

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

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KATHERINE DEVINE and LAVAR		:	CIVIL ACTION
TURNER, on behalf of themselves and others		:	
similarly situated,		:	NO. _____
	Plaintiffs,	:	
	v.	:	CLASS/COLLECTIVE ACTION
		:	
NORTHEAST TREATMENT CENTERS,		:	JURY TRIAL DEMANDED
INC.,		:	
	Defendants.	:	
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COMPLAINT – CLASS/COLLECTIVE ACTION

Katherine Devine (“Devine”) and Lavar Turner (“Turner”) (together “Plaintiffs”) bring this lawsuit against NorthEast Treatment Centers, 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. Plaintiffs’ FLSA claim is asserted as a collective action under 29 U.S.C. § 216(b), while their 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 the same lawsuit).

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. Devine resides in Philadelphia, PA.
5. Turner resides in Philadelphia, PA.

6. Defendant is a corporate entity headquartered in Philadelphia, PA.
7. Plaintiffs are employees covered by the FLSA and PMWA.
8. Defendant is an employer covered by the FLSA and PMWA.

FACTS

9. Defendant is “one of largest behavioral health and social services agencies in the region.”¹

10. Defendant, operating through a contract with the City of Philadelphia and overseen by the City’s Department of Human Services, provides foster care services within geographic regions designated as “CUA 1” and “CUA 7.”

11. In providing the above foster care services, Defendant employs **Case Managers**.

The City describes the Case Manager position as follows:

If it is determined that DHS services are needed, the child will be assigned a CUA case manager. This person will be the main point of contact for you and your foster child. The case manager: Sets up meetings and coordinates with other professionals working with your family[;] Attends court hearings[;] Sets up a visitation schedule with the child’s biological parents, when possible[; and] Checks on children in your care regularly.²

12. Devine has worked for Defendant as a Case Manager since around November 2018.

13. Turner worked for Defendant as Case Manager from around December 2019 until around March 2020.

14. Because the Case Manager position does not require specialized academic training, Case Managers have college degrees in a wide variety of fields.

¹ <http://netcenters.org/about-us/overview/> (last viewed May 21, 2020).

² <https://www.phila.gov/departments/department-of-human-services/foster-care/who-is-involved-in-your-foster-childs-case/> (last viewed May 21, 2020).

15. During the three-year period covered by this lawsuit, Case Managers have regularly worked over 40 hours per week. For example, it is/was not unusual for Devine and Turner to work over 50 hours per week as Case Managers.

16. Prior to July 1, 2019, Defendant paid Case Managers annual salaries of around \$45,000.

17. Prior to July 1, 2019, Defendant, as a matter of company policy, never paid Case Managers overtime compensation for hours worked over 40 per week.

18. Since July 1, 2019, Defendant has paid Case Managers around \$21 per hour.

19. Since July 1, 2019, Defendant has paid Case Managers time and one-half overtime compensation for *some* of their hours worked over 40 per week. Other overtime hours, however, have gone unpaid because Defendant's administrators and supervisors, *inter alia*: (i) refuse to "approve" overtime pay for hours that are overtly and necessarily worked by Case Managers; (ii) instruct Case Managers to under-report their work hours for payroll purposes; (iii) make downward adjustments to Case Managers' reported work hours; and (iv) ignore the obvious fact (as exemplified by, *inter alia*, computer log-in data, telephone calls, and email correspondence) that Case Managers regularly work during evenings and weekends.

