

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ROLAND CHAVEZ, on behalf of himself and
those similarly situated,
372 Bath Avenue
Apt. 27
Long Branch, NJ 07740

Plaintiff,

v.

ROBERT WOOD JOHNSON HEALTH
SYSTEM
1 Robert Wood Johnson Place
New Brunswick, NJ 08903

and

ROBERT WOOD JOHNSON UNIVERSITY
HOSPITAL HAMILTON
1 Hamilton Health Place
Hamilton, NJ 08690

And

JOHN DOES 1-10

Defendants.

COLLECTIVE ACTION FOR UNPAID
OVERTIME UNDER FLSA

No.

JURY TRIAL DEMANDED

COLLECTIVE ACTION CIVIL COMPLAINT

Roland Chavez (“Named Plaintiff”), on behalf of himself and those similarly situated (hereinafter referred to as “Plaintiffs”), hereby complains as follows against Defendants.

INTRODUCTION

1. Named Plaintiff has initiated the instant action to redress violations by Defendants of the Fair Labor Standards Act (“FLSA”). Named Plaintiff asserts that Defendants failed to pay Named Plaintiff and Plaintiffs proper overtime compensation in violation of the FLSA.

JURISDICTION AND VENUE

2. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

3. This Court may properly maintain personal jurisdiction over Defendants because Defendants' contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice.

4. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims herein arise under laws of the United States, the FLSA, 29 U.S.C. § 201 *et seq.*

5. Venue is properly laid in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), because Defendants reside in and/or conduct business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

PARTIES

6. The foregoing paragraphs are incorporated herein as if set forth in full.

7. Plaintiff Roland Chavez is an adult individual with an address as set forth above.

8. Defendant Robert Wood Johnson Health System is an entity with an address as set forth above.

9. Defendant Robert Wood Johnson University Hospital Hamilton is an entity with an address as set forth above.

10. The defendant entities listed immediately above will be *collectively* referred to in this Complaint as the "Robert Wood Johnson Defendants."

11. Upon information and belief, because of their interrelation of operations, common management, centralized control of labor relations, common ownership, common financial controls, and other factors, Robert Wood Johnson Defendants are sufficiently interrelated and integrated in their activities, labor relations, ownership, and management that they may be treated as a single employer for purposes of the instant action.

12. Defendants John Doe 1 through John Doe 5 are presently unknown persons who, directly or indirectly, directed, aided, abetted, and/or assisted with creating and/or executing the policies and practices of Defendants which resulted in Defendants' failing to pay Named Plaintiff and Plaintiffs proper compensation pursuant to the FLSA.

13. Defendants John Doe 6 through John Doe 10 are presently unknown persons who had control over processing payroll regarding Named Plaintiff and Plaintiffs.

14. At all times relevant herein, Robert Wood Johnson Defendants acted by and through their agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Robert Wood Johnson Defendants.

FLSA COLLECTIVE ACTION ALLEGATIONS

15. Named Plaintiff brings this action for violations of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons presently and formerly employed by Robert Wood Johnson Defendants in non-exempt positions subject to Robert Wood Johnson Defendants' unlawful pay practices and policies described herein and who worked for Robert Wood Johnson Defendants at any point in the three years preceding the date the instant action was initiated (the members of this putative class are referred to as "Plaintiffs").

16. Named Plaintiff and Plaintiffs worked and work at different facilities of Robert Wood Johnson Defendants but are subjected to the same unlawful wage policies and practices described herein.

17. Named Plaintiff and Plaintiffs are similarly situated, have substantially similar non-managerial job duties, have substantially similar pay provisions, and are all subject to Robert Wood Johnson Defendants' unlawful policies and practices as described herein.

18. There are numerous similarly situated current and former employees of Robert Wood Johnson Defendants who were compensated improperly for overtime work in violation of the FLSA and who would benefit from the issuance of a Court Supervised Notice of the instant lawsuit and the opportunity to join in the present lawsuit.

19. Similarly situated employees are known to Robert Wood Johnson Defendants, are readily identifiable by Robert Wood Johnson Defendants, and can be located through Robert Wood Johnson Defendants' records.

20. Therefore, Named Plaintiff should be permitted to bring this action as a collective action for and on behalf of himself and those employees similarly situated, pursuant to the "opt-in" provisions of the FLSA, 29 U.S.C. § 216(b).

FACTUAL BACKGROUND

21. The foregoing paragraphs are incorporated herein as if set forth in full.

22. Named Plaintiff worked for Robert Wood Johnson Defendants at their location in Hamilton, NJ beginning in or around June of 2010.

23. Named Plaintiff and Plaintiffs are current and/or former hourly employees of Robert Wood Johnson Defendants, who within the last three years have been or are presently employed by Robert Wood Johnson Defendants.

