

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

GENAIA MOJER, on behalf of herself and similarly situated employees, Plaintiff,	:	CIVIL ACTION	3:18-CV-470
v.	:	ELECTRONICALLY FILED	
	:	ON FEBRUARY 26, 2018	
AMERICARE HOME SOLUTIONS LLC, Defendant.	:	CLASS/COLLECTIVE ACTION	

COMPLAINT - CLASS/COLLECTIVE ACTION

Genaia Mojer (“Plaintiff”) brings this class/collective action lawsuit against Americare Home Solutions LLC (“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 her 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 in this Court is proper under 28 U.S.C. § 1391.

PARTIES

4. Plaintiff resides in Scranton, PA (Lackawanna County).
5. Plaintiff is an employee covered by the FLSA and the PMWA.
6. Defendant is a corporation headquartered in Avoca, PA (Lackawanna County).
7. Defendant is covered by the FLSA because it is an enterprise engaged in commerce and has annual gross sales (much of which are received from federal programs such as Medicare and Medicaid) of over \$500,000.

FACTS

8. Defendant is in the business of providing home care services to the elderly, the disabled, and other clients in need of such services.
9. Defendant currently employs over 80 individuals who are paid, in-whole or in-part, on an hourly basis and hold positions such as, for example, Caregiver or Home Health Aid. These individuals will be referred to as “hourly employees.”
10. Plaintiff works for Defendant as an hourly employee.
11. Plaintiff’s paycheck is issued by “AMERICARE HOME SOLUTIONS LLC.”
12. Plaintiff and other hourly employees often work over 40 hours per

week. For example, during the two-week period ending on January 14, 2018, Defendant credited Plaintiff with working 115.25 hours.

13. The FLSA and PMWA require that employers pay employees overtime premium compensation for hours worked over 40 per week. In particular, employees must be paid an overtime premium equaling 150% of their “regular rate.” See 29 U.S.C. § 207(a)(1); 43 P.S. § 333.104(c). Seeking to avoid the financial consequences of this mandate, Defendant maintains a policy of reducing the hourly employees’ pay rates during weeks in which they work over 40 hours. For example, during weeks in which Plaintiff does not work overtime, Defendant pays her \$10.00/hour. But, during weeks in which Plaintiff works over 40 hours, Defendant pays her only \$9.00/hour. As alleged in Counts I and II below, this policy demonstrates a willful and reckless disregard of clearly applicable FLSA and PMWA provisions.

CLASS/COLLECTIVE ACTION ALLEGATIONS

14. Plaintiff brings her FLSA claim as a collective action pursuant to 29 U.S.C. § 216(b) and brings her 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, paid (in-whole or in-part) an hourly wage, and credited with working over 40 hours during any week.

15. 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.

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

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

18. 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.

19. 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.

20. 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.

21. 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)

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

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

24. Defendant is an employer covered by the FLSA.

25. The FLSA entitles employees to overtime compensation of "not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1). "While the words 'regular rate' are not defined in the [FLSA], they obviously mean the hourly rate actually paid *for the normal, non-overtime workweek.*" Walling v. Helmerich & Payne, Inc., 323 U.S. 37 (1944) (emphasis supplied); accord 29 C.F.R. § 778.108; Walling v. Youngerman-Reynolds Hardwood Co., Inc., 325 U.S. 419, 424 (1945); United States v. Rosenwasser, 323 U.S. 360, 363-64 (1945).

26. Defendant has violated the FLSA by reducing the hourly rate paid to Plaintiff and the collective during weeks in which they are credited with working over 40 hours.

27. 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)

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

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

29. Defendant is an employer covered by the PMWA.

30. 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). Under the PMWA, the term "regular rate" should be construed consistently with FLSA principles to mean the hourly rate actually paid *for the normal, non-overtime workweek*.

31. Defendant has violated the FLSA by reducing the hourly rate paid to Plaintiff and the collective during weeks in which they are credited with working over 40 hours.

PRAAYER FOR RELIEF

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

- A. Unpaid overtime wages (including overtime wages) and prejudgment interest;
- B. Liquidated damages;
- C. Litigation costs, expenses, and attorneys' fees; and
- D. Such other and further relief as this Court deems just and proper.

Date: February 26, 2018

Respectfully,



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CONSENT TO BECOME PARTY PLAINTIFF

I hereby consent, pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), to become a party plaintiff in the accompanying FLSA action. I understand that I will be bound by the judgment of the Court on all issues in this case.


GENIA MOJER