NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4012-21

CHRISTOPHER MAIA and
SEAN HOWARTH, on behalf
of themselves and all others
similarly situated,

Plaintiffs-Appellants,

v.

IEW CONSTRUCTION
GROUP,

Defendant-Respondent.

APPROVED FOR PUBLICATION

March 1, 2023

APPELLATE DIVISION

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Argued January 24, 2023 – Decided March 1, 2023

Before Judges Messano, Rose and Gummer.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-1842-22.

Amy C. Blanchfield argued the cause for appellants (Mashel Law, LLC, attorneys; Stephan T. Mashel, of counsel and on the briefs; Amy C. Blanchfield, on the briefs).

Michael James Riccobono argued the cause for respondent (Ogletree, Deakins, Nash, Smoak & Stewart, PC, attorneys; Ryan T. Warden, on the brief).

James E. Burden argued the cause for amicus curiae NELA NJ (Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, PC, attorneys; James E. Burden, on the brief).

The opinion of the court was delivered by

MESSANO, C.J.A.D.

On April 13, 2022, on behalf of themselves and others similarly situated, plaintiffs Christopher Maia and Sean Howarth filed a complaint alleging defendant IEW Construction Group had violated the Wage and Hour Law (WHL), N.J.S.A. 34:11-56a to -56a41, and the Wage Payment Law (WPL), N.J.S.A. 34:11-4.1 to -4.14, by failing to pay them for "pre-shift" and "post-shift" work.[1]

Maia alleged he had worked for defendant from April 2019 to November 2021, and Howarth asserted he had worked for the company from April 2020 to November 2021. Plaintiffs' proposed class included "all current and former laborers and other similarly non-exempt positions employed by IEW in New Jersey at any point in the six (6) years preceding the filing . . . of th[e] [c]omplaint." Among other relief, plaintiffs sought liquidated damages and counsel fees under the statutory causes of action.

[1] The complaint also asserted a claim against defendant for unjust enrichment. We need not address this cause of action because it was not the subject of the order we review.

Defendant moved to partially dismiss the complaint before filing an answer. It argued that plaintiffs sought retroactive application of amendments enacted by the Legislature and made effective August 6, 2019. See L. 2019, c. 212, § 14 (Chapter 212). In general, those changes to the WHL and WPL allowed employees to recover liquidated damages in civil actions brought against their employers and extended the look-back period for which employees could recover unpaid wages in violation of the WHL from two to six years. Plaintiffs opposed the motion.

The Law Division judge heard argument, agreed with defendant that plaintiffs sought to apply Chapter 212 retroactively, and granted the motion to partially dismiss their complaint. The judge's July 15, 2022 order: 1) dismissed with prejudice plaintiffs' WHL claims "arising prior to August 6, 2019," and plaintiffs' WPL claims "to the extent they are based on alleged violations occurring prior to August 6, 2019"; 2) dismissed with prejudice plaintiffs' WPL claim for attorney's fees "to the extent based on alleged violations occurring prior to August 6, 2019"; 3) dismissed without prejudice plaintiffs' WHL claims "to recover alleged unpaid straight-time wages" and their WPL claims seeking "to recover alleged unpaid overtime wages," permitting plaintiffs in both instances "to amend their complaint to properly denote which statute their claims arise under."

We granted plaintiffs leave to appeal. Before us, plaintiffs reiterate the arguments made in the Law Division, specifically that they do not seek retroactive application of the 2019 amendments but rather the statutory remedies available when they filed the complaint. We granted NELA NJ's motion to appear as amicus, and it echoes plaintiffs' arguments. Defendant contends the motion judge properly decided that plaintiffs were barred from seeking statutory remedies unavailable prior to the effective date of the amendments.

We reverse.

I.

"An appellate court reviews de novo the trial court's determination of the motion to dismiss under Rule 4:6-2(e)." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 108 (2019) (citing Stop & Shop Supermarket Co. v. Cnty. of Bergen, 450 N.J. Super. 286, 290 (App. Div. 2017)). "Questions of statutory interpretation are also reviewed de novo," without deference "to the legal conclusions reached by the trial court." W.S. v. Hildreth, 252 N.J. 506, 518 (2023) (citing State v. Lane, 251 N.J. 84, 94 (2022)).