20. In providing the foster care services referenced in paragraph 10, Defendant employs **Aftercare Workers**. According to Defendant, Aftercare Workers "support[] families who have been successfully discharged from DHS/CUA formal case-management services."³

21. Turner worked for Defendant as an Aftercare Worker from around February 2019

³[https://jobs.ecipay.com/prod/net/EmpApp/\(X\(1\)S\(yd10nel4shhxxr3vmhjz4b1y\)\)/JobList.aspx?ID=Y7FqLA%2fZ%2f9Bt7wIx%2b1%2b%2fmA%3d%3d&REQID=CiekDPLFsbLgApvQ6PdlJA%3d%3d](https://jobs.ecipay.com/prod/net/EmpApp/(X(1)S(yd10nel4shhxxr3vmhjz4b1y))/JobList.aspx?ID=Y7FqLA%2fZ%2f9Bt7wIx%2b1%2b%2fmA%3d%3d&REQID=CiekDPLFsbLgApvQ6PdlJA%3d%3d) (last viewed May 21, 2020).

until around December 2019.

22. Because the Aftercare Worker position does not require specialized academic training, Aftercare Workers have college degrees in a wide variety of fields.

23. During the three-year period covered by this lawsuit, Aftercare Workers have regularly worked over 40 hours per week. For example, it was not unusual for Turner to work over 50 hours per week as an Aftercare Worker.

24. Prior to July 1, 2019, Defendant paid Aftercare Workers annual salaries of around \$35,000.

25. Prior to July 1, 2019, Defendant, as a matter of company policy, never paid Aftercare Workers overtime compensation for hours worked over 40 per week.

26. Since July 1, 2019, Defendant has paid Aftercare Workers around \$17 per hour.

27. Since July 1, 2019, Defendant has paid Aftercare Workers time and one-half overtime compensation for *some* of their hours worked over 40 per week. Other overtime hours, however, have gone unpaid because Defendant's administrators and supervisors: (i) refuse to "approve" overtime pay for hours that are overtly and necessarily worked by Aftercare Workers; (ii) instruct Aftercare Workers to under-report their work hours for payroll purposes; (iii) make downward adjustments to Aftercare Workers' reported work hours; and (iv) ignore the obvious fact (as exemplified by, *inter alia*, computer log-in data, telephone calls, and email correspondence) that Aftercare Workers regularly work during evenings and weekends.

CLASS/COLLECTIVE ACTION ALLEGATIONS

28. Plaintiffs bring their FLSA claim as a collective action pursuant to 29 U.S.C. §216(b) and bring their PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23. Devine and Turner sue on behalf of all Case Managers employed by Defendant

within the past three years. In addition, Turner sues on behalf of all Aftercare Workers employed by Defendant within the past three years.

29. Plaintiffs' FLSA claim should proceed as a collective action because they and other putative collective members, having worked pursuant to the common payroll policies and practices described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

30. Class action treatment of Plaintiffs' PMWA claim is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

31. The class, upon information and belief, includes over 100 individuals, all of whom are readily ascertainable based on Defendant's payroll records and are so numerous that joinder of all class members is impracticable.

32. Plaintiffs are class members, their claims are typical of the claims of other class members, and they have no interests that are antagonistic to or in conflict with the interests of other class members.

33. Plaintiffs and their lawyers will fairly and adequately represent the class members and their interests.

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

35. 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)

36. The FLSA requires that employees receive overtime compensation “not less than one and one-half times” their regular pay rate for hours worked over 40 per week. *See* 29 U.S.C. § 207(a)(1).

37. Defendant violated the FLSA by failing to pay Plaintiffs and the FLSA collective overtime compensation for all hours worked over 40 per week.

38. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions and, as such, willfully violated the FLSA.

COUNT II
(Alleging PMWA Violations)

39. The PMWA requires that employees receive overtime 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).

40. Defendant violated the PMWA by failing to pay Plaintiffs and the Rule 23 class overtime compensation for all hours worked over 40 per week.

JURY DEMAND

Plaintiffs demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and other members of the class/collective, seek the following relief:

- A. Unpaid overtime wages and prejudgment interest;
- B. Liquidated damages to the fullest extent permitted under the FLSA;

- C. Litigation costs, expenses, and attorneys' fees; and
- D. Any other relief the Court deems just and proper.

Date: May 22, 2020

Respectfully,

s/ Peter Winebrake

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