

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

Donna Cunningham, on behalf	§	
of herself and all others similarly	§	
situated,	§	
	§	CA No.: 3:16-cv-02141
Plaintiff,	§	
v.	§	Collective Action
	§	
Imperial Guard and Detective	§	Jury Demanded
Services, Inc. a/k/a Imperial	§	
Guard Service, Inc.	§	
Defendant.	§	

PLAINTIFF’S ORIGINAL COLLECTIVE ACTION COMPLAINT

Donna Cunningham (“**Plaintiff**”) brings this Fair Labor Standards Act (“**FLSA**”) suit against Imperial Guard and Detective Services, Inc. a/k/a Imperial Guard Service, Inc. (“**Defendant**”) and shows as follows:

1. Nature of Suit.

1.1. 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)).

1.2. Defendant failed to pay Plaintiff in accordance with the Fair Labor Standards Act. Specifically, Defendant failed to pay Plaintiff at time and one half her regular rate of pay for hours worked in a workweek in excess of forty hours because Plaintiff was not compensated for “off-the-clock” hours she worked at the start of her shift. Plaintiff was required to and did in fact arrive at her place of work approximately 15 minutes before the start of her shift. She immediately began performing compensatory duties but was not compensated until the beginning of shift change at the top of the hour. Because Plaintiff and the putative class members normally worked more than 40 hours a week, the non-paid time would be overtime and compensable under the FLSA.

2. Parties.

2.1. Plaintiff 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’s place of employment was in this District. Plaintiff’s consent to be a party plaintiff is being filed separately with the Court.

2.2. Defendant is a Tennessee corporation that does business in Texas. Defendant may be served by serving its registered agent R. Q. Brewer, 2555 Poplar Avenue, Memphis, TN 38112.

3. Jurisdiction and Venue.

3.1. Venue of this action is proper in this District because Defendant has sufficient contacts in this State and District to subject it to personal jurisdiction. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.

3.2. Defendant carries on substantial business in the District and has sufficient minimum contacts with this state to be subject to this Court's jurisdiction.

3.3. 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.

4. Coverage.

4.1. At all material times, Defendant has acted, directly or indirectly, in the interest of an employer with respect to Plaintiff.

4.2. At all material times, Defendant has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

4.3. At all material times, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

4.4. At all material times, 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).

4.5. 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.

5. Factual Allegations

5.1. Defendant is one of the largest security guard companies, with branches from coast to coast. Each of the branches is a “**Location.**” Defendant specializes in security for the distribution, transportation, logistics, high-technology, manufacturing, petrochemical, commercial real estate, hospitality, and healthcare industries.

5.2. Plaintiff was employed by Defendant as a security officer at one of Defendant’s Locations in this District during the three years preceding the filing of this lawsuit.

5.3. Plaintiff was paid on an hourly basis.

5.4. Plaintiff’s duties required her to arrive at the work location prior to shift change and to begin performing work-related duties prior to the shift change at the top of the hour. The duties included, but were not limited to, reporting in to dispatch that she had arrived at the work location, discussing the security status with the security guard that worked the previous shift, identifying who was on the lot, discussing security needs with site management and checking alarms. These duties took approximately 15 minutes and were required to be completed by the top of the hour so the security guard on duty could leave at the top of the hour (shift change).

5.5. Defendant’s corporate employee handbook, a copy of which is attached as Exhibit A, states that successful security officers must “report for duty 15 minutes prior to start time.”

- 5.6. Plaintiff was not paid for the duties performed prior to shift change.
- 5.7. Plaintiff worked shifts of 10 hours per shift and was scheduled for 5 shifts per week. Additionally, she worked more than 5 shifts during some weeks. As an example, Plaintiff worked and was paid for 40 straight time hours and 33.75 overtime hours for the workweek ending May 8, 2016. This pay did not include the duties performed prior to shift change during that workweek.
- 5.8. Thus, Plaintiff routinely worked more than 40 hours a week as part of her job duties and did so during many workweeks included in the three years prior to the filing of this Complaint.
- 5.9. Despite the fact that Plaintiff worked more than forty (40) hours per week, Defendant failed to pay Plaintiff overtime compensation at a rate of one and one-half times her regular rate of pay for all hours worked over forty (40) in a workweek because Defendant failed to include work performed by Plaintiff prior to shift change.
- 5.10. Defendant violated Title 29 U.S.C. § 207 in that Plaintiff worked in excess of forty (40) hours per week for her period of employment with Defendant and no payments, or insufficient payments and/or provisions for payment, have been made by Defendant to properly compensate Plaintiff at the statutory rate of one and one-half times Plaintiffs regular rate for all hours worked in excess of forty (40) hours per work week as provided by the FLSA.