In construing a statute, our "aim[] [is] to effectuate the Legislature's intent. The 'best indicator' of legislative intent 'is the statutory language.'" Ibid. (first citing Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 171 (2016); and then quoting Lane, 251 N.J. at 94). "When the plain language of a statute is clear and

unambiguous, we apply the law as written." Ibid. (citing In re Civil Commitment of W.W., 245 N.J. 438, 449 (2021)). When tasked with interpreting "two complementary statutes to determine and effectuate the intent of the Legislature[, w]e commence our inquiry with the plain language of each provision and accord to it the ordinary meaning of the words selected by the Legislature." Hargrove v. Sleepy's, LLC, 220 N.J. 289, 301 (2015) (first citing Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012); and then citing DiProspero v. Penn, 183 N.J. 477, 492 (2005)).

II.

We begin by reviewing the statutory framework before and after the enactment of Chapter 212.

The WPL

In Hargrove, the Court considered the history of, and policies behind, both the WPL and WHL. "The WPL . . . governs the time and mode of payment of wages due to employees." Hargrove, 220 N.J. at 302. "[T]he statute was designed to protect employees' wages and to guarantee receipt of the fruits of their labor." Rosen v. Smith Barney, Inc., 393 N.J. Super. 578, 585 (App. Div. 2007). Courts have "approach[ed] any question regarding the scope and application of the WPL mindful of the need to further its remedial purpose." Hargrove, 220 N.J. at 304.

With the exception of minor amendments that are irrelevant here, prior to the passage of Chapter 212, the WPL remained "essentially unaltered" since first enacted in 1965. Id. at 303. The WPL did not include an explicit right of employees to bring an action against an employer alleged to have violated the statute. See Winslow v. Corp. Exp., Inc., 364 N.J. Super. 128, 137 (App. Div. 2003). N.J.S.A. 34:11-4.10 permitted only the imposition of administrative and quasi-criminal penalties against employers who violated the WPL. The one exception was N.J.S.A. 34:11-4.7, which permitted an employee to bring a civil action against his or her employer "for the full amount of . . . wages" if the employer "enter[ed] into or ma[de] any agreement . . . for the payment of wages . . . otherwise than as provided in" the WPL.

Writing for our court, however, Judge Skillman concluded an aggrieved employee's claim under the statute was not limited solely to an alleged violation contained in an agreement, and we recognized "an implied private right of action could be found in the [WPL] even in the absence of express statutory authorization." Winslow, 364 N.J. Super. at 137–38 (citing Mulford v. Comput. Leasing, Inc., 334 N.J Super. 385, 393–94 (Law Div. 1999)); accord Hargrove, 220 N.J. at 302–03 (first citing N.J.S.A. 34:11-4.7; and then citing Winslow, 364 N.J. at 136).

Prior to the passage of Chapter 212, an aggrieved employee could bring a claim under the WPL limited to recovery of the full amount of wages improperly withheld by the employer. Neither party has brought to our attention any precedent regarding the accrual date of a WPL claim, the applicable statute of limitations for filing a WPL claim, or the appropriate "look-back" period for such a claim, i.e., the amount of time for which the employee could seek recoupment of improperly withheld wages. Our independent research reveals none.[2]

Chapter 212 amended the WPL, the WHL, and the Wage Collection Law, N.J.S.A. 34:11-57 to -67.2. As to the WPL, the amendments made two pertinent changes. Chapter 212 enacted an entirely new provision subsequently codified as N.J.S.A. 34:11-4.10(c). The WPL now gives an aggrieved employee the right to

> recover in a civil action the full amount of any wages due, or any wages lost because of any retaliatory action taken in violation of [N.J.S.A. 34:11-4.10(a)] . . . plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or of the wages due, together with costs and reasonable attorney's fees[.]

[2] In Troise v. Extel Communications, Inc., we held that an employee's "private civil action" under the Prevailing Wage Act, N.J.S.A. 34:11-56.40, which contains no explicit statute of limitations, was "clearly a claim for breach of contract or other economic harm," and subject to a six-year statute of limitations pursuant to N.J.S.A. 2A:14-1. 345 N.J. Super. 231, 236–38 (App. Div. 2001), aff'd o.b., 174 N.J. 375 (2002).

