

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

<p>REBECCA MCCARTHY, individually and on behalf of all similarly situated individuals,</p> <p style="text-align: center;">Plaintiff,</p> <p>PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">COLLECTIVE AND CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND</p> <p>Case No.:</p>
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COMES NOW Plaintiff, REBECCA MCCARTHY, by and through her undersigned counsel, and hereby brings this Collective and Class Action Complaint against Defendant, PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY, and states as follows:

INTRODUCTION

1. This is a collective and class action brought by Plaintiff on behalf of herself and all similarly situated current and/or former Customer Service Representative employees of Defendant to recover for Defendant’s willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, the Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101, *et seq.*, and the Pennsylvania Wage Payment And Collection Law, 43 P.S. §§ 260.1, *et seq.*

2. The U.S. Department of Labor (“DOL”) recognizes that call center jobs, like those held by Plaintiff in Defendant’s call center, are homogenous and issued guidance to alert and condemn an employer’s non-payment of an employee’s necessary boot-up and call ready activities. *See* DOL Fact Sheet #64, attached hereto as Exhibit A at 2 (“An example of the first principal activity of the day for agents/specialists/representatives working in call centers includes starting the computer to download work instructions, computer applications and work-related emails.”).

Additionally, the FLSA requires that “[a] daily or weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities must be kept.” *Id.*

3. Defendant subjected Plaintiff, and those similarly situated, to Defendant’s policy and practice of failing to compensate its call center employees for their necessary boot-up and call ready work, which resulted in the failure to properly compensate them as required under applicable federal and state laws.

4. Plaintiff seeks a declaration that her rights, the rights of the FLSA Collective, and the rights of the Rule 23 Class were violated and seeks to recover an award of unpaid wages and overtime premiums, liquidated damages, penalties, injunctive and declaratory relief, attorneys’ fees and costs, pre- and post-judgment interest, and any other remedies to which she and the putative Collective and Class may be entitled.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over Plaintiff’s FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiff’s claims arise under the FLSA, 29 U.S.C. §§ 201, *et seq.*

6. This Court has subject-matter jurisdiction over Plaintiff’s FLSA claim pursuant to 29 U.S.C. § 216(b), which provides that suits under the FLSA “may be maintained against any employer . . . in any Federal or State court of competent jurisdiction.”

7. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a) because these claims arise from a common set of operative facts and are so related to the claims within this Court’s original jurisdiction that they form a part of the same case or controversy.

8. Upon information and belief, Defendant’s annual sales exceed \$500,000 and they have more than two employees, so the FLSA applies in this case on an enterprise basis. *See* 29 U.S.C. § 203(s)(1)(A).

9. Defendant’s employees, including Plaintiff, engage in interstate commerce—including, but not limited to utilizing telephone lines and Internet—and therefore, they are also covered by the FLSA on an individual basis.

10. This Court has personal jurisdiction over Defendant because it maintains offices in the State of Pennsylvania.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant resides within this District.

PARTIES

12. Plaintiff is an individual who resides in the County of Dauphin, City of Harrisburg, Pennsylvania. Plaintiff worked for Defendant as a Customer Service Representative from October 2019 to May 2021. Plaintiff executed her Consent to Sue form, attached hereto as Exhibit B.

13. Defendant is domestic nonprofit corporation organized under the laws of Pennsylvania, 24 P.S. § 5101, with its principal place of business in Harrisburg, Pennsylvania.

14. Defendant operates a call center and/or employs remote customer service employees in Pennsylvania. *See* Job Postings, attached hereto as Exhibit C.

15. Upon information and belief, Defendant transitioned its customer service workforce to remote positions in and around March 2020.

16. Defendant is “one of the nation’s leading providers of student financial aid services” and “serves millions of students through guaranty, servicing, financial aid processing,

and other programs.” *About PHEAA*, <https://www.pheaa.org/about/> (last visited September 5, 2023).

17. Defendant may accept service at 1200 N 7th Street, Harrisburg, PA 17102.

GENERAL ALLEGATIONS

18. Defendant employed Plaintiff as an hourly call center Customer Service Representative (“CSR”). Defendant assigns CSRs, like Plaintiff, to answer customer calls from Defendant’s clients.

