

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

AMIEE HOFER, individually and on  
behalf of all others similarly situated

Plaintiff,

v.

Examination Management Services, Inc.

Defendant

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Civil Action Number: 3:13-cv-2167

Jury Demanded

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Amiee Hofer individually, and on behalf of all other similarly situated employees (“Plaintiff”) brings this Fair Labor Standards Act (“FLSA”) suit against the above-named Defendant and shows as follows:

**I. Nature of Suit**

1. The FLSA was passed by Congress in 1938 in an attempt to eliminate low wages and long hours and to correct conditions that were detrimental to the health and well-being of workers. To achieve its humanitarian goals, the FLSA “limits to 40 a week the number of hours that an employer may employ any of his employees subject to the Act, unless the employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed.” *Walling v. Helmerich & Payne*, 323 U.S. 37, 40 (1944) (discussing the requirements of 29 U.S.C. § 207 (a)).
2. Defendant failed to pay Plaintiff in accordance with the Fair Labor Standards Act. Specifically, Plaintiff was a nonexempt employee yet Defendant failed to pay Plaintiff at time and one half her regular rate of pay for hours worked in a workweek in excess of 40.

**II. Parties**

3. Plaintiff Amiee Hofer is an individual who was employed by Defendant within the meaning of the FLSA within the three year period preceding the filing of this Complaint. Plaintiff lives in the Northern District of Texas. Plaintiff’s consent to be a party plaintiff is attached as Exhibit A.

4. The “Class Members” are Defendant’s current and former employees, regardless of specific title, who completed mobile drug screens, clinical trial and insurance exams, for Defendant’s clients and were paid on a per visit/per exam basis. This includes but is not limited to those individuals who gather/ed medical history information, vitals, and blood or urine samples and who may have had title of Mobile Drug and Alcohol Screeners, Paramedical Examiners, Paramedical Examiner (Phlebotomists), Insurance Examiner or other similar titles.
5. Examination Management Services, Inc. (“Defendant”) is a Nevada corporation doing business at 3050 REGENT BLVD SUITE 400, IRVING, TX 75063 and who may be served by serving the registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

### **III. Jurisdiction and Venue.**

6. Venue of this action is proper in this district because the events giving rise to the cause of action alleged herein occurred in this judicial district, and Defendant maintains one or more offices in this District. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.
7. Defendant carries on substantial business in the Northern District of Texas and has sufficient minimum contacts with this state to be subject to this Court’s jurisdiction.
8. Further, the acts and omissions that form the basis of the lawsuit (i. e., Defendant’s establishment and enforcement of its company-wide payroll policies) occurred within this District.
9. This Court has jurisdiction over this case pursuant to the district court’s federal question jurisdiction as set forth in 28 U.S.C. § 1331. Specifically, this case is brought pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, as amended.
10. This Court has the authority to grant declaratory relief pursuant to the FLSA and the Federal Declaratory Judgment Act (“DJA”), 28 U.S.C. §§ 2201-02.

### **IV. Coverage.**

11. At all material times, Defendant has acted, directly or indirectly, in the interest of an employer with respect to Plaintiff and the Class Members.
12. At all times hereinafter mentioned, Defendant has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

13. At all times hereinafter mentioned, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).
14. At all times hereinafter mentioned, Defendant has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).
15. At all times hereinafter mentioned, Plaintiff was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206 -207.

**V. Factual Allegations**

16. Defendant has operations throughout the United States, whereby they collect personal health data on behalf of their clients, in order to facilitate risk assessment services for their clients. In connection with this business, Defendant provides the following services: complete policy medical exam, data collection, laboratory testing, inspection reports and underwriting services in the industry.
17. Defendant provides paramedical and other exams in insurance applicants' homes or offices through its employee examiners like Plaintiff and the Class Members.
18. Plaintiff was employed by Defendant as a Paramedical Examiner.
19. Plaintiff worked in this capacity from approximately August 2011 to approximately October 2012.
20. For the work she performed in conducting paramedical examinations outside the office, Plaintiff and the Class Members were paid on per visit/per examination basis. Defendant did not track and pay Plaintiff and the Class Members for this work on an hourly basis.
21. During her employment, Plaintiff worked in excess of forty (40) hours per week for which she was not compensated at the statutory rate of one and one-half times the regular rate of pay.
22. Plaintiff and the Class Members routinely worked in excess of forty (40) hours per week as part of their regular job duties.

