

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

INDIVIDUALLY AND ON)
BEHALF OF ALL OTHERS)
SIMILARLY SITUATED,)
ARLINE McGREW, KASEY)
O'BRYANT, LEIGH HARBIN,)
MELISSA HARVEY, JANE)
LAGGAN, RACHEL PEARSON,)
KAREN BALL, TASHA SILVER,)

Plaintiffs,)

vs.)

Civil Action No.: _____

DCH HEALTHCARE AUTHORITY)

JURY TRIAL REQUESTED

Defendant.)

COMPLAINT

1. The Plaintiff, Arline McGrew, is a resident of Alabama and is over the age of nineteen.
2. The Plaintiff, Karen Ball, is a resident of Alabama and is over the age of nineteen.
3. The Plaintiff, Kasey O'Bryant, is a resident of Alabama and is over the age of nineteen.
4. The Plaintiff, Leigh Harbin, is a resident of Alabama and is over the age of nineteen.
5. The Plaintiff, Melissa Harvey, is a resident of Alabama and is over the age of nineteen.
6. The Plaintiff, Jane Laggan, is a resident of Alabama and is over the age of

nineteen.

7. The Plaintiff, Rachel Pearson, is a resident of Alabama and is over the age of nineteen.
8. The Plaintiff, Tasha Silver, is a resident of Alabama and is over the age of nineteen.
9. The Plaintiffs, individually and on behalf of all others similarly situated, bring this action under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 *et seq.*) (hereinafter “FLSA”), against Defendant DCH Healthcare Authority, to recover unpaid overtime compensation, back pay, liquidated damages, attorney fees, interest, expenses and costs.
10. Plaintiff Jane Laggan also brings a claim for violations of the Family and Medical Leave Act.

JURISDICTION AND VENUE

11. This Court has jurisdiction of this action under the FLSA, 29 U.S.C. § 201, *et seq.* The Court also has jurisdiction of this action under the Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq.* Therefore, the Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331.
12. Venue is proper in the Northern District of Alabama, Western Division, pursuant to 28 U.S.C. § 1391(a), as a substantial part of the events or omissions giving rise to the Plaintiffs’ claims occurred in Tuscaloosa County, Alabama, within the Northern District, Western Division.

NATURE OF THE ACTION¹

¹ Each of the plaintiffs hereto is a woman, and all or a significantly predominate portion of the defendant’s employees who served with them in their home health care assignments and classification were also women. As such, the impermissible DCH Health Care practices and policies described herein fell most heavily on women employees and thus were potential violations of Title VII of the Civil Rights Act of 1964, as amended. Upon satisfaction of necessary preconditions to suit, this complaint may be amended to reflect such additional claims.

13. This is a collective action pursuant to 29 U.S.C. § 216(b) based on Defendant's willful violations of the overtime provisions of the FLSA, in which Plaintiffs, on behalf of themselves and similarly situated employees of DCH Healthcare Authority (hereinafter "DCH"), seek to recover unpaid overtime compensation, an additional equal amount as liquidated damages, attorney fees, interest, expenses and costs pursuant to 29 U.S.C. § 207, 216 and 255(s).
14. In this pleading, the term "Similarly Situated Employees" includes all persons who were employed by DCH as home health care nurses, licensed practical nurses, home health aids, therapists, and/or any other nonexempt employee classification during the applicable statute of limitations period and who are owed overtime pay pursuant to the FLSA. Pursuant to DCH's common policy, plan, practice, procedure, protocol, routine, and/or rule, Plaintiffs and the Similarly Situated Employees were all required to work overtime hours, off-the-clock, and not paid for hours worked in excess of 40 hours per week.
15. Additionally, Plaintiff Jane Laggan was wrongfully denied leave under the Family and Medical Leave Act based in part on her employer's claim that she did not qualify because she did not work the necessary number of hours. Laggan was also forced by DCH to work off the clock and, had her hours been properly compensated and counted by DCH, she would have qualified for FMLA leave.
16. At all materials times, the Plaintiffs were employed by DCH in the Home Health division as nurses, licensed practical nurses, therapists, home health aids, or in other positions and none of them were excluded from coverage under the FLSA or the FMLA.
17. Defendant DCH, at all times relevant to the action, has been a business organized in the State of Alabama and registered as a healthcare authority, having a place of business and doing business at 809 University Boulevard East, Tuscaloosa, AL 35401.
18. At all times relevant to the action, DCH was the employer of Plaintiffs and the Similarly Situated Employees, who were all employees as defined by Sections 203(a), (e) and (g) of the Act [29 U.S.C. § 203(a), (e) and (g)].

