

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

SCOTT KOBESKY, on behalf of	:	CIVIL ACTION
himself and similarly situated	:	
employees,	:	ELECTRONICALLY FILED
Plaintiff,	:	ON AUGUST 28, 2018
v.	:	
	:	CLASS/COLLECTIVE ACTION
A TO Z COATINGS INC.,	:	
Defendant.	:	

COMPLAINT - CLASS/COLLECTIVE ACTION

Scott Kobesky (“Plaintiff”) brings this class/collective action lawsuit against A to Z Coatings 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’s FLSA claim is asserted as a collective action under 29 U.S.C. § 216(b), while his PMWA claim is asserted as a class action under Federal Rule of Civil Procedure 23. See Knepper v. Rite Aid Corp., 675 F.3d 249 (3d Cir. 2012) (collective and class claims may proceed together in same action).

JURISDICTION AND VENUE

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. Jurisdiction over the PMWA claim is proper under 28 U.S.C. § 1367.

3. Venue is proper under 28 U.S.C. § 1391.

PARTIES

4. Plaintiff currently resides in Scranton, PA.
5. Defendant is a corporation headquartered in Scranton, PA.
6. The FLSA applies to Plaintiff's employment for at least five

independent reasons: (a) while employed by Defendant, Plaintiff was individually engaged in commerce; (b) while employed by Defendant, Plaintiff was engaged in the production of goods for commerce; (c) Defendant is an enterprise with annual gross sales of over \$500,000 that employs individuals engaged in commerce; (d) Defendant is an enterprise with annual gross sales of over \$500,000 that employs individuals engaged in the production of goods for commerce; and (e) Defendant is an enterprise with annual gross sales of over \$500,000 that employs individuals who handle, sell, or otherwise work on goods or materials that have been moved in or produced for commerce by any person.

FACTS

7. Defendant is a contractor in the business of, *inter alia*, applying insulations and sealants to buildings and structures in Pennsylvania, New York, and, upon information and belief, other states. Defendant's website explains:

From commercial roofing to spray foam insulation, exterior waterproofing, deck and floor sealing A to Z Coatings keeps you protected from the elements. Rain, heat and humidity are the enemies of roofs, walls, decks and floors. Properly

installed and maintained roofs and the correct use of sealants, insulation and coating will help to preserve and protect your property while conserving energy and saving money.

www.atozcoatings.com/

8. During the three-year period relevant to this lawsuit, Defendant has employed over 50 individuals who have been paid on an hourly basis to perform work at buildings and structures in the United States. These individuals will be referred to as “hourly employees.”

9. Plaintiff worked for Defendant as an hourly employee. His weekly pay checks were issued by: “A TO Z COATINGS INC., 3218 Pittston Avenue, Scranton, PA 18505.”

10. Plaintiff and other hourly employees often work over 40 hours per week. For example: (a) during the week beginning on June 26, 2017 and ending on July 2, 2017, Defendant credited Plaintiff with working 50 hours and (b) during the week beginning on June 12, 2017 and ending on June 18, 2017, Defendant credited Plaintiff with working 48 hours.

11. Defendant failed to pay Plaintiff and other hourly employees any overtime premium compensation for hours worked over 40 per week. For example, Plaintiff was merely paid at his regular hourly rates for all 50 hours worked during the June 26, 2017-July 2, 2017 week and for all 48 hours worked during the June 12, 2017-June 18, 2017 week.

CLASS/COLLECTIVE ACTION ALLEGATIONS

12. Plaintiff brings his FLSA claim as a collective action pursuant to 29 U.S.C. § 216(b) and brings his PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all individuals who, during the past three years, have been employed by Defendant and paid an hourly wage.

13. Plaintiff's FLSA claim should proceed as a collective action because Plaintiff and other putative collective members, 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.

14. Class action treatment of Plaintiff's PMWA claim is appropriate because, as alleged below, all of Rule 23's class action requisites are satisfied.

15. The class is readily ascertainable based on Defendant's standard payroll records and is so numerous that joinder of all class members is impracticable.

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

17. Plaintiff will fairly and adequately represent the class members and their interests, and he has retained competent and experienced counsel who will effectively represent the class members' interests.

18. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant's companywide pay policies, as described herein. The legality of these policies will be determined through the application of generally applicable legal principles to a common set of facts.

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

COUNT I
(Alleging FLSA Violations)

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

21. Plaintiff and the collective are employees entitled to the FLSA's protections.

22. Defendant is an employer covered by the FLSA.

23. The FLSA entitles employees to overtime compensation of "not less than one and one-half times" the employee's regular pay rate for hours worked over 40 per week. 29 U.S.C. § 207(a)(1).

24. Defendant has violated the FLSA by failing to pay the overtime premium to Plaintiff and other collective members.

25. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions and, thus, has committed a willful violation of the FLSA.

COUNT II
(Alleging PMWA Violations)

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

27. Plaintiff and the class are employees entitled to the PMWA's protections.

28. Defendant is an employer covered by the PMWA.

29. The PMWA requires that employees receive overtime premium compensation "not less than one and one-half times" the employee's regular pay rate for hours worked over 40 per week. *See* 43 P.S. § 333.104(c).

30. Defendant has violated the PMWA by failing to pay the overtime premium to Plaintiff and other collective members.

PRAYER FOR RELIEF

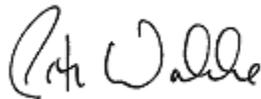
WHEREFORE, Plaintiff, on behalf of himself and other members of the proposed class and collective, seeks the following relief:

- A. Unpaid overtime wages and prejudgment interest;
- B. Liquidated damages;
- C. Litigation costs, expenses, and attorneys' fees; and

D. Such other and further relief as the Court deems just and proper.

Date: August 28, 2018

Respectfully,



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