

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

JEANETTE WALLACE, Individually and §
On Behalf of All Others Similarly §
Situated, §

§
Plaintiff, §

§
v. §

§
EXAMINATION MANAGEMENT §
SERVICES, INC., §

§
Defendant. §

CIVIL ACTION NO. 6:11-CV-00255
JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT – COLLECTIVE ACTION

SUMMARY

1. Plaintiff worked more than forty (40) hours in a workweek as a virtual medical records retrieval caseworker for Examination Management Services, Inc., (“Defendant”) for the Waco, Texas location. As such, Plaintiff would retrieve medical records for Defendant, who in turn would provide them to its health and insurance company clients. As a virtual case worker, Plaintiff worked from home. Plaintiff was compensated solely on commissions. Defendant did not pay Plaintiff overtime pay at the overtime rate required under the Fair Labor Standards Act (FLSA). Defendant required Plaintiff to pay for business expenses such as internet use and phone use out of pocket. As a result, Defendant failed to pay Plaintiff at the mandated minimum wage rate.

2. Defendant’s conduct violates the FLSA, which requires non-exempt employees to be compensated for all hours in excess of forty (40) in a workweek at one and one-half times their regular rate. *See* 29 U.S.C. § 207(a). Furthermore, Defendant’s practice of failing to pay the required federal minimum wage under the FLSA violates 29 U.S.C. § 206.

3. Plaintiff brings a nationwide collective action to recover unpaid overtime compensation and minimum wage owed to her individually and on behalf of all other similarly situated commission paid case workers, current and former, virtual and on-site, of Defendant at any time starting three years before this Complaint was filed up to the present. Members of the Collective Action are hereinafter referred to as “Class Members.”

SUBJECT MATTER JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

5. Venue is proper in the Western District of Texas, because a substantial portion of the events forming the basis of this suit occurred in the Western District of Texas.

PARTIES AND PERSONAL JURISDICTION

6. Plaintiff Jeanette Wallace is an individual residing in Orange County, Florida Plaintiff’s written consent form to this action is attached hereto as Exhibit “A.”

7. The Class Members are all of Defendant’s commission paid case workers, current and former, virtual and on-site, at any time starting three years before this Complaint was filed up to the present.

8. Defendant Examination Management Services, Inc. is a Nevada Corporation doing business as ICS Merrill and doing business as Record Retrieval Group. This defendant may be served with process by serving its registered agent as follows: Anthony Falisi, 3050 Regent Blvd., Suite 400, Irving, TX, 75063, USA.

9. This court has personal jurisdiction over Examination Management Services, Inc. because said Defendant purposefully availed itself of the privilege of conducting activities in the state of Texas and established minimum contacts sufficient to confer jurisdiction over said

Defendant, and the assumption of jurisdiction over Defendant will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

10. Defendant has and continues to have continuous and systematic contacts with the State of Texas sufficient to establish general jurisdiction over said Defendant.

11. In particular, Defendant operates various locations throughout Texas including Waco and Irving. Defendant employs Texas citizens at each one of these locations.

12. This cause of action arose from or relates to the contacts of Defendant with Texas, thereby conferring specific jurisdiction over this Defendant as well.

13. In particular, Defendant employed Texas citizens and failed to pay them for all hours worked in accordance with the Fair Labor Standards Act. This claim is based on the exact contact that Defendant has had with the forum state.

14. Furthermore, Defendant engaged in activities constituting business in the State of Texas in that said Defendant contracted with Texas residents and performance of the agreements in whole or in part thereof was to occur in Texas, and this Defendant recruits or has recruited Texas residents for employment inside or outside this state.

FLSA COVERAGE

15. At all material times, Defendant has been an employer within the meaning of 3(d) of the FLSA. 29 U.S.C. § 203(d).

16. At all material times, Defendant has been an enterprise within the meaning of 3(r) of the FLSA. 29 U.S.C. § 203(r).

17. At all material times, Defendant has been an enterprise or enterprise in commerce or in the production of goods for commerce within the meaning of 3(s)(1) of the FLSA because

Defendant has had and continues to have employees engaged in commerce. 29 U.S.C. § 203(s)(1).

18. Furthermore, Defendant has an annual gross business volume of not less than \$500,000.00.

FACTS

19. Examination Management Services, Inc. provides its insurance and health industry clients with information they in turn use to mitigate risk and make insurance policy and claims decisions. Defendant collects information, including but not limited to medical records for its clients throughout the country by employing virtual and on-site case workers.

20. Defendant employs medical records retrieval caseworkers who work from home as “virtual caseworkers.” How quickly a case worker is able to collect information on behalf of Defendant’s clients determines how much commission the case worker receives. In fact, the case workers’ pay depends entirely on commissions.

21. Defendant also employs on-site case workers who perform the same tasks as virtual case workers and are also paid solely in commissions. The only difference being that on-site case workers report to work directly to one of Defendant’s physical locations throughout the country.

22. Plaintiff was employed as a virtual caseworker for Defendant and was compensated solely on commissions. She would report to and was directed from Defendant’s office in Waco, Texas.