> [L. 2019, c. 212, § 2, now N.J.S.A. 34:11-4.10(c) (emphasis added).]

The Legislature also provided a defense to the liquidated damages provision:

> The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within [thirty] days of notice of the violation.
>
> [Ibid.]

The WHL

Enacted in 1966, the WHL is "designed to 'protect employees from unfair wages and excessive hours.'" Hargrove, 220 N.J. at 304 (quoting In re Raymour & Flanigan Furniture, 405 N.J. Super. 367, 376 (App. Div. 2009)). To further this goal, "[t]he WHL establishes not only a minimum wage but also 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 remedial purpose of the [WHL] dictates that it should be given a liberal construction." Dep't of Labor v. Pepsi-Cola Co., 170 N.J. 59, 62 (2001) (citing Yellow Cab Co. v. State, 126 N.J. Super. 81, 86 (App. Div. 1973)).

Prior to enactment of Chapter 212, the WHL permitted employees who were "paid . . . less than the minimum fair wage" to which they were entitled to file a civil action to recover "the full amount of such minimum wage less any amount actually paid . . . by the employer together with such costs and reasonable attorney's fees." N.J.S.A. 34:11-56a25 (2019). The WHL expressly permitted class actions. Ibid.

The WHL also contained a two-year look-back period that effectively functioned as a statute of repose. See N.J.S.A. 34:11-56a25.1 (2019) ("No claim for unpaid minimum wages, unpaid overtime compensation or other damages . . . shall be valid with respect to any such claim that has arisen more than [two] years prior to the commencement of an action for the recovery thereof." (emphasis added)).[3] An action was "considered to be commenced on the date when . . . a cause of action is commenced in a court of appropriate jurisdiction." Ibid.

[3] As the Court has explained, "[i]n an important respect, [a statute of repose] is unlike the typical statute of limitations [because t]he time within which suit may be brought under [the statute of repose] is entirely unrelated to the accrual of any cause of action." Daidone v. Buterick Bulkheading, 191 N.J. 557, 564 (2007) (alterations in original) (quoting Rosenberg v. Town of N. Bergen, 61 N.J. 190, 199 (1972)). "Unlike a statute of limitations, the [s]tatute of [r]epose 'does not bar a cause of action; its effect, rather, is to prevent what might otherwise be a cause of action[] from ever arising.'" Id. at 564–65 (third alteration in original) (quoting Rosenberg, 61 N.J. at 199).

Chapter 212 made two pertinent changes to the WHL. It amended N.J.S.A. 34:11-56a25, tracking language similar to the change made to the WPL. A successful claimant may now recover additional liquidated damages "equal to not more than 200 percent of the . . . unpaid minimum wages . . . due." L. 2019, c. 212, § 4, now codified as N.J.S.A. 34:11-56a25. Recovery of costs and attorney's fees remained available to a successful claimant. Ibid. Critical to this appeal, Chapter 212 also amended N.J.S.A. 34:11-56a25.1 and extended the statute of repose from two to six years. See L. 2019, c. 212, § 5, now codified as N.J.S.A. 34:11-56a25.1 ("No claim for unpaid minimum wages, unpaid overtime compensation, . . . or other damages under this act shall be valid with respect to any such claim which has arisen more than six years prior to the commencement of an action for the recovery thereof."). The Legislature left unchanged the following language: "the action shall be considered to be commenced on the date when . . . a cause of action is commenced in a court of appropriate jurisdiction." Ibid.

Effective Date of Chapter 212

Chapter 212 enacted other significant changes to the WPL and WHL, which we need not discuss in the context of this appeal. And, with one exception not relevant here, the amendments were to "take effect immediately" on August 6, 2019. L. 2019, c. 212, § 14.

Legislative History

Although the statutory language used by the Legislature is largely plain and unambiguous, we examine some legislative history to determine whether the Legislature intended that the six-year look-back period from the date "a cause of action is commenced," which expressly applies to claims under the WHL, also applies to private damage claims under the WPL. See W.S., 252 N.J. at 518 (noting a court's ability to examine "extrinsic evidence," including legislative history, to determine intent behind ambiguity (citations omitted)). We do so, keeping in mind, that "when amendments are passed jointly or as part of a legislative scheme, we must construe them together to make sense of the legislative intent." Id. at 518–19 (citing Nw. Bergen Cnty. Utils. Auth. v. Donovan, 226 N.J. 432, 444 (2016)).