19. At all times relevant to the action, Defendant employed Plaintiffs and the Similarly Situated Employees in and about their place of business in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials within the meaning of Sections 3(b), (g), (I) and (j) of the Act, 29 U.S.C. § 203 (b), (g), (I) and (j).
20. Defendant's employees, including Plaintiffs, regularly used the instrumentalities of interstate commerce in their work, including but not limited to regular and recurrent use of interstate telephone calls, facsimiles, mail, email, internet usage, and delivery services. They also regularly used medical tools and medical equipment obtained outside the state of Alabama and regularly used and produced in interstate commerce.
21. At all times relevant to the action, Defendant had an annual gross volume of sales made or business done of not less than \$1,000,000.
22. By reason of the foregoing, Defendant has been, at all times hereinafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in Sections 3® and (s) of the Act, 29 U.S.C. § 203 ® and (s).

STATEMENT OF FACTS

23. For the last several years, the nurses, employees and/or speech therapists listed above have been employed by DCH in their home health care division. The Plaintiff employees received an hourly wage.
24. DCH instituted a productivity requirement for all employees in the home health division. The productivity requirements were so onerous and unattainable that the requirements forced employees to work off the clock in order to meet the productivity requirements.
25. DCH knew that employees were being forced to work off the clock because employees complained that they were being forced to work off the clock to meet unattainable productivity requirements. Furthermore, the software and technology employed by DCH in the home health division allowed DCH to track when employees were working off the clock.

26. While they were employed by DCH, Plaintiffs and the Similarly Situated Employees were not exempt from the provisions of the FLSA because, without limitation: (I) their primary duty was not management; and (ii) they did not customarily and regularly direct the work of two or more other employees.
27. The services performed by Plaintiffs and the Similarly Situated Employees were a necessary and integral part of and directly essential to Defendant's business.
28. Plaintiffs and the Similarly Situated Employees were required to perform their duties in the home health division without overtime compensation.
29. Defendant has intentionally failed and/or refused to pay Plaintiffs and the Similarly Situated Employees in accordance with the provisions of the FLSA.
30. Plaintiff Jane Laggan applied for leave under the FMLA. DCH denied her leave request by claiming that she had not worked enough hours to qualify for FMLA leave. However, Laggan was also forced to work off the clock because of the productivity requirements. Had her time been lawfully counted by DCH, she would have qualified for FMLA leave. Furthermore, Plaintiff Jane Laggan was also very close to retirement age and is over the age of 40. Upon information and belief, Jane Laggan was forced out of her employment with DCH in order to avoid the payment of her retirement benefits.
31. The systems, practices and duties of the Plaintiffs and the Similarly Situated Employees have existed for at least three years throughout Defendant's business.
32. For at least three years, Defendant has been aware of the requirements of the FLSA and its corresponding regulations necessary to provide its nurses with overtime compensation and leave under the FMLA. Despite this knowledge, Defendant has failed to pay its employees the mandatory overtime compensation to conform the duties of these employees to the requirements of the FLSA. DCH also failed to grant FMLA leave to an employee legally qualified for FMLA leave.
33. Defendant has intentionally and repeatedly misrepresented to its employees

that the productivity requirements were for purposes other than forcing employees to work off the clock, all the while knowing that the productivity requirements were unattainable and had the sole purpose of forcing employees to work off the clock to the financial benefit of the Defendant. The Defendant knew that this would also affect the eligibility of certain nurses seeking FMLA leave because counting the off-the-clock hours would make those employees eligible for FMLA leave.