19. Plaintiff’s primary job duties included answering calls from student loan borrowers and providing customer service. More specifically, this included speaking to borrowers regarding payment plans, enrolling borrowers in payment plans, and helping to resolve other customer issues.

20. Throughout Plaintiff’s employment with Defendant, Plaintiff regularly worked at least 40 hours per workweek.

21. Regardless of whether Defendant scheduled Plaintiff to work a workweek totaling under 40 hours, a workweek totaling 40 hours, or a workweek totaling in excess of 40 hours, Plaintiff regularly worked a substantial amount of time off-the-clock as part of her job duties as a CSR. Defendant never compensated Plaintiff for this necessary time worked off-the-clock.

22. 29 C.F.R. § 553.221 provides:

Compensable hours of work generally include all of the time during which an employee is on duty on the employer’s premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of the employee’s principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and re-racking fire hoses.

23. 29 C.F.R. § 790.8 states “[a]mong activities included as an integral part of a principal activity are those closely related activities which are indispensable to its performance.”

A. Unpaid Boot-Up Work.

24. Defendant tasked Plaintiff with providing customer service to Defendant's clients by use of Defendant's telephones, Defendant's computers, and the programs accessible from Defendant's computers.

25. To access Defendant's systems, Plaintiff, and all other current and/or former CSRs, must turn on or wake up their computers, enter their credentials, and then log in to multiple computer programs, servers, and applications. Once this boot-up work is completed, Plaintiff, and all other current and/or former CSRs, must log in to Defendant's phone system to take their first call at their scheduled shift start time.

26. In addition to completing the process described above, CSRs who worked remotely also had to log in to Defendant's virtual private network (VPN).

27. Defendant does not compensate Plaintiff, and all other current and/or former CSRs, until they have logged into the phone system and marked themselves "available" to take incoming calls.

28. Regardless of how long the boot-up and log-in work takes, Defendant did not compensate Plaintiff for this time.

29. Regardless of how long the boot-up and log-in work takes, Defendant did not allow Plaintiff, and all other current and/or former CSRs, to clock in before their scheduled shift start time.

30. The boot-up work Plaintiff, and all other current and/or former physical call center CSRs, must complete before they begin being compensated is the same.

31. The boot-up work Plaintiff, and all other current and/or former remote call center CSRs, must complete before they begin being compensated is the same regardless of where they worked remotely.

32. The boot-up and log-in procedure is integral and indispensable to the performance of Plaintiff's principal job duties and integral and indispensable to Defendant's business.

33. Thus, the unpaid boot-up work performed by Plaintiff, and all other current and/or former CSRs, directly benefits Defendant.

B. Defendant's Policy and Practice of Off-the-Clock Work Violates Federal and Pennsylvania State Law.

34. At all times relevant, Defendant suffered or permitted Plaintiff, and all other current and/or former CSRs, to routinely perform off-the-clock boot-up work by not compensating its employees until after they completed the boot-up and login procedure.

35. Defendant knew or should have known that it must pay its employees for all compensable time throughout the workweek. *See* 29 C.F.R. §§ 553.221, 790.8, 785.19(a).

36. Despite this, Defendant failed to compensate Plaintiff, and all other current and/or former CSRs, for their compensable boot-up and call ready work performed in any amount.

37. Defendant knew, or should have known, that the FLSA, 29 U.S.C. § 207, requires Defendant to compensate non-exempt employees who work in excess of 40 hours in a workweek at a rate of one and one-half times their regular rate of pay—including the compensable boot-up and call ready work performed.

38. Despite this, Defendant failed to compensate Plaintiff, and all other current and/or former CSRs, for their boot-up and call ready work performed in excess of 40 hours in a workweek at one and one-half times their regular rates of pay.

