

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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Renata Kociubinski, *on behalf of herself and others similarly situated in the proposed FLSA Collective Action,*

Case No.:

Plaintiff,

Jury Trial Demanded

- against -

COMPLAINT

NYC Health and Hospital Corp. (d/b/a Coney Island Hospital),

Defendant.

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Plaintiff Renata Kociubinski (“Plaintiff” or “Kociubinski”), on behalf of herself and others similarly situated, by and through her attorneys, Levin-Epstein & Associates, P.C., upon personal knowledge as to herself and upon information and belief as to others, brings this complaint against Defendant NYC Health and Hospital Corp. (d/b/a Coney Island Hospital) (the “Defendant”), and states as follows:

NATURE OF THE ACTION

1. Plaintiff brings this lawsuit seeking recovery, for herself and all other similarly situated individuals, against Defendant’s violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”), and violations of Articles 6 and 19 of the New York State Labor Law (“NYLL”) and their supporting New York State Department of Labor regulations.

2. Plaintiff seeks injunctive and declaratory relief and to recover unpaid minimum wages, overtime wages, liquidated and statutory damages, pre- and post-judgment interest, and attorneys' fees and costs pursuant to the FLSA, NYLL, and the NYLL's Wage Theft Prevention Act ("WTPA").

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction of this case pursuant to 29 U.S.C. § 216 (b), 28 U.S.C. § 1331 and 28 U.S.C. § 1337, and has supplemental jurisdiction over Plaintiff's claims under the NYLL pursuant to 28 U.S.C. § 1367(a).

4. This Court has federal question jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 because her claims arise under the FLSA.

5. Venue is proper in the Eastern District of New York under 28 U.S.C. § 1391(b) and (c), because all events relevant to this action occurred in this District, and the acts and omissions giving rise to the claims herein alleged took place in this District.

THE PARTIES

PLAINTIFF RENATA KOCIUBINSKI

6. Plaintiff Kociubinski was employed as a nurse at Defendant's hospital and medical services and care facility located at 2601 Ocean Pkwy Brooklyn, NY 11235 ("Coney Island Hospital") from on or around August 9, 1993 through and including the present date.

7. Plaintiff Kociubinski was, and still is employed as a non-managerial manual worker at Coney Island Hospital from on or around August 9, 1993 through and including the present date.

8. At all relevant times, Plaintiff has been an employee within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

9. At all relevant times, Plaintiff has been a manual worker within the meaning of NYLL § 191(1)(a).

DEFENDANT NYC HEALTH AND HOSPITAL CORP. (D/B/A CONEY ISLAND HOSPITAL)

10. Upon information and belief, Defendant NYC Health and Hospital Corp. (d/b/a

Coney Island Hospital) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 2601 Ocean Pkwy Brooklyn, NY 11235.

11. Defendant NYC Health and Hospital Corp. (d/b/a Coney Island Hospital) owns, operates and/or controls a hospital and medical services and care facility known as “Coney Island Hospital” located at 2601 Ocean Pkwy Brooklyn, NY 11235.

12. At all times relevant to this Complaint, Defendant NYC Health and Hospital Corp. (d/b/a Coney Island Hospital) (i) has had and continues to have employees engaged in commerce or in the production of goods and services for commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and (ii) has had and continues to have an annual gross volume of sales of not less than \$500,000.00.

13. At all times relevant to this Complaint, Defendant NYC Health and Hospital Corp. (d/b/a Coney Island Hospital) was and is a covered employer within the meaning of the FLSA, 29 U.S.C. § 203(d) and, at all times relevant to this Complaint, employed employees, including Plaintiff.

14. At all times relevant to this Complaint, Defendant NYC Health and Hospital Corp. (d/b/a Coney Island Hospital) was and is an employer within the meaning of the 29 U.S.C. 201 *et seq.* and NYLL Section 190(3), and employed employees, including Plaintiff.

15. Defendant NYC Health and Hospital Corp. (d/b/a Coney Island Hospital) possessed substantial control over Plaintiff’s (and other similarly situated employees’) working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiff, and all similarly situated individuals, referred to herein.

16. Defendant NYC Health and Hospital Corp. (d/b/a Coney Island Hospital) had the power to hire and fire Plaintiff, control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for Plaintiff's services.

FACTUAL ALLEGATIONS

17. Plaintiff and other similarly situated individuals are individuals who have worked for Defendant in similarly-titled, hourly paid position, during the statutory period.

18. Plaintiff and other similarly situated individuals all shared similar job titles, training, job descriptions and job tasks, during the statutory period.

19. Plaintiff was, and still is an employee of Defendant.

20. Plaintiff worked as a nurse at the Catlab, Cardiology division of the hospital and medical services and care facility known as "Coney Island Hospital" located at 2601 Ocean Pkwy Brooklyn, NY 11235 from on or around August 9, 1993 through and including the present date.

21. Defendant's hospital and medical services and care facility operate on a 24-hour, 7 day a week basis.

22. In addition to working their regularly assigned schedules, Defendants' nurses, including Plaintiff, are required to be "on-call" approximately three (3) or four (4) days per week.

23. An "on-call" shift generally spans twelve (12) hours, *e.g.*, 8:30 p.m. to 8:30 a.m., or 7:30 a.m. to 7:30 p.m.

24. Whenever they work an "on-call" shift, Defendants' nurses, including Plaintiff, receive an hourly, "on-call" rate.

25. For example, Plaintiff's hourly "on-call" rate, as of the date of this filing, is \$29.30 per hour.

26. In addition to working their regularly assigned schedules, and "on-call" schedules,

Defendants' nurses, including Plaintiff, are also required to respond to pages, on an emergency, as-needed basis.

27. Whenever they respond to an emergency page, Defendants' nurses, including Plaintiff, receive an overtime rate, with a guaranteed minimum of four (4) overtime hours.

28. These emergency page shifts are colloquially known as "overtime cards."

29. Beginning on or around September 2021, Plaintiff noticed that she was not being fully compensated for her "on-call" shifts or "overtime card" shifts.

30. Plaintiff regularly worked "on-call" shifts for the Defendant, but never received her agreed-upon regular rate of pay for those hours.

31. Plaintiff regularly worked "overtime card" shifts for the Defendant, entitling her to a guaranteed minimum of four (4) overtime hours, per shift, but never received an overtime premium of one and one-half times her agreed-upon regular rate of pay for those hours.

32. No notification, either in the form of posted notices, or other means, was ever given to Plaintiff regarding wages are required under the FLSA or NYLL.

33. Defendant did not provide Plaintiff a statement of wages, as required by NYLL 195(3).

34. Defendant did not give any notice to Plaintiff of her rate of pay, employer's regular pay day, and such other information as required by NYLL § 195(1).

35. At all relevant times, Defendant did not pay Plaintiff at the rate of one and one-half times her hourly wage rate for hours worked in excess of forty per workweek.

FLSA COLLECTIVE ACTION ALLEGATIONS

36. Plaintiff brings the First and Third Claims for Relief as a collective action pursuant to FLSA §16(b), 29 U.S.C. §216(b), on behalf of all non-exempt persons (including but not limited

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