34. Plaintiffs and the Similarly Situated Employees regularly worked more than 40 hours in each work week in which they were employed by Defendant. Defendant knew that Plaintiffs and the Similarly Situated Employees regularly worked more than 40 hours per work week.
35. Defendant paid Plaintiffs and the Similarly Situated Employees their regular hourly rate even when they worked over 40 hours in a workweek. Defendant repeatedly violated Section 7 of the Act, 29 U.S.C. § 207, by failing to compensate Plaintiffs and the Similarly Situated Employees at a rate of at least one and one-half times the regular rate at which they were employed for every hour over 40 in a workweek. Defendant owes Plaintiffs and the Similarly Situated Employees time-and-half for every overtime hour they worked during their employment.
36. Defendant also violated the Family and Medical Leave Act by failing to grant leave to otherwise eligible employees who were working off the clock but did not get credit for that unpaid work and thus did not “qualify” for leave according to DCH.
37. DCH knew or showed reckless disregard for whether its failure to pay Plaintiffs and the Similarly Situated Employees overtime compensation was prohibited by the Act. Defendant’s violations of the FLSA were willful and subject to the three year statute of limitations. 29 U.S.C. § 255(a).
38. Plaintiffs and the Similarly Situated Employees were required by Defendant and did submit to Defendant’s records of the number of hours they worked throughout their employment.
39. DCH has at all times pertinent hereto been required by Section 11 of the Act,

29 U.S.C. § 211, and the regulations at 29 C.F.R. Part 516 to keep complete and accurate records with respect to Plaintiffs and the Similarly Situated Employees: the hour and day the workweek begins; total hours worked each workday and each workweek; total weekly straight-time earnings; total overtime compensation; date of payment and pay period covered.

40. All records concerning the number of hours worked by Plaintiff and the Similarly Situated Employees and the compensation they received in workweeks in which they worked overtime hours are in the possession and under the custody and control of the Defendant, and Plaintiff and the Similarly Situated Employees are unable to state at this time the exact amount owing to them.

FLSA COLLECTIVE ACTION ALLEGATIONS

41. The Plaintiff realleges all prior paragraphs of the Complaint.
42. In the count below for Violations of the Fair Labor Standards Act (hereinafter “The Count”), Plaintiff brings an action for a violation of the FLSA in a collective action pursuant to 29 U.S.C. §§ 207(a), 216(b) and 255(a) on behalf of all Similarly Situated Employees in Alabama on or after the date that is three years before the filing of the Complaint, and incorporates herein by reference the Consent that she filed with her original Complaint.
43. Plaintiffs and the Similarly Situated Employees:
 - a. worked for DCH as nurses in the home health division;
 - b. were employed by DCH at various times during the applicable statute of limitations period to the present;
 - c. had work schedules and rates of pay that were controlled by DCH; and
 - d. were paid less than the required overtime wages for work performed in excess of 40 hours per workweek.
44. At all relevant times, Plaintiffs and the Similarly Situated Employees are and

have been similarly situated, have had substantially similar job requirements and pay provisions, and have all been subject to DCH's common policy, plan, practice, procedure, protocol, routine, and/or rule, under which DCH has:

- a. willfully failed and refused to pay them at the legally required time-and-a-half rates for work in excess of forty (40) hours per workweek; and
 - b. willfully failed to keep records required by the FLSA. The claims of Plaintiffs stated herein are the same as those of the Similarly Situated Employees.
45. The Count below is properly brought under and maintained as an opt-in collective action pursuant to 29 U.S.C. § 216(b). The numerous Similarly Situated Employees who have been improperly compensated in violation of the FLSA would benefit from the issuance of Court-Supervised Notice of the present lawsuit and the opportunity to join the present lawsuit. For purpose of Notice and other purposes related to this action, the Similarly Situated Employees are known to Defendant; and their names and addresses are readily available through Defendant's records. Adequate notice should be provided to the Similarly Situated Employees via first class mail.