By enacting Chapter 212, the Legislature intended to "assist[] workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators." Sponsor's Statement to S. 1790 17 (L. 2019, c. 212) (emphasis added). Importantly, the Legislature made clear that it intended to provide increased remedies for aggrieved workers under both laws:

> The bill further enhances enforcement procedures and remedies by extending certain remedies

> currently available to workers who are victims of violations of the State's minimum wage law to workers who are victims of violations of the State's wage payment laws. Specifically, the bill extends the remedies provided to employees by the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.
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> [Id. at 18–19 (emphasis added).]

We conclude the Legislature intended to provide "the same opportunity" for aggrieved workers to recover for violations of the WPL as it did for violations under the WHL. That includes the same six-year period wherein workers may recover liquidated damages, costs, and counsel fees through a civil proceeding "in a court of appropriate jurisdiction," measured from the date the suit is commenced. N.J.S.A. 34:11-56a25.1.

III.

Defendant's argument, accepted by the motion judge, is that plaintiffs seek the retroactive application of Chapter 212. It argues that "if a violation occurred prior to enactment of" Chapter 212, the two-year look-back period applies, limiting plaintiffs' substantive claims for violations and any claims for liquidated damages. Defendant cites general principles, which we acknowledge support the proposition that "[g]enerally, newly enacted laws are applied

prospectively." Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 387 (2016) (citing James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 556 (2014)).

Defendant further contends that by stating the relevant portions of Chapter 212 became effective immediately, the Legislature intended the amendments to apply only prospectively. See, e.g., James, 216 N.J. at 574–75 (holding use of "effective date" in legislation signaled intention to reform contracts of insurance as of that date but did not make the statute retroactively apply to accidents that occurred prior to the effective date). Defendant additionally cites several unreported decisions from the federal courts that are factually distinguishable and otherwise unpersuasive. Instead, we conclude the Court's recent opinion in W.S. wholly resolves this appeal.

In W.S., the Court considered 2019 amendments to the Child Sexual Abuse Act (CSAA) and the Tort Claims Act (TCA). 252 N.J. at 510. Effective December 1, 2019, the Legislature retroactively extended the statute of limitations under the CSAA to permit child sexual abuse victims to bring their claims at any time prior to reaching age fifty-five. Id. at 511. Effective the same date, the Legislature amended the TCA, to "provide[] that the 'procedural requirements' of the TCA 'shall not apply to an action at law for an injury resulting' from sexual abuse." Id. at 513 (emphasis added) (quoting N.J.S.A. 59:8-3(b)).

The plaintiff did not file his claim under the CSAA until "one month after the amendments went into effect." Id. at 514. The defendants moved to dismiss the complaint, arguing the plaintiff's failure to comply with the notice provisions of the TCA when his claim accrued in 2016 required dismissal. Ibid. The motion judge denied the motion, and we affirmed, "albeit for reasons other than those expressed by the motion judge." Id. at 515 (citing W.S. v. Hildreth, 470 N.J. Super. 57, 61 (App. Div. 2021)). The Court granted the defendants leave to appeal. Id. at 516.

Before the Court, the "[d]efendants maintain[ed] that [we had] retroactively applied N.J.S.A. 59:8-3(b) by absolving [the plaintiff] 'from filing a TCA notice for a claim which accrued in 2016, prior to the effective date of the amendment.'" Ibid. In particular, the

> defendants assert[ed] that the relevant date for purposes of N.J.S.A. 59:8-3(b) is not when a complaint was filed, but when a cause of action accrued. For a cause of action that accrued prior to December 1, 2019, . . . the Legislature intended for the amendment to the TCA notice provisions to apply only prospectively, not retroactively.
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> [Id. at 516–17.]

In rejecting the defendants' arguments and affirming our judgment, the Court said we had

> afforded N.J.S.A. 59:8-3(b) prospective effect and correctly applied the statutory text to W.S.'s complaint.