39. For example, upon information and belief, during the workweek of March 1, 2021 to March 5, 2021, Defendant paid Plaintiff for over 40 hours of work. However, the hours Defendant paid Plaintiff did not include the boot-up and call ready work as alleged herein. Had

Defendant properly paid Plaintiff for all hours worked during this pay period, then it would have paid her additional overtime wages equal to the uncompensated boot-up and call ready work.

40. Defendant is aware of each and every workweek Plaintiff was scheduled and worked for more than 40 hours because Defendant's own payroll records reflect the number of hours it paid Plaintiff.

41. Defendant is aware of Plaintiff's regular hourly rate for each and every workweek Plaintiff worked because Defendant's own payroll records reflect the hourly rate it paid Plaintiff. For example, upon information and belief, Plaintiff's hourly rate for the exemplar week noted above was \$17.50 per hour.

42. Defendant knew or should have known that Pennsylvania wage and hour laws require an employer to pay employees wages for all hours worked. *See* 43 P.S. § 333.104.

43. Despite this, Defendant failed to compensate Plaintiff, and all other current and/or former hourly CSRs working in Defendant's call center or remotely in Pennsylvania for their compensable boot-up and call ready work performed in workweeks totaling less than 40 hours and in workweeks totaling in excess of 40 hours at the proper legal rates, including overtime premiums.

44. In reckless disregard of the FLSA and Pennsylvania wage and hour laws, Defendant adopted and then adhered to its policy, plan, or practice of employing Plaintiff, and all other current and/or former CSRs, to perform compensable boot-up and call ready work off-the-clock. This illegal policy, plan, or practice caused incorrect payments for all straight time and overtime performed by Plaintiff, and all other current and/or former CSRs, in violation of the FLSA and Pennsylvania wage and hour laws.

C. Recordkeeping.

45. The Pennsylvania wage and hour laws state that every employer “shall keep a true and accurate record of the hours worked by each employe and the wages paid to each” *See* 43 P.S. § 333.108.

46. Further, 29 C.F.R § 516.1 subjects “every employer subject to any provisions of the Fair Labor Standards Act” to maintain employee records.

47. Federal regulations mandate each employer to maintain and preserve payroll or other records containing, without limitation, the total hours worked by each employee each workday and total hours worked by each employee each workweek. *See* 29 C.F.R § 516.2.

48. Upon information and belief, Defendant failed to establish, maintain, and preserve accurate timesheet and payroll records for all hours worked by Plaintiff as required by the FLSA and Pennsylvania wage and hour laws because it failed to include the off-the-clock boot-up and call ready work on Plaintiff’s and all other current and/or former CSRs’ payroll records.

49. When the employer fails to keep accurate records of the hours worked by its employees, the rule in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687–88 (1946) controls. That rule states:

[w]here the employer’s records are inaccurate or inadequate . . . an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee’s evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

50. The Supreme Court set forth this test to avoid placing a premium on an employer’s failure to keep proper records in conformity with its statutory duty, thereby allowing the employer to reap the benefits of the employees’ labors without proper compensation as required by the FLSA. Where damages are awarded pursuant to this test, “[t]he employer cannot be heard to

complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with . . . the Act.” *Id.*

COLLECTIVE ACTION ALLEGATIONS

51. Plaintiff brings this action pursuant to the FLSA, 29 U.S.C. § 216(b) individually and on behalf of:

All current and former Customer Service Representative employees, and/or other job titles performing the same or similar job duties, who worked for Pennsylvania Higher Education Assistance Agency at any time in the last three years.

(hereinafter referred to as the “FLSA Collective”). Plaintiff reserves the right to amend these definitions as necessary.¹

52. Plaintiff does not bring this action on behalf of any executive, administrative, or professional employees exempt from coverage under the FLSA.

53. 29 U.S.C. § 216(b) *Conditional Certification “Similarly Situated” Standard*: With respect to the claims set forth in this action, a collective action under the FLSA is appropriate because, under 29 U.S.C. § 216(b), the call center employees described are “similarly situated” to Plaintiff. The class of employees on behalf of whom Plaintiff brings this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are subject to the same or similar unlawful practices, policies, or plan (namely, Defendant’s practices, policies, or plan of not paying its CSR employees for their compensable work performed in excess of 40 hours per workweek at an overtime premium of at least one and one-half times their regular rates of pay); (c) their claims are based upon the same legal theories; and (d) the employment relationship between Defendant and every putative FLSA Collective member is exactly the same, and differs only by name, location, and rate of pay.

