

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICOLE DUNN, on behalf of herself and
others similarly situated,

Plaintiff,

v.

H & J RESTAURANT MANAGEMENT,
INC.,

Defendant.

:
: CIVIL ACTION
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: No. _____
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: JURY TRIAL DEMANDED
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CLASS/COLLECTIVE ACTION COMPLAINT

Plaintiff Nicole Dunn (“Plaintiff”) brings this class/collective action lawsuit against Defendant H & J Restaurant Management, Inc. (“Defendant”) seeking all available relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.101, *et seq.* Plaintiff asserts her FLSA claim as a collective action under 29 U.S.C. § 216(b) and asserts her PMWA claim as a class action under Federal Rule of Civil Procedure 23.

JURISDICTION AND VENUE

1. Subject matter jurisdiction over the FLSA claim is based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. Subject matter jurisdiction over the PMWA claim is based on 28 U.S.C. § 1367.
3. Venue is based on 28 U.S.C. § 1391.

PARTIES

4. Plaintiff resides in Doylestown, Pennsylvania (Bucks County).
5. Defendant is a Pennsylvania corporate entity headquartered in Doylestown,

Pennsylvania (Bucks County).

6. Defendant employs individuals, including Plaintiff, engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person.

FACTS

7. Defendant operates at least three McDonald's franchises located in southeastern Pennsylvania. This includes locations in Plumsteadville, New Hope, and Warrington,

8. During the relevant time period, Plaintiff was employed by Defendant at its Plumsteadville McDonald's franchise from approximately January 2017 until April 2017 and again from approximately January 2018 until April 2018.

9. Throughout her employment with Defendant, Plaintiff was paid on an hourly basis of approximately \$8.25/hr and was not exempt from the mandates of the FLSA and/or PMWA.

10. Throughout her employment with Defendant, Plaintiff regularly worked in excess of 40 hours in a workweek.

11. Defendants failed to record and pay Plaintiff for all of the time she spent performing her work activities. This included regular hours (below 40 hours in a workweek) and overtime hours when she worked above 40 hours in a workweek.

12. Defendant failed to pay Plaintiff for all of her work activities through various methods including, for example: (a) erasing or modify Plaintiff's recorded time in order to eliminate or reduce her work hours credited by Defendant, and (b) requiring Plaintiff to perform work during unpaid breaks.

13. Even when Defendant credited Plaintiff with working more than 40 hours in a

single week, it failed to pay her overtime premium compensation for her overtime work. Instead, Defendant would only pay Plaintiff overtime premium compensation when she worked over 80 hours in a *two-week* period.

14. In addition to Plaintiff, Defendant employs numerous other non-exempt hourly employees at their franchise locations throughout southeastern Pennsylvania. Like Plaintiff, these individuals: (a) are paid on an hourly basis; (b) have regularly worked more than 40 hours in a single workweek; (c) have not been compensated for all of their work activities; and (d) did not receive overtime premium compensation when they worked over 40 hours in a single week.

15. As a result of these common business practices, Defendant has failed to compensate Plaintiff and similarly situated non-exempt hourly employees for all work hours, and when warranted, the legally mandated overtime premium for hours worked over 40 in a workweek.

16. In failing to properly compensate Plaintiff and similarly situated non-exempt hourly employees, Defendant has acted willfully and with reckless disregard of clearly applicable FLSA and PMWA provisions concerning the payment of minimum wages and overtime premium wages.

COLLECTIVE AND CLASS ACTION ALLEGATIONS

17. Plaintiff brings her FLSA claim pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of all individuals who, during any workweek since July 18, 2015, have worked at one of Defendant's McDonald's franchises in Pennsylvania and were classified as non-exempt from the overtime pay mandates.

18. Plaintiff's FLSA claim should proceed as a collective action because Plaintiff and other potential members of the collective, having worked pursuant to the common policies

described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

19. Plaintiff brings her PMWA claim pursuant to Federal Rule of Civil Procedure 23 on behalf of all individuals who, during any workweek since July 18, 2015, have worked at one of Defendant’s McDonald’s franchises and were classified as non-exempt from the overtime pay mandates.

20. The putative class, upon information and belief, includes at least 50 individuals, all of whom are readily ascertainable based on Defendant’s payroll records, and, as such, is so numerous that joinder of all class members is impracticable.

21. Plaintiff is a class member, her claims are typical of the claims of other class members, and she has no interests that are antagonistic to or in conflict with the interests of other class members.

22. Plaintiff will fairly and adequately represent the class members and their interests, and she has retained competent and experienced counsel who will effectively represent the class members’ interests.

23. Questions of law and fact are common to all class members, since, *inter alia*, this lawsuit concerns the legality of Defendant’s standardized compensation practices.

24. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any questions affecting only Plaintiff and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
(Alleging Violations of the FLSA)

25. All previous paragraphs are incorporated as though fully set forth herein.

26. Plaintiff and members of the proposed collective are employees entitled to the FLSA's protections.

27. Defendant is an employer covered by the FLSA.

28. The FLSA entitles employees to minimum hourly compensation of \$7.25. See 29 U.S.C. §207

29. The FLSA entitles employees to compensation for every hour worked in a workweek. See 29 U.S.C. §207(a)(1).

30. The FLSA entitles employees to overtime compensation "not less than one and one-half times" their regular rate of pay for all hours worked over 40 in a workweek. See 29 U.S.C. § 207(a)(1).

31. Defendant violated the FLSA by failing to pay Plaintiff and the proposed collective the legally mandated minimum wage and overtime premium compensation.

32. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

COUNT II
(Alleging Violations of the PMWA)

33. All previous paragraphs are incorporated as though fully set forth herein.

34. Plaintiff and members of the proposed class are employees entitled to the PMWA's protections.

35. Defendant is an employer covered by the PMWA.

36. The PMWA entitles employees to minimum hourly compensation of \$7.25. See 43 P.S. § 333.104.

37. The PMWA entitles employees to compensation for every hour worked in a workweek. See 34 Pa. Code § 231.1.

38. The PMWA entitles employees to overtime compensation “not less than one and one-half times” the employee’s regular rate of pay for all hours worked over 40 in a workweek. See 43 P.S. § 333.104(c).

39. Defendant violated the PMWA by failing to compensate Plaintiff and the proposed class the legally mandated minimum wage and overtime premium compensation.

40. In violating the PMWA, Defendant acted willfully and with reckless disregard of clearly applicable PMWA provisions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and others, seeks: (a) unpaid minimum wage and overtime premium compensation; (b) prejudgment interest; (c) liquidated damages (available under FLSA only); (d) reasonable litigation costs, expenses, and attorney’s fees; and (e) any other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial as to all claims so triable.

Date: July 18, 2018



Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
WINEBRAKE & SANTILLO, LLC
Twining Office Center, Suite 211
715 Twining Road
Dresher, PA 19025
Phone: (215) 884-2491

Counsel for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Pennsylvania McDonald's Employee Files Suit Seeking Allegedly Unpaid Wages](#)
