplinary action were not entitled to payment for any accrued PTO hours on the date of termination.[6] HMH further presented

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[4] The referee also awarded $113 in liquidated damages, a $25 summons cost, and a $124.85 administrative fee.

[5] In pertinent part, N.J.S.A. 34:11–63 provides for an appeal to the Superior Court "[f]rom any judgment which may be obtained in the wage collection division" of the DOL.

[6] The Law Division permitted the parties to supplement the record in accordance with N.J.S.A. 34:11–65, which provides that "[u]pon the trial of any appeal either party may produce any witness not produced or sworn in the court below, or any documentary evidence not offered or admitted in the court below, if otherwise legal and competent, without notice to the opposite party." See Marr v. ABM Carpet Service, Inc., 286 N.J. Super. 500, 504 (Law Div. 1995)

records showing that despite Warren's claims to the contrary, she used and was paid for numerous accrued PTO hours when she took time off from work during the course of her employment.

In its oral opinion, the court noted Warren argued in part she was entitled to payment for the accrued PTO hours extant on her termination date because HMH had denied her requests to use the hours when she had requested to do so during her employment. The court rejected the claim; it did not find Warren was entitled to payment for accrued PTO hours on that basis.

The court rejected the referee's conclusion Warren accrued seventy PTO hours prior to the effective date of the April 1, 2019 policy, finding the referee's approximation of the hours was made without "mathematical certainty." The court accepted HMH's records showing Warren had 43.9 accrued PTO hours on her termination date and awarded Warren payment for those hours at her hourly pay rate for a total of $712.06.[7]

(explaining N.J.S.A. 34:11–65 "anticipates a broad scope of review by allowing the parties to introduce evidence on appeal").

[7] The court also directed HMH pay $262.85 in liquidated damages, fees, and costs. As part of that sum, the court incorrectly directed HMH to pay $113.50 in liquidated damages, the same amount imposed by the referee. Because liquidated damages are assessed as a percentage of the amount of wages found to be due, and the trial court concluded HMH owed Warren less wages than the

In a conclusory finding unsupported by any analysis of the facts, caselaw, or pertinent statutory language, the court based its award on its determination accrued PTO hours constitute wages under N.J.S.A. 34:11–57. The court further determined HMH's April 1, 2019 policy — providing an employee who is terminated due to a disciplinary action is not entitled to payment for accrued PTO hours — is void because it violates HMH's statutory obligation to pay wages under N.J.S.A. 34:11–4.3. The statute requires employers "pay [an] employee all wages due not later than the regular payday for the pay period during which the employee's termination . . . took place" regardless of the reason for the termination. N.J.S.A. 34:11–4.3

The court found the PTO policy violated N.J.S.A. 34:11–4.3 because "the accrued and unused PTO were wages at the time of Warren's termination," and the "policy" that "deprive[d] her of her PTO simply by reason of termination is void, [as] affecting a forfeiture." The court reasoned that "[b]ecause an employment agreement that violates the [WPL] is null and void," see N.J.S.A. 34:11–4.7, and HMH's PTO policy violated the WPL by denying payment for

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referee concluded, the trial court should have reduced the liquidated damages award accordingly. The error is of no moment because, as we explain, the trial court erred by awarding Warren an amount for purported wages in the first instance.

accrued PTO to employees terminated due to a disciplinary action, the policy could not lawfully bar Warren from receiving payment for accrued PTO hours.

The court entered an order directing HMH pay Warren at her hourly rate for the accrued 43.9 PTO hours extant on her termination date. HMH moved for reconsideration and requested oral argument. The court did not hear oral argument and entered an order denying the reconsideration motion.[8] HMH appealed from the court's orders.[9]

II.

HMH contends the court erred by applying the definition of wages in N.J.S.A. 34:11–57 in its analysis of Warren's claim, and the court should have applied the definition of wages set forth in N.J.S.A. 34:11–4.1(c) instead. HMH

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[8] Where, as here, a party requests oral argument on a motion that does not involve pretrial discovery or is not directly addressed to the calendar, "the request shall be granted as of right." R. 1:6-2(e). The motion court therefore erred by failing to grant HMH's request for oral argument on the reconsideration motion.

[9] Warren did not participate in the appeal. By failing to do so, Warren did not offer any argument challenging the court's rejection of her claimed entitlement to payment for accrued PTO hours based on HMH's alleged refusal to allow her to take paid time off prior to the termination of her employment. We therefore do not address the claim or the court's rejection of it. See generally Drinker Biddle & Reath LLP v. N.J. Dept. of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (explaining an issue not briefed on appeal is deemed abandoned).

also argues in part the court erred by finding the accrued 43.9 PTO hours extant on Warren's termination date constituted wages as defined under N.J.S.A. 34:11–57.