23. Defendant required Plaintiff to pay for her internet and phone use. As a virtual case worker, she was required to have internet and phone access to communicate with Defendant

and to perform her work for the sole benefit of Defendant. Defendant required that Plaintiff bear these business expenses.

24. Plaintiff worked more than forty (40) hours per work-week, and did so frequently, but was not compensated at the FLSA mandated time-and-a-half rate for hours in excess of forty (40) per work-week. Furthermore, Defendant failed to compensate Plaintiff at the federally mandated minimum wage rate.

25. Plaintiff was a non-exempt employee.

26. Defendant's method of paying Plaintiff in violation of the FLSA was willful, and was not based on a good faith and reasonable belief that its conduct did not violate the FLSA.

PLAINTIFF'S OVERTIME CLAIM: VIOLATION OF 29 U.S.C. § 207

27. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

28. Defendant's practice of failing to pay Plaintiff time-and-a-half rate for hours in excess of forty (40) per workweek violates the FLSA. 29 U.S.C. § 207.

29. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime at a rate not less than one and one-half times the regular rate at which its employees are employed are applicable to the Defendant or the Plaintiff.

PLAINTIFF'S MINIMUM WAGE CLAIM: VIOLATION OF 29 U.S.C. § 206

30. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

31. Defendant's practice of failing to pay Plaintiff at the required minimum wage rate violates the FLSA. 29 U.S.C. § 206.

32. None of the exemptions provided by the FLSA regulating the duty of employers to pay employees for all hours worked at the required minimum wage rate are applicable to the Defendant or the Plaintiff.

COLLECTIVE ACTION ALLEGATIONS

33. Plaintiff has actual knowledge that Class Members have also been denied their minimum wage and overtime pay for hours worked over forty (40) hours per workweek. Plaintiff's knowledge is based on her virtual case worker experience and through communications with other virtual case workers of Defendant while performing work for Defendant's Waco, Texas location. Furthermore, Plaintiff's knowledge is based from time spent working on-site at Defendant's Texas location and while training with other Texas on-site case workers and virtual case workers.

34. Other commission paid virtual and on-site case workers similarly situated to the Plaintiff work for Defendant throughout the United States, but are not paid overtime at the rate of one and one-half their regular rate when those hours exceeded forty (40) hours per workweek. Furthermore, these employees have also been denied their minimum wage. Defendant has locations at, but not limited to Salt Lake City, Utah, Jacksonville, Florida, Omaha, Nebraska, Irving, Texas and Waco, Texas. Plaintiff is aware of approximately 200 similarly situated case workers at Defendant's Waco location, alone.

35. Although Defendant permitted and/or required the Class Members to work in excess of forty (40) hours per workweek, Defendant has denied them full compensation for their hours worked over forty (40). Furthermore, Defendant has denied them their minimum wage.

36. The Class Members perform or have performed the same or similar work as the Plaintiff.

37. Class Members regularly work or have worked in excess of forty (40) hours during a workweek.

38. Class Members are not exempt from receiving overtime or minimum wage under the FLSA.

39. As such, Class Members are similar to Plaintiff in terms of relevant job duties, pay structure, and/or the denial of overtime and minimum wage.

40. Defendant's failure to pay overtime and minimum wage compensation at the rate required by the FLSA results from generally applicable policies or practices, and does not depend on the personal circumstances of the Class Members.

41. The experiences of the Plaintiff, with respect to her pay, are typical of the experiences of the Class Members.

42. The specific job titles or precise job responsibilities of each Class Member does not prevent collective treatment.

43. All Class Members, irrespective of their particular job requirements, are entitled to minimum wage for hours worked up to forty (40) hours and overtime compensation for hours worked in excess of forty (40) during a workweek.

44. Although the exact amount of damages may vary among Class Members, the damages for the Class Members can be easily calculated by a simple formula. The claims of all Class Members arise from a common nucleus of facts. Liability is based on a systematic course of wrongful conduct by the Defendant that caused harm to all Class Members.

45. As such, the class of similarly situated Plaintiffs is properly defined as follows:

The Class Members are all of Defendant's current and former, virtual and on-site, commission paid caseworkers throughout the United States at any time starting three years before this Complaint was filed up to the present.

DAMAGES SOUGHT

46. Plaintiff and Class Members are entitled to recover compensation for the hours they worked for which they were not paid at the federally mandated minimum wage rate.

47. Additionally, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation.

48. Plaintiff and Class members are also entitled to an amount equal to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

49. Plaintiff and Class Members are entitled to recover their attorney's fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

JURY DEMAND

50. Plaintiff and Class Members hereby demand trial by jury.

PRAYER

51. For these reasons, Plaintiff and Class Members respectfully request that judgment be entered in their favor awarding them the following:

- a. Overtime compensation for all hours worked over forty in a workweek at the applicable time-and-a-half rate;
- b. Unpaid wages at the FLSA mandated minimum wage rate;
- c. Liquidated damages in an amount equal to their unpaid overtime and minimum wages as allowed under the FLSA;
- d. Reasonable attorney's fees, costs, and expenses of this action as provided by the FLSA; and
- e. Such other and further relief as may be required by law or in equity.

Respectfully submitted,

KENNEDY HODGES, LLP

By: /s/ Galvin B. Kennedy

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