¹ Plaintiff specifically reserves the right to amend the definition and/or propose subclasses related to whether an employee worked in a physical call center, remotely, or in a hybrid environment.

54. Upon information and belief, Plaintiff estimates the FLSA Collective, including both current and former call center employees over the relevant period, will include several hundred members who would benefit from the issuance of court-supervised notice of this action and the opportunity to join it. The precise number of members of the FLSA Collective should be readily available from a review of Defendant’s personnel, scheduling, time, and payroll records; and from input received from members of the FLSA Collective as part of the notice and “opt-in” process provided by 29 U.S.C. § 216(b).

55. Plaintiff shares the same interests as members of the FLSA Collective in that the outcome of this action will determine whether they are entitled to unpaid overtime compensation, interest, attorneys’ fees and costs owed under the FLSA. Because the facts in this case are similar, if not altogether identical, and the factual assessment and legal standards lend themselves to a collective action.

THE PENNSYLVANIA WAGE AND HOUR LAW CLASS ACTION ALLEGATIONS

56. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23 on behalf of a putative Class defined to include:

All current and former Customer Service Representative employees in Pennsylvania, and/or other job titles performing the same or similar job duties, who worked for Pennsylvania Higher Education Assistance Agency at any time in the last three years.

(hereinafter referred to as the “Class”). Plaintiff reserves the right to amend these definitions as necessary.²

57. *Numerosity:* The members of the Class are so numerous that joinder of all members in the case would be impracticable, and the disposition of their claims as a class action will benefit

² Plaintiff specifically reserves the right to amend the definition and/or propose subclasses related to whether an employee worked in a physical call center, remotely, or in a hybrid environment.

the parties and the Court. The precise number of members of the Class should be readily available from a review of Defendant's personnel and payroll records.

58. *Commonality/Predominance:* There is a well-defined community of interest among members of the Class and common questions of both law and fact predominate in the action over any questions affecting individual members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether Defendant violated 43 P.S. § 333.104 by failing to pay current and former employees for all hours worked;
- b. Whether Defendant violated 43 P.S. § 260.3 by failing to pay current and former employees for all wages earned;
- c. The proper measure of damages sustained by the proposed Class; and
- d. Whether Defendant violated 43 P.S. § 333.108 by failing to make, keep, and preserve true and accurate payroll records.

59. *Typicality:* Plaintiff's claims are typical of those of the Class in that Plaintiff and all other members suffered damages as a direct and proximate result of Defendant's common and systemic payroll policies and practices. Plaintiff's claims arise from Defendant's same policies, practices, and course of conduct as all other Class members' claims and Plaintiff's legal theories are based on the same legal theories as all other members of the Class: whether all members of the Class were employed by Defendant on an hourly basis without receiving compensation for all hours worked.

60. *Adequacy:* Plaintiff will fully and adequately protect the interests of the Class and Plaintiff retained national counsel who are qualified and experienced in the prosecution of nationwide wage-and-hour class actions. Neither Plaintiff nor her counsel have interests that are contrary to, or conflicting with, the interests of the Class.

61. *Superiority*: A class action is superior to other available methods for the fair and efficient adjudication of the controversy, because, inter alia, it is economically infeasible for members of the Class to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer. Given the material similarity of the claims of Class members, even if each Class member could afford to litigate a separate claim, this Court should not countenance or require the filing of hundreds, or thousands, of identical actions. Individual litigation of the legal and factual issues raised by Defendant's conduct would cause unavoidable delay, a significant duplication of efforts, and an extreme waste of resources. Alternatively, proceeding by way of a class action would permit the efficient supervision of the claims of the putative Class, create significant economies of scale for the Court and the parties, and result in a binding, uniform adjudication on all issues.