HMH's arguments present issues of statutory construction we review de novo. N.J. Div. of Child Placement and Perm. v. D.C.A., 474 N.J. Super. 11, 24 (2022). In our interpretation of a statute, our goal "is to 'determine and give effect to the Legislature's intent.'" State v. Lopez-Carrera, 245 N.J. 596, 612 (2021) (quoting In re Registrant H.D., 241 N.J. 412, 418 (2020)). We begin with the language of a statute, "which is typically the best indicator of intent." State v. McCray, 243 N.J. 196, 208 (2020) (quoting In re T.B., 236 N.J. 262, 274 (2019)). "If the language of the statute is clear, 'the inquiry is over.'" T.B., 236 N.J. at 274 (quoting State v. Harper, 229 N.J. 228, 237 (2017)). Where, as here, we are required to interpret multiple statutory provisions, we do not read "[w]ords and phrases . . . in isolation. Instead, we read them in context, along 'with related provisions[,] . . . to give sense to the legislation as a whole.'" State v. A.M., 252 N.J. 432, 451 (2023) (second alteration in original) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)).

Our Legislature has enacted a series of statutes governing the payment of wages to employees. The statutes include the WPL, the New Jersey State Wage

and Hour Law (NJWHL), N.J.S.A. 34:11–56a1 to –56a38, and the wage collection provisions, N.J.S.A. 34:11–57 to –67.[10]

The WPL governs "the time and mode of payment of wages due employees[,]" Hargrove v. Sleepy's, LLC, 220 N.J. 289, 302 (2015), and "is designed to protect an employee's wages and to assure timely and predictable payment[,]" id. at 313. The WPL mandates an employer pay wages at certain regular intervals, N.J.S.A. 34:11–4.2, and, upon the termination of an employee's employment, "not later than the regular payday for the pay period during which the employee's termination, suspension or cessation of employment . . . took place," N.J.S.A. 34:11–4.3.

Subject to exceptions inapplicable here, the WPL also prohibits an employer from "enter[ing] any agreement with an employee for the payment of wages except as provide by statute . . . ." Hargrove, 220 N.J. at 302; N.J.S.A. 34:11–4.7. The WPL also authorizes employees to "maintain a private cause of action for an alleged violation of the law." Hargrove, 220 N.J. at 303 (citing N.J.S.A. 34:11–4.7; Winslow v. Corp. Express, Inc., 364 N.J. Super. 128, 136 (App. Div. 2003)).

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[10] Other statues governing the payment of wages include the New Jersey Prevailing Wage Act, N.J.S.A. 34:11–56.25 to –56.56, and the New Jersey Equal Pay Act, N.J.S.A. 34:11–56.1 to –56.11.

The NJWHL addresses other issues concerning the payment of wages and "is designed 'to protect employees from unfair wages and excessive hours.'" Id. at 304 (quoting In re Raymour & Flanigan Furniture, 405 N.J. Super. 367, 376 (App. Div. 2009)). The statute "establishes . . . a minimum wage . . . [and] an overtime rate for each hour of work in excess of forty hours in any week for certain employees." Ibid. (citing N.J.S.A. 34:11–56a4).

The wage collection provisions, N.J.S.A. 34:11–57 to –67, provide a process for the collection of unpaid wages due. The provisions authorize the DOL commissioner to "investigate any claim for wages due an employee." N.J.S.A. 34:11–58. The statutes allow the commissioner to conduct a proceeding to determine the wages due and "make a decision or award" that may be docketed as a judgment in the Superior Court. Ibid. The wage collection provisions further permit an appeal to the Superior Court from a commissioner's decision wages are due, N.J.S.A. 34:11–63, and allow parties to supplement the record in the Superior Court with witness testimony and documentary evidence that was not presented before the commissioner, N.J.S.A. 34:11–65. Warren's claim for the accrued PTO hours she alleges are wages due from HMH was processed in accordance with the procedures set forth in the wage collection provisions.

Although the WPL, the NJWHL, and the wage collection provisions separately govern issues related to the wages of New Jersey employees, each defines the term "wages" using different language. Under the WPL, "wages" are defined as:

> the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.
>
> [N.J.S.A. 34:11–4.1.]

The NJWHL defines "wages" as:

> any moneys due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and including the fair value of any food or lodgings supplied by an employer to an employee, and, until December 31, 2018, "wages" includes any gratuities received by an employee for services rendered for an employer or a customer of an employer.
>
> [N.J.S.A. 34:11–56a1(d).]

Under the wage collection provisions, "wages" are

> any moneys due an employee from the employer whether payable by the hour, day, week, semimonthly, monthly or yearly and shall include commissions, bonus, piecework compensation and any other benefits

arising out of an employment contract.