23. Despite the fact that Plaintiff and the Class Members worked more than forty (40) hours per week, Defendant failed to pay Plaintiff and the Class Members overtime compensation at a rate of one and one-half times their regular rates of pay for hours worked over forty (40) in a workweek.
24. Defendant has employed and continues to employ hundreds of other individuals who performed and continue to perform the same or similar job duties under the same or similar pay policies as Plaintiff. These other individuals are the Class Members.
25. For a portion of her employment, Plaintiff also performed exams and other work in Defendant's offices. Although she was paid an hourly rate for this work and she routinely worked more than 40 hours, she was not paid overtime compensation at time and one-half her regular rate of pay for this work.
26. Defendant has violated Title 29 U.S.C. § 207 in that:
  - a. Plaintiff and the Class Members worked in excess of forty (40) hours per week during one or more weeks of employment;
  - b. No payments, or insufficient payments and/or provisions for payment, have been made by Defendant to properly compensate Plaintiff and the Class Members at the statutory rate of one and one-half times the regular rate for those hours worked in excess of forty (40) hours per work week as provided by the FLSA; and
  - c. Defendant has failed to maintain proper time records as mandated by the FLSA.

**VI. Collective Action Allegations.**

27. Plaintiff and the Class Members were all employees of Defendant and performed the same or similar job duties as one another in that they provided paramedical exams on behalf of Defendant, many were employed in the position of Paramedical Examiner, however, Defendant maintains multiple titles for this job, including, but not limited to, Mobile Drug and Alcohol Screeners, Insurance Examiner and Phlebotomist.
28. All of these individuals were and are paid in the same manner for their out of office examinations, on a per visit/per exam basis without proper overtime compensation.
29. All of these individuals were deprived of overtime pay even though they routinely worked in excess of 40 hours per week and should have received overtime pay.
30. Thus, the class members are owed overtime wages for the same reasons as Plaintiff.

31. Defendant's failure to compensate its Plaintiff and the Class Members for hours worked in excess of forty (40) hours in a workweek as required by the FLSA results from a policy or practice applicable to Plaintiff and the Class Members.
32. Application of this policy or practice does/did not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policy or practice which resulted in the non-payment of overtime to Plaintiff applied and continues to apply to all Class Members.
33. Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff and the Class Members.
34. Defendant has failed to maintain accurate records of Plaintiff's and the Class Members' work hours in accordance with the law.

**VI. Cause of Action: Failure to Pay Wages in Accordance with the Fair Labor Standards Act.**

35. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.
36. Plaintiff and the Class Members were, and are, entitled to be paid at the statutory rate of one and one-half times their regular rates of pay for those hours worked in excess of forty (40) hours.
37. During the relevant period, Defendant violated the FLSA by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA, as aforesaid, for one or more workweeks without compensating such employees for their work at a rate of at least one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.
38. At all times material hereto, Defendant failed, and continues to fail, to maintain proper time records as mandated by the FLSA.
39. To date, Defendant continues to fail to pay Plaintiff and the Class Members their FLSA-mandated overtime pay.
40. Defendant's actions in this regard were/are willful and/or showed/show reckless disregard for the provisions of the FLSA as evidenced by their continued failure to compensate Plaintiff and the Class Members at the statutory rate of one and one-half

times their regular rates of pay for the hours worked in excess of forty (40) hours per weeks when it knew, or should have known, such was, and is due.

41. Defendant has failed to properly disclose or apprise Plaintiff and the Class Members of their rights under the FLSA.
42. Due to the intentional, willful, and unlawful acts of Defendant, Plaintiff and the Class Members suffered and continue to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.
43. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

**VII. Jury Demand.**

44. Plaintiff demands a trial by jury herein.

**VIII. Relief Sought.**

45. Wherefore, Plaintiff, individually and on behalf of the Class Members respectfully requests that this Court grant the following relief:
  - a. Designation of this action as a collective action on behalf of the Class Members and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals, appraising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consents to participate in the suit pursuant to 29 U.S.C. §216(b);
  - b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;
  - c. A finding that Defendant's actions are willful under the FLSA;
  - d. An award of unpaid wages and overtime compensation due under the FLSA;
  - e. An award of liquidated damages as a result of the Defendant's failure to pay wages and overtime compensation pursuant to the FLSA;
  - f. An award of prejudgment and post judgment interest;
  - g. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and

h. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ J. Derek Braziel

**J. Derek Braziel**

Texas Bar No. 00793380

**MEREDITH MATHEWS**

Texas Bar No. 24055180

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**ATTORNEYS FOR PLAINTIFF**