24. Upon information and belief, Robert Wood Johnson Defendants have maintained an unlawful wage payment system for at least the last three years, and have enforced such unlawful policies at each of their facilities named in this lawsuit.

UNLAWFUL ROUNDING VIOLATIONS

25. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

26. Defendants utilize a computerized system which tracks the exact time (accurate to 1 minute or less) an employee clocks in and clocks out of work.

27. Even though Defendants maintain a system which records, to the minute, the time an employee clocks in and clocks out, Defendants utilize a rounding system in computing payroll which rounds to 15-minute intervals.

28. Defendants round up to the next 15-minute interval if an employee clocks in no more than 8 minutes before the next 15-minute interval.

29. Defendants round down to the previous 15-minute interval if an employee clocks in no more than 7 minutes after the previous 15-minute interval.

30. Accordingly, by way of example, an employee who clocks in between 6:52-7:07 will be treated by Defendants' payroll computations as having clocked in at 7:00.

31. Defendants utilize the same rounding system for clock outs.

32. Accordingly, by way of example, an employee who clocks out between 6:52-7:07 will be treated by Defendants' payroll computations as having clocked out at 7:00.

33. Viewed in a vacuum, the rounding system utilized by Defendants appears to neither favor Defendants nor their employees as Defendants utilize the same rounding system when an employee clocks in or out.

34. However, Defendants utilize a disciplinary system to alter the seemingly neutral rounding system in a manner which transforms Defendants' rounding system into a system which is substantially rigged in Defendants' favor.

35. Per Defendants' employment policies, Named Plaintiff and Plaintiffs must clock in "within seven minutes before the start of their shift."

36. Per Defendants' employment policies, Named Plaintiff and Plaintiffs are subject to discipline if they clock in after the start of their shift.

37. Per Defendants' employment policies, Named Plaintiff and Plaintiffs must clock out "within seven minutes after the end of their shift."

38. As a result of these employment policies, Named Plaintiff and Plaintiffs typically clock in and begin working prior to the start of their shift, and as much as 7 minutes before the start of their shift.

39. Named Plaintiff and Plaintiffs do not typically arrive after the official start time of their shifts, because if they did so, they would be subject to discipline.

40. Per Defendants' rounding system, none of the up to 7 minutes per day is paid as Defendants round this time to the next 15-minute interval, the official start time of Named Plaintiff's and Plaintiffs' shift.

41. Accordingly, at the start of an employee's shift, Defendants' rounding system is rigged in favor of Defendants because Defendants utilize their disciplinary system to ensure that, most of the time, the rounding which occurs at the start of the shift decreases the amount of compensable time Defendants pay their employees.

42. Put another way, an employee is subject to discipline if he or she is tardy in a manner which results in Defendants' rounding system increasing the compensable time by even

a minute, but would not be subject to discipline if the employee is early in a manner which results in Defendants' rounding system decreasing the compensable time by as much as 7 minutes.

43. Moreover, Named Plaintiff and Plaintiffs, at the end of the day, are to clock out after the official end time of their shift, but within 7 minutes of that time.

44. As a result of such discipline, Named Plaintiff and Plaintiffs do not typically leave work early; instead, they typically leave work and clock out between the end of their shift and 7 minutes thereafter.

45. Accordingly, at the end of an employee's shift, Defendants' rounding system is rigged in favor of Defendants because Defendants utilize their disciplinary system to ensure that, most of the time, the rounding which occurs at the end of the shift decreases the amount of compensable time Defendants pay their employees.

46. Accordingly, Defendants' rounding system unfairly benefits Defendants in that, most of the time, it results in Named Plaintiff and Plaintiffs being paid for less time than they actually worked.

47. Defendants have no good faith basis to use such a rigged rounding system as their time clocks record the actual clock in and clock out times to at least a one-minute accuracy.

48. As Named Plaintiff and Plaintiffs routinely work overtime, this unpaid time results has resulted in Named Plaintiff and Plaintiffs being denied proper overtime compensation.

UNLAWFUL LUNCH DEDUCTIONS

49. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

50. Per Defendants' policies, Named Plaintiff and Plaintiffs may take a 30-minute unpaid lunch break each shift.

51. However, Defendants automatically deduct 30 minutes of paid time from Named Plaintiffs' and Plaintiffs' paychecks for each shift Named Plaintiff and Plaintiffs work, whether or not a lunch break is taken.

52. Accordingly, Defendants do not accurately track Named Plaintiff's and Plaintiffs' time for "unpaid breaks."

53. In addition, Named Plaintiff and Plaintiffs are subject to discipline if they take a lunch break which lasts longer than 30 minutes.

54. Named Plaintiff and Plaintiffs are routinely docked for 30-minute lunch breaks even when they do not take a bona-fide meal break of at least 30 minutes.