6. Collective Action Allegations

- 6.1. Plaintiff and the Class Members are/were all non-exempt employees of Defendant and performed the same or similar job duties as one another in that they all performed general security guard services.
- 6.2. All of these individuals are/were and are paid in the same manner, i.e., hourly but not compensated for work-related duties performed at the start of their shift.
- 6.3. All of these individuals are/were deprived of overtime pay even though they routinely worked in excess of forty (40) hours in a workweek.
- 6.4. Further, Plaintiff and the Class Members are/were subjected to the same pay provisions in that they are/were denied pay for work-related duties performed when they were required to “report for duty 15 minutes prior to start time.”
- 6.5. Thus, the Class Members are owed overtime wages for the same reasons as Plaintiff.
- 6.6. Defendant’s failure to compensate Plaintiff and the Class Members at a rate one and one-half times their regular rate of pay 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.
- 6.7. 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.
- 6.8. Accordingly, the Class Members of similarly situated plaintiffs is properly defined as:

6.8.1. All security guard personnel (regardless of specific title) who worked for Defendant at any of the Locations within the last three years who were paid hourly and not compensated for duties performed prior to shift change and thus not compensated at the statutory rate of one and one-half times their regular rate of pay for all hours worked more than forty (40) in a workweek.

6.9. Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay minimum wage and overtime compensation with respect to Plaintiff and the Class Members.

6.10. Defendant did not act in good faith and/or have reasonable grounds for a belief that its actions did not violate the FLSA nor did it act in reliance upon any of the following in formulating their pay practices: (a) case law; (b) the FLSA, 29 U.S.C. § 201, et seq.; (c) Department of Labor Wage & Hour Opinion Letters; or (d) the Code of Federal Regulations.

6.11. Defendant has failed to maintain accurate records of Plaintiff's and the Class Members' work hours in accordance with the law.

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

7.1. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

7.2. Plaintiff and the Class Members were, and are, entitled to be paid at the statutory rate of one and one-half times their regular rate of pay for those hours worked in excess of forty (40) hours in a workweek.

7.3. During the relevant period, Defendant violated § 207 of 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 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.

7.4. To date, Defendant continues to fail to pay the Class Members their FLSA mandated overtime pay for the 15 minutes at issue.

7.5. Defendant's actions in this regard were/are willful and/or showed/show reckless disregard for the provisions of the FLSA as evidenced by its continued failure to compensate Plaintiff and the Class Members at the statutory rate of one and one-half times their regular rate of pay for the hours worked in excess of forty (40) hours in a workweek when they knew, or should have known, such was, and is due.

7.6. Defendant has failed to properly disclose or apprise Plaintiff and the Class Members of their rights under the FLSA.

7.7. Due to the intentional, willful, and unlawful acts of Defendants, Plaintiff and the Class Members suffered and continue to suffer damages and lost compensation for time worked over forty (40) hours in a workweek, plus liquidated damages.

7.8. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

8. Demand for Jury.

8.1. Plaintiff demands a jury trial on all matter so triable.

9. Prayer.

9.1. Wherefore, Plaintiff, individually and on behalf of the Class Members, respectfully requests that this Court grant the following relief for the time period beginning three years prior to the date of the filing of this suit and continuing to the date of trial:

9.1.1. Designation of this action as a collective action on behalf of the Plaintiff and Class Members and promptly issue a 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);

9.1.2. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

9.1.3. An order for injunctive relief ordering the Defendant to end all of the illegal wage practices alleged herein pursuant to the FLSA and related laws and regulations;

9.1.4. A finding that Defendant's actions are willful under the FLSA;

9.1.5. An award of unpaid wages for overtime compensation due under the FLSA and continuing until the time of trial;

9.1.6. An award of liquidated damages as a result of the Defendant's failure to pay minimum wages and overtime compensation pursuant to the FLSA and continuing until the time of trial;

9.1.7. An award of prejudgment and post judgment interest;

9.1.8. An award of costs and expenses of this action together with reasonable attorneys' and expert fees;

9.1.9. Incentive awards for the lead Plaintiff(s);

9.1.10. Leave to add additional plaintiffs by motion, the filing of written consents, or any other method approved by the Court;

9.1.11. Equitably tolling of the statute of limitations for the Class Members effective the date of the filing of this Complaint; and

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

Respectfully submitted:

By: /s/ Chris R. Miltenberger
Chris R. Miltenberger
Texas State Bar Number 14171200
Designated as Lead Attorney

**The Law Office of Chris R. Miltenberger,
PLLC**

1340 N. White Chapel, Suite 100
Southlake, Texas 76092
817-416-5060 (office)
817-416-5062 (fax)
chris@crmlawpractice.com

Attorney for Plaintiff