COUNT ONE
VIOLATION OF THE FAIR LABOR STANDARDS ACT

46. Plaintiff incorporates herein the allegations in the Complaint.
47. DCH repeatedly and willfully employed Plaintiffs and the Similarly Situated Employees in the aforesaid enterprise for workweeks longer than 40 hours and failed and refused to compensate them for their employment in excess of 40 hours per workweek at a rate of at least one and one-half times the regular rate at which they were employed, in violation of the requirements of Section 7(a) of the Act [29 U.S.C. § 207(a) and 255(a)].
48. DCH is liable to Plaintiffs for all unpaid overtime compensation for which they should have been paid throughout their employment in an amount that DCH knows or should have known. Defendant further owes Plaintiffs an additional

equal amount of liquidated damages. Plaintiffs are also entitled to recover from DCH reasonable attorney fees, interest, costs and expenses. 29 U.S.C. § 216(b).

49. DCH is liable to the Similarly Situated Employees for all unpaid overtime compensation for which they should have been paid throughout their employment in an amount to be determined at trial. DCH further owes the Similarly Situated Employees an additional equal amount as liquidated damages. The Similarly Situated Employees are also entitled to recover from Defendant their reasonable attorney fees, interest, expenses and costs of the action. 29 U.S.C. § 216(b).
50. WHEREFORE, Plaintiff, individually and on behalf of the Similarly Situated Employees, pursuant to §216(b) of the FLSA, prays for the following relief:
 - a. That at the earliest possible time, Plaintiffs be allowed to give notice, or that the Court issue such notice, to all Defendant's employees in all locations within the United States during the three years immediately preceding the filing of this suit, to all other potential plaintiffs who may be similarly situated informing them that this action has been filed, the nature of the action, and of their right to opt-into this lawsuit if they worked overtime but were not overtime benefits pursuant to 29 U.S.C. § 216(b).
 - b. That Plaintiffs and each of the Similarly Situated Employees who opt-into this action be awarded damages in the amount of his or her respective unpaid compensation and benefits, plus an equal amount of liquidated damages pursuant to 29 U.S.C. § 216(b), and/or prejudgment interest;
 - c. That Plaintiffs and each of the Similarly Situated Employees who opt-into this action be awarded reasonable attorney fees, including the costs and expenses of this action; and
 - d. That Plaintiffs and each of the Similarly Situated Employees who opt-into this action have such other legal and equitable relief, including, any injunctive and/or declaratory relief, to which they may be entitled.

COUNT TWO
VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT

51. DCH is a covered employee pursuant to the FMLA. It has more than 50 employees for each working day during each of 20 or more calendar work weeks during the current or preceding year.
52. Plaintiff Laggan was at all times eligible for FMLA coverage:
 - a. She was employed by DCH as a home health care nurse;
 - b. She had been employed there for 12 months preceding her request for FMLA leave;
 - c. She would have had more than 1,250 hours of service in the preceding 12 month period if DCH had been legally counting the hours that they forced her to work off the clock; and
 - d. She was employed at DCH where 50 or more employees are employed by DCH within 75 miles.
53. She suffered from a serious health condition that qualified her for benefits under the FMLA. She had been so harassed by her managers in DCH home health, as had most of the other home health care nurses, that it precipitated incapacitation for more than three consecutive days.
54. Plaintiff Laggan was entitled to 12 work weeks of unpaid leave.
55. She properly gave advance notice of her intent to take leave under the FMLA.
56. DCH denied her leave under the FMLA on the basis that she did not have qualifying hours in the preceding 12 months. However, DCH did not count the hours that it forced her to work off the clock to meet productivity requirements. Had those hours been counted, she would have qualified for leave under the FMLA.