[N.J.S.A. 34:11–57.]

Here, the motion court determined the definition of wages in N.J.S.A. 34:11–57 governed the resolution of Warren's claimed entitlement to pay for the accrued PTO hours extant on the termination date. HMH claims the court's determination was made in error. We agree.

Warren's claim HMH wrongfully failed to pay what she asserted were wages was processed in accordance with the wage collection provisions, N.J.S.A. 34:11–57 to –67. But the provisions set forth only the procedure for processing a claim for wages otherwise "due" under the WPL and the NJWHL. N.J.S.A. 34:11–57 to –67. The wage collection provisions do not directly address or govern Warren's right, if any, to the accrued 43.9 PTP hours as wages. Indeed, N.J.S.A. 34:11–57 defines wages as "moneys due an employee from the employer, whether payable by the hour, day, week, semimonthly, monthly or yearly." The statute does not provide any standard for determining when or how "moneys" become due such that they qualify as wages, or if moneys are due as wages in the first instance. In other words, the wage collection provisions establish only a procedure for collecting "wages," and N.J.S.A. 34:11–57 leaves it to other statutes to define when and how the "moneys" become "due" and

therefore constitute wages subject to the collection process set forth in N.J.S.A. 34:11–57 to –67.

The gap in the wage collection provisions is filled by the WPL, and more particularly N.J.S.A. 34:11–4.1(c), which, as noted, defines wages as "the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis." Warren's labor and services were provided to HMH on a time basis; Warren worked for $16.22 per hour. And, under N.J.S.A. 34:11–4.1(c), her wages consisted only of "direct monetary compensation for the labor or services she provided."

Warren's claim HMH failed to timely pay her purported wages — in the form of an amount equal to her accrued PTO hours multiplied by her hourly rate — is founded on an alleged violation of the WPL. Warren asserted the accrued PTO hours constitute wages HMH failed to pay pursuant to WPL's mandate that an "employer shall pay the full amount of wages due to [its] employees" in accordance with the statute's requirements. N.J.S.A. 34:11–4.2. Therefore, for the reasons we have explained, the trial court erred by finding the definition of wages applicable to Warren's claim is found in the wage collection provisions under N.J.S.A. 34:11–57, and we instead apply the WPL's definition of wages, N.J.S.A. 34:11–4.1(c), to the analysis of Warren's claim. See also Mulford v.

Comput. Leasing, Inc., 334 N.J. Super. 385, 394-95 (Law Div. 1999) (finding the definition of the term "employer" in N.J.S.A. 34:11–57 was "supplanted by the enactment of N.J.S.A. 34:11–4.1," which included a conflicting definition of the term because N.J.S.A. 34:11–4.1 was enacted "later in time" and "the later definition is intended to effect the remedial interpretation of the statutory scheme").

In pertinent part, the WPL defines wages as "direct monetary compensation for the labor or services provided." N.J.S.A. 34:11–4(1)(c). In our interpretation of the statute, we must "strive to give effect to every word rather than to ascribe a meaning that would render part of the statute superfluous." N.J. Div. of Youth & Fam. Servs. v. I.S., 214 N.J. 8, 36 (2013). We also give a statute's "'words their ordinary meaning and significance.'" In re Pontoriero, 439 N.J. Super. 24, 36 (App. Div. 2015) (quoting James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 566 (2014)); see also N.J.S.A. 1:1–1 (providing in part that "unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated," the "words and phrases" in our statutes "shall . . . be given their generally accepted meaning").

To give effect to the word "direct" in the WPL's definition of wages, we interpret N.J.S.A. 34:11–4.1(c) to define wages as including only monetary

compensation directly due to an employee for the labor or services provided. See Direct, Merriam-Webster, https://www.merriam-webster.com/dictionary/direct (last visited Feb. 7, 2023) (defining "direct" as "marked by an absence of an intervening agency, instrumentality, or influence"); Direct, Black's Law Dictionary (11th ed. 2019) (defining "direct" as "straight; undeviating" or "[f]ree from extraneous influence; immediate"). Consistent with that interpretation, N.J.S.A. 34:11–4.1(c)'s definition of wages excludes "any form of supplementary incentives and bonuses calculated independently of regular wages and paid in addition thereto." That is, wages under N.J.S.A. 34:11–4.1 do not include monetary compensation that is not directly paid for labor or services provided by the employee.[11]

Our interpretation of N.J.S.A. 34:11–4.1 is further supported by the DOL's interpretation of "wages" under the NJWHL. As we have noted, the NJWHL