> As the Appellate Division found, "as of December 1, 2019, there was no longer any precondition for a plaintiff alleging sexual abuse as a minor by a public employee or public employer to file a notice of claim under the TCA before filing suit, regardless of when the cause of action accrued."
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> [Id. at 521–22 (quoting W.S., 470 N.J. Super. at 70).]

The Court went on to explain in reasoning that effectively disposes of defendant's arguments in this case:

> Applying the law in effect at the time a complaint is filed—even when that law changed the requirements for filing a complaint—is not applying a statute retroactively; it is applying a statute prospectively to cases filed after its effective date. Defendants effectively posit that W.S.'s complaint should not have been subject to the laws in effect at the time it was filed, but rather to laws the Legislature had at that point intentionally repealed. There is no support for that position in the text, structure, purpose, or legislative history of N.J.S.A. 59:8-3(b).
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> [Id. at 522.]

Lastly, the Court rejected the defendants' argument that the accrual date of the plaintiff's cause of action, not the filed date of the complaint, was "what matters for purposes of N.J.S.A. 59:3(b)." Id. at 523. The Court observed that the Legislature stated the TCA's procedural requirements no longer applied to an action at law filed after the amendments' effective date, and "an 'action at law' . . . can be commenced only 'by filing a complaint with the court.'" Ibid.

(quoting R. 4:2-2). The amendment "says nothing about when a cause of action accrues." Ibid.

Here, the Legislature enacted Chapter 212 effective August 6, 2019. Howarth's claim involves his employment with defendant, which began and ended after the effective date of Chapter 212. Maia was first employed by defendant in April 2019, four months before the amendments' effective date.

The Legislature, however, did not tether Chapter 212's remedies to the accrual date of an employee's claim. It only prohibited an employee from recovering damages for wages due more than six years prior to the "commencement" of the action, specifically the filing of a complaint in a court of competent jurisdiction. Plaintiffs filed their complaint nearly twenty months after Chapter 212's effective date, and they are entitled to have the court apply the provisions of the WPL and WHL as of the date of that filing. "Applying the law in effect at the time a complaint is filed . . . is not applying a statute retroactively; it is applying a statute prospectively to cases filed after its effective date." Id. at 522. We therefore reverse the order under review.

We add some words of caution lest our opinion be misconstrued and applied broadly to issues not before us. First, we express no opinion on whether the putative class as now framed should be certified or whether plaintiffs are appropriate class representatives. See R. 4:32-1(a). Our opinion is intended to

address only the claims brought by the two named plaintiffs and the erroneous partial dismissal of their complaint.

Second, the judge dismissed without prejudice plaintiffs' WHL claim "to recover alleged unpaid straight-time wages" and their WPL claim seeking "to recover alleged unpaid overtime wages," permitting plaintiffs in both instances "to amend their complaint to properly denote which statute their claims arise under." During oral argument, plaintiffs' counsel advised us that plaintiffs were pursuing individual claims under both statutes, meaning claims for unpaid wages recoverable under the WPL and "unpaid overtime wages" specifically recoverable under the WHL. We nevertheless remain unsure what the exact nature of plaintiffs' WPL claim is, because plaintiffs' complaint alleges only a claim for unpaid wages for pre- and post-shift work, i.e., presumably work plaintiffs claim entitled them to overtime wages. We are dubious that duplicative claims for the same wages can yield recoveries under both statutes.

Certainly, defendant is entitled to understand the nature of plaintiffs' claims, and the claims of the class if one is eventually certified, under each statute. However, it was unnecessary for the judge to dismiss without prejudice plaintiffs' WHL claims "to recover alleged unpaid straight-time wages" and their WPL claims seeking recovery of "alleged unpaid overtime wages" in order to provide defendant with a better understanding of plaintiffs' causes of action pled

under both statutes. Defendant is free to move under Rule 4:6-4(a) for a more definite statement if it "cannot reasonably be required to frame a responsive pleading" to plaintiffs' complaint as it currently stands. Alternatively, discovery will undoubtedly resolve any uncertainty.

Reversed. The matter is remanded to the Law Division for further proceedings consistent with this opinion. We do not retain jurisdiction.