

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SALVATORE GALLO
Plaintiff

CIVIL ACTION NO.

v.

CIGNA CORPORATION
Defendant

JUNE 2, 2021

COMPLAINT

I. INTRODUCTION

1. Employers are liable to their employees for overtime at a rate of one and one-half times their regular rate when they work more than forty (40) hours in a work week. Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”)¹; Connecticut Wage Act, Conn. Gen. Stat. §§ 31-68, *et seq.* (“CWA”).
2. Employers cannot escape legal liability for wages due to their employees under state and federal wage laws simply by hiring workers through layers of other companies, sometimes called “temp agencies” or “staffing agencies” when in fact those entities are not the true employers.
3. Here, Defendant Cigna Corporation used PRO Unlimited, Inc. and Apex Systems, Inc. to try to distance itself from liability for overtime wages while simultaneously taking advantage of Gallo’s overtime work. Cigna required Plaintiff Salvatore Gallo to work more than forty (40) hours per week but instructed him not to record more than forty (40) hours per work week on his time sheets. As a result, Apex only paid Gallo for forty hours per week when in fact he worked far more.

¹ *Greenawalt v. AT & T Mobility LLC*, 642 F. App'x 36, 38 (2d Cir. 2016) (citing *Zheng v. Liberty Apparel Co.*, 355 F.3d 61, 72 (2d Cir.2003)).

4. Defendant Cigna is in fact Gallo's employer and intentionally deprived him of thousands of dollars in wages and overtime pay. As a result, Cigna is liable to Plaintiff for back pay, liquidated damages, penalty damages, attorneys' fees, and costs.

II. PARTIES

5. Plaintiff Salvatore Gallo ("Plaintiff" or "Gallo") is an individual residing in Wethersfield, Connecticut. At all times relevant to this Complaint, Gallo was an employee of Defendant, as that term is defined in the Fair Labor Standards Act ("FLSA") and the Connecticut Wage Act ("CWA").
6. Defendant Cigna Corporation ("Cigna") is a Delaware corporation with a principal place of business located in Bloomfield, Connecticut.

III. JURISDICTION AND VENUE

7. This Court has jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331.
8. This Court has jurisdiction over Plaintiff's CWA claims pursuant to 28 U.S.C. § 1367 since they are so related to the FLSA claims that they form part of the same case or controversy.
9. Venue is proper in this district under 28 U.S.C. § 1391 because the acts or omissions giving rise to the claims in this complaint took place in this district.

IV. LEGAL PRINCIPLES

10. Employers are liable to their employees for overtime at a rate of one and one-half times their regular rate when they work more than forty (40) hours in a work week. Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA")²; Connecticut Wage Act, Conn. Gen. Stat. §§ 31-68, 31-71a, 31-72, et seq. ("CWA").

² *Greenawalt v. AT & T Mobility LLC*, 642 F. App'x 36, 38 (2d Cir. 2016) (citing *Zheng v. Liberty Apparel Co.*, 355 F.3d 61, 72 (2d Cir.2003)).

11. The applicable definition of ‘employer’ under the FLSA states: “‘Employer’ includes any person³ acting directly or indirectly in the interest of an employer in relation to an employee.” 29 U.S.C. § 203(d).
12. The applicable definition of ‘employer’ under the CWA states: “‘Employer’ means any owner or any person or, ... corporation, ... acting directly as, or on behalf of, or in the interest of an employer in relation to employees...” Conn. Gen. Stat. § 31-58(d).
13. Employers cannot avoid legal liability for wages due to their employees by hiring them through layers of other companies which have “no substantial, independent economic purpose” but are instead “most likely a subterfuge meant to evade the FLSA or other labor laws.” *Zheng v. Liberty Apparel*, 355 F.3d 61 (2d Cir. 2003).
14. Employers who hire employees through temp agencies are still legally liable as employers if the work is done on their premises, if the work is done using their equipment, if the work is integral to the employer’s operations, if the work would remain the same regardless of which agency referred the worker, and if the employer effectively controlled on-site terms and conditions of employment. *Barfield v. New York City Health and Hospitals Corp.*, 537 F.3d 132 (2008).

