

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

TRACY ELLIS, individually and on behalf  
of all others similarly situated,

v.

PEPSICO, INC.

**Case No. \_\_\_\_\_**

**FED. R. CIV. P. 23 Class Action**

**CLASS ACTION COMPLAINT**

**SUMMARY**

1. Like many other companies across the United States, PepsiCo's timekeeping and payroll systems were affected by the hack of Kronos in 2021.
2. That hack led to problems in timekeeping and payroll throughout PepsiCo's organization.
3. As a result, PepsiCo's workers who were not exempt from the overtime requirements under New Jersey law, were not paid for all hours worked or were not paid their proper overtime premium after the onset of the Kronos hack.
4. Tracy Ellis is one such PepsiCo worker.
5. PepsiCo could have easily implemented a system for recording hours and paying wages to non-exempt employees until issues related to the hack were resolved.
6. But it didn't. Instead, PepsiCo used prior pay periods or reduced payroll estimates to avoid paying wages and proper overtime to these non-exempt hourly and salaried employees.
7. PepsiCo pushed the cost of the Kronos hack onto the most economically vulnerable people in its workforce.

8. The burden of the Kronos hack was made to fall on front-line workers—average Americans—who rely on the full and timely payment of their wages to make ends meet.

9. PepsiCo's failure to pay wages, including proper overtime, for all hours worked violates the New Jersey State Wage and Hour Law (NJSWHL), N.J. Stat. Ann. § 34:11-56a, *et seq.*

10. Ellis brings this lawsuit to recover these unpaid overtime wages and other damages owed by PepsiCo to him and the non-overtime-exempt workers like him, who were the ultimate victims of not just the Kronos hack, but also PepsiCo's decision to make its front line workers bear the economic burden for the hack.

11. This action seeks to recover the unpaid wages and other damages owed by PepsiCo to all these workers, along with the penalties, interest, and other remedies provided by New Jersey law.

#### **JURISDICTION & VENUE**

12. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because complete diversity of citizenship exists between the Parties and the amount in controversy exceeds \$75,000.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events at issue occurred in this District.

14. Ellis worked for PepsiCo in this District.

#### **PARTIES**

15. **Plaintiff Tracy Ellis** is a natural person.

16. Ellis is a resident and citizen of New Jersey.

17. Ellis has been, at all relevant times, an employee of PepsiCo.
18. Ellis has worked for PepsiCo since about 1998.
19. Ellis's written consent is attached as Exhibit 1.
20. Ellis represents a class of similarly situated workers under New Jersey law pursuant to Federal Rule of Civil Procedure 23. This "New Jersey Class" is defined as:

**All current or former hourly and salaried employees of PepsiCo, including its subsidiaries and alter egos, who were not exempt from overtime pay and who worked for PepsiCo in New Jersey at any time since the onset of the Kronos ransomware attack, on or about December 11, 2021, to the present.**

21. Throughout this Complaint, the New Jersey Class Members are also referred to as the "Similarly Situated Workers."
22. **Defendant PepsiCo, Inc. ("PepsiCo")** is a New Jersey corporation.
23. PepsiCo maintains its headquarters and principal place of business in New York.
24. PepsiCo conducts business in a systematic and continuous manner throughout New Jersey and this District.
25. PepsiCo may be served by service upon its registered agent, **The Corporation Trust Company, 820 Bear Tavern Road, West Trenton, NJ 08628**, or by any other method allowed by law.
26. At all relevant times, PepsiCo exerted operational control over its subsidiaries and alter egos.
27. At all relevant times, PepsiCo substantially controlled the terms and conditions of employment for workers of its subsidiaries and alter egos.

28. At all relevant times, PepsiCo had a common control and management of labor relations regarding employees of its subsidiaries and alter egos.

29. PepsiCo employed and/or jointly employed, with its subsidiaries and alter egos, Ellis and the Similarly Situated Workers.

30. PepsiCo and its respective subsidiaries and alter egos are joint employers for purposes of New Jersey law.

#### FACTS

31. PepsiCo is a food, snack, and beverage corporation.

32. Many of PepsiCo's employees are paid by the non-overitme-exempt hourly and salaried workers.

33. Since at least 2021, PepsiCo has used timekeeping software and hardware operated and maintained by Kronos.

34. On or about December 11, 2021, Kronos was hacked with ransomware.

35. The Kronos interfered with its clients, including PepsiCo's, ability to use Kronos's software and hardware to track hours and pay employees.

36. Since the onset of the Kronos hack, PepsiCo has not kept accurate track of the hours that Ellis and Similarly Situated Workers have worked.

37. Instead, PepsiCo has used various methods to estimate the number of hours Ellis and Similarly Situated Workers work in each pay period.

38. For example, PepsiCo issued paychecks based on the workers' scheduled hours, or simply duplicated paychecks from pay periods prior to the Kronos hack.

39. This means that employees who were non-exempt and who worked overtime were in many cases paid less than the hours they worked in the workweek, including overtime hours.

40. Even if certain overtime hours were paid, the pay rate would be less than the full overtime premium.

41. Many employees were not even paid their non-overtime wages for hours worked before 40 in a workweek.

42. Ellis is one such employee.

43. Instead of paying Ellis for the hours he actually worked (including overtime hours), PepsiCo simply paid based on estimates of time or pay, or based upon arbitrary calculations and considerations **other than** Ellis's actual hours worked and regular pay rates.

44. In some instances, Ellis was paid portions of overtime hours worked, but the overtime rate was not at the proper overtime premium of at least 1.5x the regular rate of pay, including required adjustments for shift differentials and non-discretionary bonuses.

45. In properly calculating and paying overtime to a non-exempt employee, the only metrics that are needed are: (1) the number of hours worked in a day or week, and (2) the employee's regular rate, taking into account shift differentials, non-discretionary bonuses, and other adjustments required by law.

46. PepsiCo knows they have to pay proper overtime premiums to non-exempt hourly and salaried employees.

47. PepsiCo knows this because, prior to the Kronos hack, it routinely paid these workers for all overtime hours at the proper overtime rates.

48. PepsiCo knows it has to pay the wages it agreed to pay its employees.

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