

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOE NO. 1,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Docket No. 21-1371 C

**PLAINTIFF'S COMPLAINT FILED IN
COLLECTIVE ACTION UNDER THE
FAIR LABOR STANDARDS ACT**

COMPLAINT

INTRODUCTION

1. This is a civil action brought by Plaintiff No. 1 who is an employee of the defendant United States of America (“Defendant”), in its Department of Justice, Federal Bureau of Investigation (“FBI”). Plaintiff is employed as a Language Specialist (“LS”) in occupational series GS-1040.¹ Plaintiff brings this case on behalf of themselves and all other similarly situated LSs.² Plaintiff seeks to recover from Defendant back pay, liquidated damages, interest, attorneys’ fees, and costs pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., (“FLSA”), 5 U.S.C. § 5596.

2. The FBI previously unlawfully treated FBI LSs as exempt under the FLSA until it reclassified LSs as non-exempt in or around September 2019. During the period that the FBI

¹ The position is also referred to as “Language Analyst.”

² We refer to Plaintiff with the pronouns “they” and “their” to avoid disclosing the Plaintiff’s gender.

classified them as exempt, Plaintiff and others similarly situated worked hours for which the FBI failed to properly compensate them under the FLSA.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this civil action pursuant to 5 U.S.C. § 5596, 28 U.S.C. §§ 1346(a)(2), 1491, and 29 U.S.C. § 216(b).

4. Further, this Court has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to issue declaratory judgments and other relief sought herein in that actual controversies exist between the Plaintiff and Defendant regarding actions and failures to act by Defendant under the FLSA and otherwise.

THE PARTIES

5. Plaintiff is an employee of Defendant within the meaning of 29 U.S.C. § 203(e), and within the meaning of Title 5 of the U.S. Code, specifically, 5 U.S.C. §§ 2105, 5541.

6. Plaintiff and others similarly situated are or have been employed by Defendant during periods from 2018 to date.

7. Plaintiff, and others similarly situated, desire anonymity in connection with their participation in this litigation. They seek to litigate this case partially under seal in light of the sensitive nature of the duties they perform for Defendant, and the need for their identities not to be disclosed and made public in this litigation, or otherwise, as is more fully set forth in Plaintiff's Motion for a Protective Order and to Permit Plaintiff and Putative Class Members to File their Claims Anonymously, which Plaintiff is filing in this Court simultaneously herewith.

8. Defendant and its involved agency is, and at all material times has been, a "public agency" and "employer" within the meaning of the FLSA, 29 U.S.C. § 203(d) and § 203(x), and an executive agency within the meaning of 5 U.S.C. §§ 105, 5541, 5596.

GENERAL ALLEGATIONS

9. Plaintiff has been employed by Defendant as a GS-12 Language Specialist in occupational series GS-1040 since 2004. During that time, until approximately September 2019, Defendant classified them as FLSA exempt.

10. Defendant and its officers and agencies are responsible under the United States Constitution, federal law, and regulations for the establishment and administration of personnel, employment, and compensation policies and practices and for applying to Plaintiff the provisions of the FLSA and other applicable federal pay and compensation statutes and regulations.

11. OPM regulations pertaining to the FLSA mandate that agencies observe the following principles when making FLSA determinations. First, “[e]ach employee is presumed to be FLSA nonexempt unless the employing agency correctly determines that the employee clearly meets the requirements of one or more of the [FLSA] exemptions . . . [.]” 5 C.F.R. § 551.202(a). Second, “[t]he burden of proof rests with the agency that asserts the exemption.” 5 C.F.R. § 551.202(c). Third, “[a]n employee who clearly meets the criteria for exemption must be designated FLSA exempt. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee will be designated FLSA nonexempt.” 5 C.F.R. § 551.202(d). Fourth, “[w]hile established position descriptions and titles may assist in making initial FLSA exemption determinations, the designation of an employee as FLSA exempt or nonexempt must ultimately rest on the duties actually performed by the employee.” 5 C.F.R. § 551.202(e).

12. 5 C.F.R. § 551.531(c) of OPM regulations pertaining to the FLSA provide, *inter alia*, that “an agency may not require that an employee be compensated for overtime work . . . with an equivalent amount of compensatory time off from the employee’s tour of duty.”

Further, “[a]n employee may not directly or indirectly intimidate, threaten, or coerce any other employee for the purpose of interfering with such employee’s rights to request or not to request compensatory time off in lieu of payment for overtime hours.”

13. Plaintiff and others similarly situated have worked more than 8 hours per day and 40 hours per week at various times between 2018 and approximately September 2019.

14. Nevertheless, Defendant considered and treated Plaintiff and other similarly situated LSs as FLSA exempt, and did not accord Plaintiff the rights and benefits to which FLSA non-exempt employees of Defendant are entitled.

15. From various times since at least 2018, Defendant required Plaintiff, and other similarly situated LSs, to receive compensatory time instead of FLSA overtime pay or overtime pay at a rate less than they are due under the FLSA, for working in excess of 8 hours each day and/or 40 hours each week.

16. Defendant required Plaintiff, and other similarly situated LSs, to receive travel compensatory time instead of FLSA overtime pursuant to the requirements of 5 C.F.R. § 551.422.

17. Defendant and its officers and agency, the FBI, have previously and repeatedly misclassified employees as exempt from the overtime provisions of the FLSA.

18. Defendant and its officers and agency, the FBI, willfully have violated the provisions of the FLSA by wrongfully and willfully failing and refusing to provide Plaintiff, and other similarly situated LSs, with pay and benefits due under the FLSA and implementing regulations of Defendant.

