UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHERYL BURGARD, on behalf of herself and others similarly situated,
 	
                     Plaintiff,
 	
                 v.
 	
INTERNATIONAL BUSINESS MACHINES CORPORATION,
 	
                   Defendant.
	Case No.: 7:24-cv-02885
	
	CLASS AND COLLECTIVE ACTION COMPLAINT
	
	JURY TRIAL DEMANDED

Plaintiff Cheryl Burgard ("Plaintiff"), on behalf of herself and others similarly situated, hereby alleges as follows against Defendant International Business Machines Corporation ("IBM" or "Defendant").

NATURE OF THE CLAIMS

1.   IBM is the largest industrial research organization in the world, with annual revenue exceeding $60 billion.

2.   IBM engages in a common, willful, and deliberate policy and practice of failing to compensate Plaintiff and other similarly situated Executive Assistants in accordance with the Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL").

3.   First, IBM engages in a common pattern and practice of denying Executive Assistants payment for all hours worked, including overtime compensation.

4.   Specifically, IBM retaliates against Executive Assistants for logging their true hours worked, including by, *inter alia*, criticizing them for logging overtime, using their overtime hours as a basis to issue negative performance reviews, withholding incentive compensation, and

admonishing them for complaining that they are forced to work off the clock or discussing their overtime hours with their colleagues.

5.   As a result, Executive Assistants regularly work off the clock, including in the evenings and on weekends.

6.   IBM has actual or constructive knowledge of such off-the-clock work, yet still fails to compensate the Executive Assistants for their full hours worked.

7.   Further, IBM engages in a common pattern and practice of requiring Executive Assistants to work through their unpaid meal breaks.

8.   Finally, as a result of its tactics to force Executive Assistants to work off the clock, IBM issues its Executive Assistants wage statements that do not reflect their full hours worked and, thus, are inaccurate and unlawful under the NYLL.

9.   To redress these wrongs, Plaintiff brings claims against Defendant under the FLSA, as a collective action pursuant to 29 U.S.C. § 216(b) and applicable regulations thereunder, on behalf of herself and all other similarly situated persons employed by Defendant at any time during the full statute of limitations period.

10.   Plaintiff also brings claims under the NYLL as a class action, pursuant to Federal Rule of Civil Procedure ("FRCP") 23, on behalf of herself and all other similarly situated persons employed by Defendant at any time during the full statute of limitations period.

JURISDICTION AND VENUE

11.   Pursuant to 28 U.S.C. §§ 1331 and 1343, the Court has subject matter jurisdiction over this action because it involves federal questions regarding the deprivation of Plaintiff's rights under the FLSA.

12.   The Court also has supplemental jurisdiction over Plaintiff's related claims arising under State and local law pursuant to 28 U.S.C. § 1367.

13.   Venue is proper under 28 U.S.C. § 1391 because Defendant's principal place of business is located in this District and a substantial portion of the events or omissions giving rise to this action occurred in this District.

PARTIES

A.   Plaintiff Cheryl Burgard

16.   Plaintiff is a resident of the State of New York and was employed by Defendant during the full statute of limitations. Plaintiff left IBM's employ in or around February 2023.

17.   At all relevant times, Plaintiff was an "employee" of Defendant within the meaning of all applicable statutes and regulations.

B.   Defendant International Business Machines Corporation

18.   Defendant is a domestic business corporation with its principal place of business located at 1 Orchard Road, Armonk, New York 10504.

19.   At all relevant times, Defendant was an "employer" within the meaning of all applicable statutes and regulations.

FACTS

A.   Background

32.   IBM is the largest industrial research organization in the world, with annual revenue exceeding $60 billion.

33.   IBM employs approximately 150 Executive Assistants throughout the State of New York at any given time.

34.   Executive Assistants' job duties include, *inter alia*: (i) managing IBM executives' calendars; (ii) scheduling client meetings; (iii) coordinating IBM executives' travel; and (iv) submitting expenses on behalf of IBM executives.

35.   Executive Assistants all report directly to IBM's Global Administration department, which is located in Armonk, New York.

36.   Executive Assistants are paid hourly.

37.   Executive Assistants' typical scheduled workweek spans from Monday through Friday.

38.   Executive Assistants' typical workday ostensibly spans from approximately 8:30 a.m. through 5:15 p.m. with a 45-minute unpaid lunch break; however, as detailed below, Executive Assistants often work before their scheduled shift times, through lunch, after their scheduled shift times, and on weekends.

B.   Unlawful Wage Practices

39.   Despite its massive corporate wealth, IBM subjects its Executive Assistants to several common policies and practices that violate the rights of those Executive Assistants under the FLSA and NYLL.

i.   Failure to Pay Overtime

40.   First, IBM engages in a common pattern and practice of denying Executive Assistants payment for all hours worked, including overtime.

41.   While IBM permits Executive Assistants to log overtime, the Company discourages and retaliates against Executive Assistants from reporting their true hours worked.

42.   By way of example only, the Company retaliates against Executive Assistants who log overtime by, *inter alia*, issuing them poor performance reviews and, in turn, depressing the bonuses they can earn under IBM's Growth Driven Profit-Sharing program.

43.   As a result, Executive Assistants do not report their true hours worked, thus resulting in Executive Assistants being denied payment for all hours worked, including overtime.

44.   IBM has actual or constructive knowledge of Executive Assistants' hours worked.

45.   Indeed, IBM maintains electronic records of Executive Assistants' true hours worked.

46.   For example, Executive Assistants are required to log their hours via electronic timekeeping software.

47.   IBM also tracks when Executive Assistants arrive at and leave the office via electronic records of their building badge swipes.

48.   IBM also has records of Executive Assistants' shift start and end times for days when Executive Assistants work remotely—*e.g.*, as a result of the COVID-19 pandemic and when performing weekend or after-hours work.

49.   Specifically, Executive Assistants are required to log into their IBM email and other accounts via a virtual private network, which creates a record of when they each logged on and logged off.

50.   Given the nature of their work, which is largely done on the computer, Executive Assistants' true hours worked are also reflected through other electronic records, including, *inter alia* emails, electronic calendar events, and internal messages.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.