62. The case will be manageable as a class action. This class action can be efficiently and effectively managed by sending the same FLSA opt-in notice to all employees similarly situated and adding for the Class within that group a separate opt-out notice pertaining to their rights under Pennsylvania state law. Plaintiff and her counsel know of no unusual difficulties in the case and Defendant has payroll systems that will allow the class, wage, and damages issues in the case to be resolved with relative ease. Because the elements of Rule 23(b)(3), or in the alternative (c)(4), are satisfied in the case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue her claim as a class action”).

COUNT I

VIOLATION OF THE FAIR LABOR STANDARDS ACT, U.S.C. § 201, *et seq.*, FAILURE TO PAY OVERTIME WAGES

(FLSA Collective)

63. Plaintiff re-alleges and incorporates all previous paragraphs herein.

64. At all times relevant to this action, Defendant was an “employer” under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. §§ 201, *et seq.*

65. Defendant is engaged in interstate commerce or in the production of goods for commerce, as defined by the FLSA.

66. At all times relevant to this action, Plaintiff was an “employee” of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

67. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) was employed in an enterprise engaged in commerce or in the production of goods for commerce.

68. The position of Customer Service Representative is not exempt from the FLSA.

69. Defendant’s other job titles performing similar customer service representative job duties are not exempt from the FLSA.

70. At all times relevant to this action, Defendant “suffered or permitted” Plaintiff to work and thus “employed” her within the meaning of the FLSA, 29 U.S.C. § 203(g).

71. The FLSA requires an employer to pay employees the federally mandated overtime premium rate of one and a half times their regular rate of pay for every hour worked in excess of 40 hours per workweek. *See* 29 U.S.C. § 207.

72. Defendant violated the FLSA by failing to pay Plaintiff the federally mandated overtime premium for all hours worked in excess of 40 hours per workweek.

73. Upon information and belief, Defendant has corporate policies of evading overtime pay for its hourly workers.

74. Defendant's violations of the FLSA were knowing and willful.

75. By failing to compensate its hourly workers at a rate not less than one and one-half times their regular rate of pay for work performed in excess of 40 hours in a workweek, Defendant violated the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a). All similarly situated CSRs, or other job titles performing the same or similar job duties, are victims of a uniform and company-wide enterprise which operates to compensate employees at a rate less than the federally mandated overtime wage rate. This uniform policy, in violation of the FLSA, has been, and continues to be, applied to CSRs, or other job titles performing the same or similar job duties, who have worked or are working for Defendant in the same or similar position as Plaintiff.

76. None of the provisions of the FLSA can be contravened, set aside, abrogated, or waived by Plaintiff or the Collective.

77. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to their unpaid overtime wages plus an additional equal amount in liquidated damages, costs, and reasonable attorneys' fees.

COUNT II

VIOLATIONS OF THE PENNSYLVANIA MINIMUM WAGE ACT ("MWA") (Pennsylvania Class)

78. Plaintiff, individually and on behalf of the proposed Class, re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

79. Plaintiff and members of the Class are current and former employees of Defendant within the meaning of 43 P.S. § 333.103.

80. Defendant at all relevant times was an employer within the meaning of 43 P.S. § 333.103.

81. Defendant was required to pay Plaintiff and the Class for all hours worked.

82. 43 P.S. § 333.104(a) requires every employer to pay their employees wages for all hours worked.

83. Wages are defined as “compensation due to any employe by reason of his or her employment” 43 P.S. § 333.103(d).

84. Defendant, pursuant to its policies and illegal timekeeping practices, refused and failed to pay Plaintiff and the Class for all hours worked.

85. By failing to properly compensate Plaintiff and the Class for all hours worked, Defendant violated, and continues to violate its CSRs’ statutory rights under 43 P.S. § 333.104.

86. As a direct and proximate result of Defendant’s unlawful conduct, Plaintiff and the proposed Class have suffered damages in an amount to be determined at trial.

87. Plaintiff and the proposed Class seek damages in the amount of their unpaid straight-time and overtime wages for all hours worked, costs for this action, pre- and post-judgment interest, attorneys’ fees, and such other legal and equitable relief as the Court deems proper.