V. FACTUAL BACKGROUND

15. Cigna Corporation (“Cigna”) is a corporation headquartered in Bloomfield, Connecticut, and is a company engaged in the provision of healthcare insurance services.
16. Cigna utilizes and provides information technology (“IT”) services as an integral part of the delivery of healthcare insurance technology services to their policyholders; it employs hundreds of IT professionals in various positions as part of their delivery of healthcare

³ The FLSA defines “person” to include corporations. 29 U.S.C. § 203(a).

insurance technology services to their customers, including but not limited to database administrators, server administrators, programmers, application support personnel, call center support, and account administrators.

17. Cigna states on its website under “contract opportunities” that “all contract hiring is handled by Pro Unlimited, a managed services provider for Cigna. By clicking on the hyperlink above, you will be leaving the Cigna careers website and entering a site that is independently run by PRO Unlimited.”⁴ Cigna’s website therein provides a hyperlink to the website of PRO Unlimited.
18. The PRO Unlimited website contains the Cigna emblem and states, “Contractor Positions at Cigna”; as of June 1, 2021, Pro Unlimited posted 28 open jobs at Cigna, including but not limited to IT positions such as “Software Engineering Advisor” and “Systems Analysis Advisor” at its Bloomfield, CT headquarters.⁵
19. PRO Unlimited, Inc. (“PRO Unlimited”) is headquartered in San Francisco, California, and is a company engaged in the business of contingent (temporary) workforce management; it also hires contract employees to perform services on a temporary basis to third party businesses, including but not limited to contract employees that perform information technology (“IT”) functions.
20. PRO Unlimited markets to companies claiming that it can help reduce the risks associated with “contractor misclassification or co-employment.”⁶
21. In or about February of 2019, Gallo learned of a position of data center infrastructure specialist and submitted a resume and application to Apex Systems, Inc.

⁴ <https://jobs.cigna.com/us/en/contract-opportunities> (last accessed 6/1/21).

⁵ <https://directsourcepro-cgn.prounlimited.com/careers?pid=137446326638&domain=directsourcepro-cigna.com> (last accessed 6/1/21).

⁶ <https://www.prounlimited.com/pro-1099-compliance.php> (last accessed 6/1/21).

22. On or about March 19, 2019, Gallo signed a contract presented to him by Apex Systems, Inc. (“Apex”), a temp agency for IT professionals, to work as a “Contract Employee” for “ProUnlimited at Cigna” in the position of “Technical Support Specialist.”
23. Gallo agreed under this contract to work in return for a promise to be paid “\$31.82 per hour for all hours worked and verified by Client representative [ProUnlimited at Cigna] in a workweek[.]”
24. On or about March 19, 2019, Tim Stino, one of the managers of Apex, arranged an interview between Plaintiff Gallo and Eugene Deroode, who holds the position of Architecture Senior Manager at Cigna.
25. Mr. Stino explained to Mr. Gallo that Mr. Deroode would be deciding whether Gallo would be hired to work at the Cigna facility.
26. Mr. Deroode approved of the hire of Mr. Gallo in or about March of 2019; Gallo thereafter began working at the Cigna headquarters.
27. Mr. Gallo performed a discrete job integral to Cigna’s business; the position description stated in part:

Responsible for the continuous operation and performance of Cigna's Data Centers, day-to-day support of server, network and storage components. This support includes chassis, module and power supply replacement during incidents, project engagements, RMA returns and maintenance activities. This position will ensure high quality service delivery through responsiveness to network, server and storage problems, crisis management, and adherence to service levels and network improvement initiatives. A person in this role is expected to respond to high impact issues on a 24x7 basis, participating in a rotating on call schedule with other team members, with work hour norms based on second or third shift.

28. Mr. Deroode required that Mr. Gallo report to Steven Danko, who was another Cigna employee, who supervised the team of five to six (5-6) IT professionals in the infrastructure department which included Mr. Gallo.

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