57. DCH knew or should have known it was violating the FMLA in refusing to count the Plaintiff's off the clock hours that she was forced to work due to DCH's unattainable productivity requirements. The Plaintiff contends that the violation by DCH was a willful violation.
58. DCH discriminated against the Plaintiff in the form of a hostile work environment and harassment by the management of DCH home health. She was denied employee benefits, including the wrongful denial of FMLA leave. She was harassed severely by home health management, as were all of the Plaintiffs and most of the nurses in the division, because they could not meet unattainable productivity goals. They were forced to work off the clock and DCH knew this was occurring.
59. WHEREFORE, as a result of the violation of the FMLA, the Plaintiff requests the following in damages:
 - a. Lost wages and benefits;
 - b. Actual monetary losses;
 - c. Liquidated damages of two times the actual damages;
 - d. Attorney fees;
 - e. Expert Witness Fees;
 - f. Expenses;
 - g. Costs;
 - h. Compensatory Damages; and
 - i. Punitive Damages for the willful violation of the FMLA.

COUNT THREE
VIOLATION OF THE ALABAMA AGE DISCRIMINATION ACT²

60. The Plaintiffs reallege all prior paragraphs of the Complaint.
61. Plaintiff Jane Laggan is over the age of 40. She was very close to retirement at DCH. DCH engaged in harassment and retaliation against Ms. Laggan, in part, to force her resignation and deprive her of her retirement benefits.
62. This is a violation of Alabama's Age Discrimination statute, Ala. Code § 25-1-21 (1975), which prohibits discrimination against workers 40 years of age and older.
63. WHEREFORE, as a result of the violation of the Alabama Age Discrimination statute, Plaintiff Laggan is entitled to:
 - a. Compensatory damages;
 - b. Punitive damages;
 - c. Retirement benefits;
 - d. Costs, fees, interest and expenses.

COUNT FOUR
VIOLATION OF THE EQUAL PAY ACT

64. The Plaintiffs reallege all prior paragraphs of the Complaint.
65. The Equal Pay Act, 29 U.S.C. § 206, requires that men and women in the same workplace be given equal pay for equal work.
66. The employees of DCH's home health division were predominantly women.

² The Plaintiffs anticipate bringing EEOC charges, and subsequent claims, for violations of Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination Act of 1975.

Upon information and belief, they were paid less than male employees in similarly situated positions of employment.

67. WHEREFORE, the Plaintiffs are entitled to recover:
- a. Back pay;
 - b. Liquidated damages;
 - c. Attorney fees, interest, costs and expenses.

COUNT FIVE
VIOLATION OF RETALIATION PROVISIONS OF FLSA

68. The Plaintiffs reallege all prior paragraphs of the Complaint.
69. When the Plaintiffs in this matter complained about work performed off the clock, they were retaliated against by DCH in violation of the FLSA, specifically 29 U.S.C. § 215(a)(3). The Act prohibits any discrimination against an employee who has made a complaint related to the FLSA.
70. In order to suppress employee complaints about FLSA violations, DCH would threaten, harass and retaliate against employees who raised any such complaint.
71. It is a violation of the FLSA to retaliate against any employee who exercised their right to express their complaints about working off the clock in excess of the legal work week.³

JURY TRIAL DEMAND

72. Plaintiffs respectfully demand a jury trial on all triable issues.

Done and submitted this 26th day of October, 2016.

³ E.E.O.C. v. White and Son Enterprises, 881 F. 2d 1006, 1011-12 (11th Cir. 1989) (holding that informal complaint by employees triggered FLSA retaliation provisions).

/s/ J. Michael Comer

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Unpaid Overtime Lawsuit Filed Against DCH Healthcare Authority](#)
