

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

STEPHANIE MAYHEW, on behalf of	:	
herself and others similarly situated,	:	CIVIL ACTION
	:	
Plaintiff,	:	ELECTRONICALLY FILED
v.	:	ON OCTOBER 16, 2015
	:	
ECM ENERGY SERVICES INC.,	:	CLASS/COLLECTIVE ACTION
	:	
Defendant.	:	
	:	

COMPLAINT – CLASS/COLLECTIVE ACTION

Stephanie Mayhew (“Plaintiff”) brings this lawsuit against ECM Energy Services 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 FLSA Section 16(b), 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) (FLSA collective action claims and Rule 23 class action claims may proceed together in 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 is proper under 28 U.S.C. § 1391.

PARTIES

4. Plaintiff is an individual residing in Morgantown, West Virginia.
5. Plaintiff is an employee covered by the FLSA and the PMWA.
6. Defendant is a corporation headquartered in Williamsport, Pennsylvania (Lycoming County).
7. Defendant is an employer covered by the FLSA and the PMWA.

FACTS

8. Defendant provides various services at natural gas drilling sites within this judicial district and beyond.
9. Plaintiff has been employed by Defendant since approximately July 2015 in the job title of Traffic Control/Manifold Attendant (“TCMA”).
10. During the three-year time period relevant to this lawsuit, Defendant has employed over 100 individuals under the Traffic Control/Manifold Attendant (“TCMA”) job title.
11. Defendant pays Plaintiff and other TCMA’s on a day-rate basis. Plaintiff, for example, is paid \$160 per day. Thus, for the two-week pay period ending August 1, 2015, Plaintiff worked 11 days and received gross pay of \$1,760 (11 days X \$160). Likewise, for the two-week pay period ending August 15, 2015,

Plaintiff worked 8 days and received gross pay of \$1,280 (8 days X \$160).

12. Plaintiff and other TCMA's regularly work over 40 hours per week. For example, it is not unusual for Plaintiff to work between 48 and 72 hours in a week.

13. Even though the FLSA and the PMWA entitle day-rate and hourly employees to extra overtime premium compensation for hours worked over 40 per week, *see, e.g.*, 29 C.F.R. § 778.112; 34 Pa. Code § 231.43(b), Defendant does not pay Plaintiff and other TCMA's any extra overtime premium compensation for their overtime hours.

14. By failing to pay the overtime premium to Plaintiff and other TCMA's, Defendant has acted willfully and with reckless disregard of clearly applicable FLSA provisions.

CLASS/COLLECTIVE ACTION ALLEGATIONS

15. Plaintiff brings her FLSA claim as a collective action pursuant to 29 U.S.C. § 216(b) on behalf of all individuals who, during any time within the past three years, were employed by Defendant in the United States under the job title of Traffic Control/Manifold Attendant, Traffic Control, or Manifold Attendant.

16. 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.

17. Plaintiff brings her PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all individuals who, during any time within the past three years, were employed by Defendant in Pennsylvania under the job title of Traffic Control/Manifold Attendant, Traffic Control, or Manifold Attendant.

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

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

20. 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.

21. 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.

22. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant's companywide pay policies, as

summarized herein. The legality of these policies will be determined through the resolution of generally applicable legal principles to a common set of facts.

23. 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)

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

25. The FLSA requires that employees receive overtime premium 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).

26. Defendant violated the FLSA by failing to pay Plaintiff any overtime premium for hours worked over 40 per week, and such violation was undertaken willfully and with reckless disregard of clearly applicable FLSA provisions.

COUNT II
(Alleging PMWA Violations)

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

28. 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).

29. Defendants violated the PMWA by failing to pay Plaintiff any overtime premium for hours worked over 40 per week.

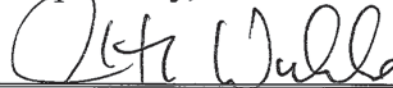
PRAYER FOR RELIEF

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

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

Date: October 16, 2015

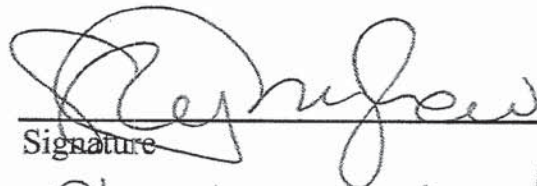
Respectfully,



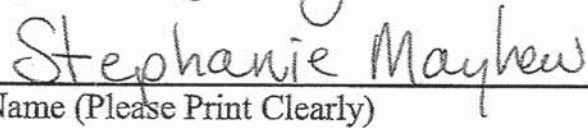
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CONSENT TO BECOME PARTY PLAINTIFF

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.



Signature



Name (Please Print Clearly)