

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANN MARGARET DAYWALT, *individually and*
on behalf of all others similarly situated,
457 N Hanover Street
Pottstown, PA 19464

Plaintiffs,

v.

AFFECTIONATE HOME HEALTH
CARE SERVICES LLC
14 S Lansdowne Avenue
Lansdowne, PA 19050

Defendants.

Civil Action No.: _____

JURY TRIAL DEMANDED

COLLECTIVE AND CLASS ACTION COMPLAINT

Plaintiff Ann Margaret Daywalt (“Plaintiff”) hereby brings this action against Defendant Affectionate Home Health Care Services LLC (“Defendant”), and alleges, upon personal belief as to her own acts, and upon information and belief as to the acts of others, as follows:

NATURE OF THE ACTION

1. Plaintiff bring this complaint contending that Defendant has unlawfully failed to pay her and other similarly-situated individuals employed in the positions of Home Health Aid (“Class Plaintiffs”), overtime compensation pursuant to the requirements of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.100, *et seq.*, and the Pennsylvania Wage Payment and Collection Law (“WPCL”), 43 P.S. § 260.1, *et seq.*

2. Plaintiff and Class Plaintiffs are current/former employees of Defendant who were employed in the position of Home Health Aid. During the course of their employment, Plaintiff and Class Plaintiffs regularly worked more than forty (40) hours per week, but were not properly compensated for their work in that Plaintiff and Class Plaintiffs were not paid an overtime premium at 1.5 times their regular rate of pay for each hour worked in excess of forty (40) hours in a workweek in violation of the FLSA and PMWA.

3. Accordingly, Plaintiff contends that they are owed unpaid wages, and overtime compensation which were denied to them as a result of Defendant's unlawful pay practices.

4. Plaintiff brings this action as a representative action under the FLSA, PMWA, and WPCL for monetary damages and penalties, to seek redress for Defendant's willful, unlawful, and improper conduct.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 216(b), which provides, in relevant part, that suit under the FLSA "may be maintained against any employer . . . in any Federal or State court of competent jurisdiction." See 29 U.S.C. § 216(b).

6. This Court also has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331.

7. This Court has supplemental jurisdiction over Plaintiff's state law claims because those claims arise out of the same nucleus of operative fact as Plaintiff's FLSA claims.

8. Personal jurisdiction over Defendant exists in the Commonwealth of Pennsylvania as Defendant maintains an office location within the Commonwealth of Pennsylvania in Lansdowne, Pennsylvania, and conducts business throughout the Commonwealth of Pennsylvania.

9. The venue in this district is proper pursuant to 28 U.S.C. § 1391(b), as the Defendant resides in this judicial district, doing business therein, and a substantial part of the unlawful practices about which Plaintiff is complaining were committed in the Commonwealth of Pennsylvania and in this judicial district.

PARTIES

10. Plaintiff Ann Margaret Daywalt currently resides at 457 N Hanover Street, Pottstown, PA 19464.

11. Upon information and belief, Defendant Affectionate Home Health Care Services LLC, is a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania, with a corporate address and principal place of business located at 14 S Lansdowne Avenue, Lansdowne, PA 19050.

12. Defendant is a “private employer” and covered by the FLSA.

13. Plaintiff and Class Plaintiffs are/were employees who have been employed by Defendant during all times relevant hereto and, as such, are employees entitled to the FLSA’s protections. See 29 U.S.C. § 203(e).

14. At all times relevant hereto, Defendant acted or failed to act through its agents, servants, and/or employees thereto existing, each of whom acted at all times relevant hereto in the course and scope of their employment with and for Defendant.

FLSA COLLECTIVE ACTION ALLEGATIONS

15. Paragraphs 1 through 14 are hereby incorporated by reference as though the same were fully set forth at length herein.

16. This action is brought as a collective action to recover unpaid overtime compensation, liquidated damages, unlawfully withheld wages, statutory penalties, and damages owed to Plaintiff and all similarly-situated current and former employees of Defendant.

17. Pursuant to 29 U.S.C. § 216(b) of the FLSA, Plaintiff brings this action individually and on behalf of all other similarly situated persons presently or formerly employed by Defendant in the position of Home Health Aid, or in positions with substantially similar job duties, who worked for Defendant at any point in three (3) years preceding the date the instant action was initiated, who were paid on an hourly basis and denied overtime compensation at 1.5 times their regular rate of pay for all hours worked over forty (40) in a workweek (“Class Plaintiffs”).

18. Upon information and belief, Plaintiff estimates that there are approximately three hundred (300) other similarly situated Home Health Aides who either are working or worked for Defendant in the Commonwealth of Pennsylvania and were unlawfully denied overtime compensation at 1.5 times their “regular rate” of pay for hours work in excess of forty (40) in a workweek as a result of the unlawful practices described above. The precise number of employees can easily be ascertained by Defendant. These employees can be identified and located using Defendant’s payroll and/or personnel records. Class Plaintiffs may be informed of the pendency of this Collective Action by direct mail, electronic mail, and/or publication.

19. Pursuant to 29 U.S.C. § 216(b), this action is properly maintained as a collective action because the Class Plaintiffs are similarly-situated. Plaintiff and Class Plaintiffs were similarly denied overtime compensation at 1.5 times their regular rate of pay as a result of Defendant’s failure to accurately track the hours they worked for Defendant when calculating their eligibility for overtime compensation, had the same or similar job classifications and job

duties, and were subject to the same uniform policies, business practices, payroll practices, and operating procedures. Further, Defendant's willful policies and practices, which are discussed more fully in this Collective and Class Action Complaint, whereby Defendant has failed to pay Class Plaintiffs an overtime premium based on 1.5 times their "regular rate" for all hours worked over forty (40) hours in a workweek, have impacted Class Plaintiffs in the same fashion.

20. Plaintiff will request the Court to authorize notice to all current and former similarly-situated employees employed by Defendant, informing them of the pendency of this action and their right to "opt-in" to this lawsuit pursuant to 29 U.S.C. § 216(b), for the purpose of seeking unpaid compensation, overtime compensation, and liquidated damages under the FLSA.

CLASS ACTION ALLEGATIONS

21. Paragraphs 1 through 20 are hereby incorporated by reference as though the same were fully set forth at length herein.

22. Plaintiff brings this action individually, and on behalf of the following state-wide class of similarly situated individuals, pursuant to Rule 23 of the Federal Rules of Civil

Procedure:

All persons presently or formerly employed by Defendants during the past three (3) years in the position of Home Health Aid or in positions with substantially similar job duties who were paid on an hourly basis and were denied overtime compensation for work performed in excess of forty (40) hours in a workweek.

23. The members of the class are so numerous that joinder of all members is impractical. Class members may be informed of the pendency of this Class Action by direct mail, electronic mail, and/or publication.

24. Pursuant to the Federal Rule of Civil Procedure 23(a)(2), there are questions of law and fact common to the Class, including, but not limited to:

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