COUNT III

VIOLATIONS OF THE PENNSYLVANIA WAGE PAYMENT AND COLLECTION LAW (“WPCL”) (Pennsylvania Class)

88. Plaintiff, individually and on behalf of the proposed Class, re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

89. Defendant at all relevant times was an employer within the meaning of 43 P.S. § 260.2a.

90. The WPCL requires an employer to pay all wages due to employees on regular paydays. *See* 43 P.S. § 260.3.

91. The WPCL provides a statutory remedy when an employer breaches a contractual obligation to pay earned wages.

92. Defendant breached the WPCL and its contractual obligations to Plaintiff and the Class by failing to pay Plaintiff and the Class for necessary boot-up and call ready work.

93. Plaintiff and the Class were hired at various times. Defendant offered to pay Plaintiff and the Class certain rates per hour for each hour worked as a CSR. Each Class members' contractual hourly rate is identified in paystubs and other records that Defendant prepares as part of its regular business activities.

94. Plaintiff and the Class accepted the offer and worked for Defendant as CSR, and/or other job titles performing the same or similar job duties.

95. Plaintiff and the Class also accepted the offer by their performance—i.e., reporting for work and completing the tasks assigned to them.

96. Plaintiff's duties, and the duties of the Class, required boot-up and call ready work.

97. Plaintiff and every Class member performed under their contract by doing their jobs in addition to carrying out the off-the-clock duties Defendant required.

98. Defendant does not compensate its CSRs, and/or other job titles performing the same or similar job duties, until after the boot-up and call ready procedure is complete.

99. Despite being required to complete these integral boot-up and call ready duties, Plaintiff and the Class were not compensated at their hourly rate for their work performed.

100. By failing to pay Plaintiff and the Class for the boot-up and call ready work, Defendant breached its contract with Plaintiff and the Class to pay their hourly rate for each hour worked.

101. Defendant breached its duty to keep accurate records and to keep track of the time Plaintiff and Class members spent performing boot-up and call ready work, which is a fundamental part of an employer's job.

102. In sum, the facts set forth above establish the following elements and terms of the contract:

- a. Offer: a set hourly rate for each hour worked as a CSR;
- b. Acceptance: Plaintiff and the Class accepted the offer overtly or via performance (i.e., each showed up to work and completed the tasks assigned to them by Defendant);
- c. Breach: Defendant did not pay Plaintiff and the Class for each hour (or part thereof) worked; and
- d. Damages: By failing to pay Plaintiff and the Class their hourly rate for each hour worked, Plaintiff and the Class were damaged in an amount to be determined at trial.

103. As a direct and proximate cause of Defendant's breach, Plaintiff and the Class were damaged in an amount to be proven at trial.

104. Plaintiff and the Class seek damages in the amount of their unpaid straight-time and overtime wages for all hours worked, liquidated damages, costs for this action, pre- and post-judgment interest, attorneys' fees, and such other legal and equitable relief as the Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- a. An Order certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth above;

- b. An Order certifying the Pennsylvania Class pursuant to Fed. R. Civ. P. 23;
- c. An Order compelling Defendant to disclose in computer format, or in print if no computer readable format is available, the names, addresses, and email addresses of all those individuals who are similarly situated, and permitting Plaintiff to send notice of this action to all those similarly situated individuals including the publishing of notice in a manner that is reasonably calculated to apprise the potential collective members of their rights under this litigation;
- d. An Order designating Plaintiff to act as the Class Representative on behalf of the FLSA Collective and the Pennsylvania Class;
- e. An Order declaring that Defendant willfully violated the FLSA and its attendant regulations as set forth above;
- f. An Order declaring that Defendant violated its obligations under the FLSA;
- g. An Order declaring that Defendant violated Pennsylvania's Minimum Wage Act and Wage Payment and Collection Law and their attendant regulations as set forth above;
- h. An Order granting judgment in favor of Plaintiff and against Defendant and awarding the amount of unpaid wages and overtime pay calculated at the rate of one and one-half (1.5) of Plaintiff's regular rate multiplied by all hours that Plaintiff worked in excess of 40 hours per week;
- i. An Order awarding liquidated damages to Plaintiff, in an amount equal to the amount of unpaid wages found owing to Plaintiff under the FLSA, in addition to all damages and penalties owed under Pennsylvania's Minimum Wage Act and Wage Payment and Collection Law and its attendant regulations as set forth above;
- j. An Order awarding reasonable attorneys' fees and costs incurred by Plaintiff in filing this action;
- k. An Order awarding pre- and post-judgment interest to Plaintiff on these damages; and
- l. An Order awarding such further relief as this court deems appropriate.