COLLECTIVE ACTION ALLEGATIONS

19. Plaintiff brings this action on behalf of themselves and all others similarly situated (“the Class”), which is defined as follows: all FLSA FBI employees who worked as Language Specialists in occupational series GS-1040 and were classified as exempt under the FLSA between 2018 and the present.

20. Defendant failed to pay members of the Class all overtime due to them. As a result, these employees received overtime pay at a rate less than they are due under the FLSA, for working in excess of 8 hours each day and/or 40 hours each week.

21. These employees suffered the same legal violation under the same factual circumstances, attributable to Defendant, and seek the same remedies.

22. A collective action would be the most efficient way to resolve their FLSA overtime claims, which involve the same questions of law and fact.

COUNT ONE

(Failure to Properly Compensate Plaintiff for Overtime under FLSA)

23. Plaintiff incorporates by reference herein the allegations contained in each of the above paragraphs.

24. Defendant wrongfully and willfully denied Plaintiff, and other similarly situated LSs, coverage under FLSA and wrongfully and willfully withheld overtime compensation due them by failing and refusing to pay them in accordance with FLSA for hours worked in excess of 8 hours per day and/or 40 hours per week by misclassifying them as exempt.

COUNT TWO

(Request for Back Pay, Liquidated Damages, Interest, Attorneys' Fees and Costs)

25. Plaintiff incorporates by reference herein the allegations contained in each of the above paragraphs.

26. As a result of the wrongful and willful violations of law by Defendant and its officers and agents as alleged in the claims specified above, there is due and owing to Plaintiff, and others similarly situated, various amounts of back pay, liquidated damages, interest, attorneys' fees and costs.

27. Employment, time, work, pay, leave and other records relating to Plaintiff are in the possession, control, and custody of Defendant and its officers and agents and Plaintiff is unable to state at this time the exact amount of pay, benefits, and liquidated damages which are due and owing to them with respect to their individual claims. Defendant and its officers and agents are under a duty imposed by Section 11(c) of the FLSA, 29 U.S.C. § 211(c), and other statutes and regulations to maintain and preserve payroll and other employment records with respect to Plaintiff from which the amounts of Defendant's liability to Plaintiff may be determined.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

a) Certify this case as a collective action and promptly issue notice of this action to all members of the Class, apprising them of the pendency of this action, and permitting them to assert their FLSA claims in this action by filing individual consent forms pursuant to 29 U.S.C. § 216(b);

b) Issue a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 stating that Plaintiff and all others similarly situated were employed by Defendant in a non-exempt capacity under the FLSA from at least 2018 to the present, and were wrongfully and willfully denied such status by Defendant; and

c) Order Defendant, subject to rules and regulations to be established by this Court which conform with the FLSA, to conduct a full, complete and accurate accounting of all back overtime wages, interest, and liquidated damages due and owing to Plaintiff and others similarly situated as a result of their misclassification as exempt from the FLSA; and

d) Award Plaintiff and others similarly situated such back pay, liquidated damages, and interest under the FLSA and Back Pay Act from the date of the denial of such pay and entitlements until Defendant reclassifies Plaintiff and others similarly situated as non-exempt from the FLSA, and costs, as are due and owing to them by Defendant under applicable federal laws and regulations; and

e) Award Plaintiff reasonable attorneys' fees and costs to be paid by Defendant under FLSA, the Back Pay Act, 5 U.S.C. § 5596, and the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(B); and

f) Issue a call upon Defendant pursuant to 28 U.S.C. § 2507, requiring the production of information or papers of Defendant establishing Defendant's liability herein; and

g) Grant to Plaintiff such other relief as the Court deems just and proper.

Respectfully submitted,

OF COUNSEL:

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Attorneys for Plaintiff

Dated: May 18, 2021

CERTIFICATE OF SERVICE

Pursuant to the Rule 4 of the United States Court of Federal Claims, service of this complaint on Defendant United States of America will be effectuated by the clerk of the court.

/s/ Alice Hwang
Alice Hwang

In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)

21-1371 C

Names: Doe No. 1

Location of Plaintiff(s)/Petitioner(s) (city/state): _____

Plaintiffs' locations are set forth in their consent forms that will be filed herein at a later date.

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): Alice C. Hwang

Firm Name: James & Hoffman, P.C.

Contact information for pro se plaintiff/petitioner or attorney of record:

Post Office Box: _____

Street Address: _____

1130 Connecticut Avenue, N.W., Suite 950

City-State-ZIP: _____

Washington, D.C. 20036

Telephone & Facsimile Numbers: _____

(202) 496-0500; (202) 496-0555 fascimile

E-mail Address: _____

achwang@jamhoff.com

Is the attorney of record admitted to the Court of Federal Claims Bar? Yes No

Nature of Suit Code: 304

Select only one (three digit) nature-of-suit code from the attached sheet.

Agency Identification Code: DOJ

Number of Claims Involved: _____

Amount Claimed: \$ To be determined

Use estimate if specific amount is not pleaded.

Bid Protest Case (required for NOS 138 and 140):

Indicate approximate dollar amount of procurement at issue: \$ _____

Is plaintiff a small business? Yes No

Yes No

Was this action preceded by the filing of a protest before the GAO? Yes No

Yes No

GAO Solicitation No. _____

If yes, was a decision on the merits rendered? Yes No

Yes No

Income Tax (Partnership) Case:

Identify partnership or partnership group: _____

Takings Case:

Specify Location of Property (city/state): _____

Vaccine Case:

Date of Vaccination: _____

Related Case:

Is this case directly related to any pending or previously filed case(s) in the United States Court of Federal Claims? If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.

Yes No

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [FBI Language Specialists Owed Unpaid Overtime, Lawsuit Claims](#)