[11] We observe the accrual of PTO hours is materially different than "compensatory time" as the term is defined by the Code of Federal Regulations and used in the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 to 219. Compensatory time is directly awarded to compensate for an employee's labor, as it "is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime compensation is required by section 7 of the FLSA." 29 C.F.R. § 553.22 (emphasis added). In contrast, under HMH's policy an employee accrues PTO hours based on a number of factors and are not in lieu of payment for the wages otherwise due to an employee for hours during which labor and services are actually provided.

uses different words to define wages than does the WPL. Compare N.J.S.A. 34:11–56a1(d) (defining wages under the NJWHL), with N.J.S.A. 34:11–4.1 (defining wages under the WPL). However, it would be incongruous to apply different meanings to the term wages under the various statutory schemes governing wages for New Jersey employees. To do so might mean an individual entitled to wages under the WPL is not entitled to the minimum wage guaranteed under the NJWHL. Application of different definitions might also illogically result in an entitlement to a minimum wage under the NJWHL and no entitlement to wages under the WPL. Such results are wholly inconsistent with the principle enunciated in Hargrove, that like terms in the WPL and NJWHL should be interpreted in the same manner because "[s]tatutes addressing similar concerns should resolve similar issues" for individuals "seeking the protection of one or both statutes, by the same standard." 220 N.J. at 313.

In Hargrove, the Court noted the NJWHL and WPL "do not define 'employee,' 'employer,' or 'employ' identically," but the Court held "[t]he similarity of language" in the statutes "suggests that any interpretation or implementation issues should be treated similarly." 220 N.J. at 312. The Court also determined a DOL regulation prescribing the test to determine whether a

person or entity is an employer under the NJWHL also governs the determination of the same issue under the WPL. Id. at 316.

The Court's reasoning in Hargrove applies with syllogistic precision here. We discern no basis to apply different standards for the determination of what constitutes wages under the WPL and the NJWHL. Moreover, the DOL's interpretation of wages under the NJWHL, as reflected in its regulations, supports our conclusion wages only include moneys for direct compensation for labor or services performed.

N.J.S.A. 12:56–5.2(b) provides that "[a]n employer is not required . . . to pay an employee for hours the employee is not required to be at [the] place of work by reason of holidays, vacation, lunch hours, illness and similar reasons." In other words, the DOL interprets the term wages to exclude any requirement an employer pay employees during hours the employee is not required to be at work by reason of a vacation or "similar reason."

We find N.J.S.A. 12:56–5.2(b) is consistent with the definition of wages in N.J.S.A. 34:11–4.1(c). As we have explained, wages under N.J.S.A. 34:11–4.1(c) include only compensation directly paid for labor or services performed. Pay for hours an employee is not required to be at work for reasons such as

vacation or "similar reasons," including accrued PTO, is not, by definition, compensation for labor or services actually performed.

Measured against these principles, Warren's accrued 43.9 PTO hours extant on her termination date did not constitute wages under N.J.S.A. 34:11–4.1(c). On her termination date, the accrued hours constituted a benefit entitling Warren to payment at a point in the future but not as "direct monetary compensation for labor or services rendered." Instead, the accrued hours permitted her only to take time off in the future for which she would receive pay for not rendering any labor or services at all. The potential for such compensation attendant to the accrued 43.9 PTO hours did not constitute "direct monetary compensation for labor or services rendered by" Warren, because, on the date of her termination, she had not taken time off and was not entitled to any monetary compensation for the PTO hours under HMH's policy.

Because the accrued hours do not constitute wages under the WPL, and HMH was not required to offer, pay, or provide PTO in the first instance, N.J.A.C. 12:56–5.2(b), the WPL did not limit the ability of Warren and HMH to contract regarding a term of employment that does not violate the law. Cf. Winslow, 364 N.J. Super. at 139 (noting employer was free to contractually change the commission structure previously in place provided it did so after

giving notice and "afford[ing] [the employee] an opportunity to decide whether he wished to continue working at a reduced rate of compensation."). And, contrary to the trial court's determination, the PTO policy did not violate the WPL because no statutory mandate to pay wages was violated, and HMH was therefore "free to set" the terms on which Warren became entitled to compensation for the accrued hours. Ibid.; see also Textile Workers Union of Am. v. Paris Fabric Mills, Inc., 22 N.J. Super. 381, 384 (App. Div. 1952) (holding "contractual provisions for vacation with pay are neither gratuity nor gift, but rather a supplement to the employment agreement which constitutes an offer or reward of additional wages for service, to which the employee becomes entitled upon performance of the obligations imposed by the contract"). HMH's PTO policy set the terms for Warren's entitlement to pay for accrued PTO hours, and, under the policy's express terms, she was not entitled to compensation for the accrued 43.9 hours of PTO because she was terminated due a disciplinary action. The trial court erred by concluding otherwise.

Reversed.