JURY DEMAND

NOW COMES Plaintiff, by and through her undersigned attorneys, and hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above-entitled cause.

Dated: September 19, 2023

Respectfully submitted,

**KOPELOWITZ OSTROW FERGUSON
WEISELBERG GILBERT, P.A.**

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**Pro Hac Vice Forthcoming*

EXHIBIT A

U.S. Department of Labor
Wage and Hour Division



(Revised July 2008)

Fact Sheet #64: Call Centers under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees working in call centers.

Characteristics

A call center is a central customer service operation where agents (often called customer care specialists or customer service representatives) handle telephone calls for their company or on behalf of a client. Clients may include mail-order catalog houses, telemarketing companies, computer product help desks, banks, financial services and insurance groups, transportation and freight handling firms, hotels, and information technology (IT) companies.

Coverage

If the annual dollar volume of a call center's sales or business is \$500,000 or more, and the enterprise has at least two employees, all employees of the enterprise are covered by the FLSA on an "enterprise" basis. An enterprise may consist of one establishment, or it may be made up of multiple establishments.

Additionally, the FLSA also provides an "individual employee" basis of coverage. If the gross sales or volume of business done does not meet the requisite dollar volume of \$500,000 annually, employees may still be covered if they individually engage in interstate commerce, the production of goods for interstate commerce, or in an occupation closely related and directly essential to such production. Interstate commerce includes such activities as transacting business via interstate telephone calls, the Internet or the U.S. Mail (such as handling insurance claims), ordering or receiving goods from an out-of-state supplier, or handling the accounting or bookkeeping for such activities.

Requirements

Covered nonexempt employees are entitled to be paid at least the federal minimum wage as well as [overtime](#) at time and one-half their regular rate of pay for all hours worked over 40 in a workweek. (This may not apply to certain executive, administrative, and professional employees, including computer professionals and outside sales, as provided in Regulations [29 CFR 541](#)).

The FLSA requires employers to keep records of wages, hours, and other items, as specified in the recordkeeping regulations. With respect to an employee subject to both [minimum wage](#) and [overtime](#) provisions, records must be kept as prescribed by Regulations [29 CFR 516](#). Records required for exempt employees differ from those for non-exempt workers.

The FLSA also contains youth employment provisions regulating the employment of minors under the age of 18 in covered work, as well as recordkeeping requirements. Additional information on the youth employment provisions is available at www.youthrules.dol.gov.

Typical Problems

Hours Worked: Covered employees must be paid for all hours worked in a workweek. In general, “hours worked” includes all time an employee must be on duty, or on the employer’s premises or at any other prescribed place of work, from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work. An example of the first principal activity of the day for agents/specialists/representatives working in call centers includes starting the computer to download work instructions, computer applications, and work-related emails.

Rest and Meal Periods: Rest periods of short duration, usually 20 minutes or less, are common in the industry (and promote employee efficiency), and must be counted as hours worked. *Bona fide* meal periods (typically 30 minutes or more) generally need not be compensated as work time as long as the employee is relieved from duty for the purpose of eating a regular meal.

Recordkeeping: A daily and weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities, must be kept.

Overtime: Earnings may be determined on an hourly, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the regular hourly rate derived from all such earnings. This is calculated by dividing the total pay (except for certain statutory exclusions) in any workweek by the total number of hours actually worked. See Regulations [29 CFR 778](#).