55. As Named Plaintiff and Plaintiffs routinely work overtime, this unpaid time results has resulted in Named Plaintiff and Plaintiffs being denied proper overtime compensation.

UNLAWFUL OVERTIME RATES

56. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

57. Defendants paid and pay Named Plaintiff and Plaintiffs non-discretionary shift differentials depending on which shifts Plaintiff and Named Plaintiffs work.

58. Defendants did not and do not properly include such shift differentials in determining the "regular rate" on which overtime is based; accordingly, Defendants do not pay a true 50% premium for hours worked over 40 per workweek.

59. By way of example only, on the week of April 3, 2011-April 9, 2011, Defendants paid Named Plaintiff for working a total of 74.25 hours.

60. Defendants paid Named Plaintiff \$18.00 per hour for 40 regular hours.

61. Defendants paid Named Plaintiff \$1.50 per hour as a shift differential for 27.75 hours, totaling \$41.63 in shift differential pay.

62. Defendants paid Named Plaintiff \$27.00 per hour for 34.25 overtime hours (straight time of \$18.00 per hour plus 50% OT premium of \$9.00).

63. To calculate the correct overtime rate, Defendants should have added all the remuneration Plaintiff earned (minus only amounts earned as 50% OT premiums) and divided that number by the total hours Named Plaintiff worked each week. Then, Defendants should have divided that number by 2, and provided same as the minimum OT premium.

64. Accordingly, Defendants should have added \$1,336.50 (74.25 hours times \$18/hr) with \$41.63 (27.75 hours times \$1.50 per hour) to arrive at \$1,378.13. Defendants then should have taken that number and divided it by the total number of hours worked (74.25) to arrive at: \$18.56.

65. Defendants therefore should have paid a minimum overtime premium of at least \$9.28 per overtime hour worked; Defendants instead paid only \$9.00 in overtime premium per overtime hour worked.

66. Accordingly, Defendants failed to pay Named Plaintiff the minimum overtime premium as required by the FLSA, resulting in Named Plaintiff being shorted \$9.59 (34.25 overtime hours times \$.28) for the workweek.

67. The aforementioned instance is a mere example of the unlawful policies and practices of Defendants. Defendants' practice of not applying the shift differentials to determine the regular rate occurred consistently to Named Plaintiff and Plaintiffs for nearly all pay periods, save only the pay periods where Named Plaintiff and Plaintiffs did not work in excess of 40 hours or where shift differentials were not provided.

68. The aforementioned conduct has caused damages to Named Plaintiff and Plaintiffs.

COUNT I
Fair Labor Standards Act (“FLSA”)
(Failure to pay Overtime Compensation)
(Named Plaintiff and Plaintiffs v. Defendants)

69. The foregoing paragraphs are incorporated herein as if set forth in full.

70. At all times relevant herein, Defendants have and continue to be “employers” within the meaning of the FLSA.

71. At all times relevant herein, Defendants were and are responsible for paying wages to Named Plaintiff and Plaintiffs.

72. At all times relevant herein, Named Plaintiff and Plaintiffs were and are employed with Defendants as “employees” within the meaning of the FLSA.

73. Under the FLSA, an employer must pay an employee at least one and one half times his or her regular rate of pay for each hour worked in excess of forty hours per workweek.

74. Defendants’ violations of the FLSA include, but are not limited to: (1) unlawfully docking Named Plaintiff’s and Plaintiffs’ overtime pay by using a rigged rounding system which substantially favors Defendants; (2) unlawfully docking Named Plaintiff’s and Plaintiffs’ overtime pay by reducing their pay by 30 minutes each day, regardless of whether the employee took a bona-fide 30 minute meal break; and (3) unlawfully compensating Named Plaintiff and Plaintiffs overtime at less than 1.5 times their regular rate.

75. Defendants’ conduct in failing to pay Named Plaintiff and Plaintiffs properly was and is willful and was and is not based upon any reasonable interpretation of the law.

76. As a result of Defendants’ unlawful conduct, Named Plaintiff and Plaintiffs have suffered damages as set forth herein.

WHEREFORE, Named Plaintiff and Plaintiffs pray that this Court enter an Order providing that:

(1) Defendants are to be prohibited from continuing to maintain their illegal policy, practice, or customs in violation of federal wage and hour laws;

(2) Defendants are to compensate, reimburse, and make Named Plaintiff and Plaintiffs whole for any and all pay and benefits they would have received had it not been for Defendants' illegal actions, including but not limited to past lost earnings.

(3) Named Plaintiff and Plaintiffs are to be awarded, pursuant to the FLSA, liquidated damages in an amount equal to the actual damages in this case;

(4) Named Plaintiff and Plaintiffs are to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable law.

(5) Named Plaintiff and Plaintiffs are to be awarded all other relief this Court deems just and proper.

Respectfully Submitted,

/s/ Justin L. Swidler

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