



**STATE OF NEW JERSEY
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November 22, 2005

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since October 27, 2005

Other Cases

In Zubrycky v. ASA Apple, Inc., ___ N.J. Super. ___ (App. Div. 2005), an Appellate Division panel (Judges Collester, Lisa and S.L. Reisner), affirmed the dismissal of a CEPA complaint filed by a driver who resigned because the employer refused to pay him overtime owed to him under the Wage and Hour Law. The Court noted that the complaint did not allege that the employer had threatened to fire the plaintiff if he complained to an outside agency about the underpayment and it concluded that the failure to pay required overtime did not rise to the level of a constructive discharge. While an earlier Appellate Division opinion had upheld plaintiff's unemployment compensation claim on the grounds that he had "good cause" to resign, the unemployment compensation law, unlike CEPA, does not require that a plaintiff be either fired or constructively discharged to qualify for benefits.

REA:aat