Salaried Employees: A salary, by itself, does not exempt employees from the [minimum wage](#) or from [overtime](#). Whether employees are exempt from [minimum wage](#) and/or [overtime](#) depends on their job duties and responsibilities as well as the salary paid. Sometimes, in call centers, salaried employees do not meet all the requirements specified by the regulations to be considered as exempt. Regulations [29 CFR 541](#) contain a discussion of the requirements for several exemptions under the FLSA (i.e., executive, administrative, and professional employees – including computer professionals, and outside sales persons).

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

EXHIBIT B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

REBECCA MCCARTHY, individually and
on behalf of all similarly situated individuals,

Plaintiff,

**PENNSYLVANIA HIGHER
EDUCATION ASSISTANCE AGENCY**,

Defendant.

CONSENT TO SUE

Case No.:

1. I understand this lawsuit against Pennsylvania Higher Education Assistance Agency asserts claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* and Pennsylvania state law concerning Defendant's alleged failure to correctly pay overtime wages.
2. I hereby consent to opt-in and join and become a Plaintiff in this lawsuit and be bound by the Court, whether favorable or unfavorable, to any judgment or settlement of this action.
3. I hereby designate Johnson Becker, PLLC to represent me in this lawsuit and make all decisions on my behalf regarding the litigation and any potential settlement.

Signature: 

Date: 09/09/2023

Print Name: Rebecca McCarthy

EXHIBIT C

POSTED ON 10/2/2022 CLOSED ON 6/19/2023

[Pennsylvania Higher Education Assistance Agency](#)  Harrisburg, PA Full Time

Job Posting for Clerical Wage - Bilingual Call Center Representative at Pennsylvania Higher Education Assistance Agency

PHEAA is a nonprofit student aid organization that holds a mission of providing affordable access to higher education.

Give back tomorrow by joining us today!

PHEAA's AES team is seeking qualified Bilingual Call Center Representatives to help us make a difference in the lives of millions of students! It is our daily goal to meet our public service mission - creating affordable access to higher education. We take pride in educating borrowers on the long-term impact of student loan borrowing and the repayment options available to them!

This entry-level clerical wage position provides outstanding customer service to our borrowers who have student loans owned by the federal government. **This role offers the opportunity for long-term remote employment. The 6-week training program will be held remotely. Continued remote work is dependent on meeting department expectations.** We ensure our team members are destined for success by offering a comprehensive training program created by our knowledgeable training staff. Our dedicated Call Center Representatives provide a positive experience for all customers. As you become more confident and proficient in phone work, you will have the opportunity to further develop your professional experience and train on processing tasks.

Here, at PHEAA, we value customer commitment, quality, accountability, development, leadership, and diversity.

Location: 1200 North 7th Street, Harrisburg, PA 17102/Remote

Training Shift: Monday – Friday, 8:00 am – 4:30 pm

Call Center Representative I
Mid Penn Bancorp Inc. -
Halifax, PA

[View Job Details](#)

Call Center Representative
West Shore Home -
Mechanicsburg, PA

[View Job Details](#)

Call Center Representative
Randstad -
Harrisburg, PA

[View Job Details](#)

Call Center Representative
NEW CUMBERLAND FCU -
New Cumberland, PA

[View Job Details](#)

[View More](#)

- Apply for this job
- Receive alerts for other **Clerical Wage - Bilingual Call Center Representative** job openings

 [Report this Job](#)

Popular Search Topics

[Full Time Part Time Remote Within 2-7 Days Bilingual Call Center Representative](#)

Salary.com Estimation for **Clerical Wage - Bilingual Call Center Representative** in **Harrisburg, PA**
\$39,736 to \$52,560

ADVERTISEMENT

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Rebecca McCarthy

(b) County of Residence of First Listed Plaintiff Dauphin (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Pennsylvania Higher Education Assistance Agency

County of Residence of First Listed Defendant Dauphin (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, PERSONAL INJURY, PERSONAL INJURY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category contains numbered checkboxes for specific suit types.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 USC 201, et seq. Brief description of cause: Unpaid wages.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Sep 19, 2023

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.