

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Brenda Brown	)	
	)	
Plaintiffs	)	
	)	Case No. 10-cv-06748
v	)	
	)	
	)	The honorable Judge:
Wolin & Levin Inc.,	)	Robert M. Dow, Jr.
and Robert Levin,	)	
individually	)	JURY TRIAL REQUESTED
	)	
Defendants.	)	

**SECOND AMENDED COMPLAINT**

Brenda Brown ("Plaintiff"), by and through her attorney, Ryan Scott Nalley, in support of her Second Amended Complaint against Wolin and Levin, Inc. and Robert Levin, individually, ("Defendants"), states as follows.

**JURISDICTION AND VENUE**

1. This Court has federal question jurisdiction over the instant matter pursuant to 28 U.S.C. §1331, which states that Federal District Courts have primary jurisdiction over actions that arise under the laws of the United States. Plaintiff alleges violations of the Fair Labor Standards Act of 1938, 29 U.S.C. §201 *et. seq.* ("Act" or FLSA), and the Family Medical Leave Act, 29 U.S.C. 2601 *et. seq.*
2. Further, this Court has supplementary jurisdiction over Brenda Brown's common law cause of action for retaliatory discharge, as a result of being terminated for claiming worker's compensation benefits pursuant to the Illinois Insurance Act 820 ILCS § 305 *et. seq.*, and for claims under the Illinois Minimum Wage Law 820 ILCS § 105 *et. seq.* ("IMWL"); the Illinois Wage Payment and Collection Act, 820 ILCS 115/2,

and the Attorney's Fees in Wage Actions Act, 705 ILCS 225/1 pursuant to 28 U.S.C § 1367.

3. Venue is proper as all actions and events giving rise to this action occurred within the Northern District of Illinois.

### **PARTIES AND STATEMENT OF THE CASE**

4. Plaintiff re-alleges and incorporates paragraphs 1 through 3 as stated above and states further.
5. Plaintiff, Brenda Brown has been employed as a pay roll administrator for Wolin and Levin Inc. from November of 2006 until May 4, 2010 when she was terminated while on FMLA leave.
6. That Wolin and Levin, Inc. is a property management company with two offices within the City of Chicago and is an enterprise within the meaning of the Fair Labor Standards Act, Section 203(r)(1) with gross sales in excess of \$500,000, and is otherwise engaged in commerce, and employs over 50 individuals whom handle goods or materials transported through interstate commerce, or are otherwise engaged in commerce.
7. That during her employment with Wolin and Levin Inc. Plaintiff regularly worked in excess of 40 hours per work week, but was never compensated at time and one half for any such hours over 40 in any workweek.
8. That Wolin and Levin, Inc. have a written employment policy which states that employees will be required to work over 40 hours a week in certain work weeks, but that no overtime or straight time wages will be paid to any employee, despite whether he or she is considered an exempt employee. (See exhibit "1" which is Wolin and

Levin, Inc.'s employment policy cover page and section on employee compensation, § "J" pp. 14-22. (See pp. 14, 15, 16 ¶ 1-2.)

9. Plaintiff also claims Retaliatory Discharge in that Defendant fired her in retaliation for claiming worker's compensation benefits, and interference with her rights under the Family Medical Leave Act, in that Defendant terminated Plaintiff, and found a replacement before Plaintiff had a reasonable chance to send in her certified FMLA forms, and while Defendant already knew Plaintiff suffered from a serious medical condition.
10. That Robert Levin was, at all times material, the "Executive Administrator" of Wolin and Levin Inc.'s northside office and therefore an employer for purposes Section 203 of the Fair Labor Standards Act. 29 U.S.C. § 203(d), the Illinois Minimum Wage Law, 820 ILCS § 105/11(a)(b), Illinois Wage Payment and Collection Act, 820 ILCS § 115/13, and Section 2611(4)(ii)(I) of the Family Medical Leave Act as, at all times material, as he had the authority to exercise control over the Plaintiff, set work place policies, and was aware of the manner in which employees were paid, and of work place policy in general

**FACTS COMMON TO ALL COUNTS**

11. Plaintiff re-alleges and incorporates herein paragraphs 1 through 10 as stated above and states further.
12. On March 12, 2010, Friday, Plaintiff had to have an ambulance come to her workplace (Wolin and Levin Inc. 325 West Huron Chicago, Illinois 60654) and take her to emergency room as a result as a result of a work related injury.

13. On March 15, 2010, Monday Plaintiff called in to the human resources manager, and let them know that she was going to be off work for an extended time period due to her injury.
14. On March 16, 2010 a worker's compensation adjustment claim for benefits was filed.
15. That according to Defendants, they mailed Plaintiff FMLA papers on April 19, 2010, and that such papers stated that she had 15 days to return the certified papers to her employer from the date that she received said papers.
16. Plaintiff did not receive any FMLA papers in the mail.
17. On May 4, 2010, prior to the 15 day deadline for submitting the FLMA certification, Defendants terminated Plaintiff by letter because she had not provided the paperwork, or otherwise called in, even though they were otherwise aware that she was suffering from a serious medical condition, and the deadline for submitting the papers had not passed. (See exhibit "2" letter from Defendant.)
18. That Plaintiff subsequently informed human resources that she never received such paperwork.
19. Defendants did not mail her FMLA papers until June 3, 2010.
20. That on June 3, 2010 a letter was also delivered with her FMLA papers that stated Plaintiff must pay \$582.60 + \$538.32 + \$44.28 in order to reinstate her insurance while on FMLA leave, and that she would be on FMLA leave until June 7, 2010, exactly 4 more days; the said nothing on the subject of re-instating her employment. (See exhibit "3" which is the letter from Defendant on June 3, 2010.)

21. That upon information and belief, such amounts were greatly inflated from the normal insurance costs that Plaintiff was usually required to pay, and would have caused severe financial hardship on Plaintiff.
22. That Plaintiff timely submitted such paperwork prior to Defendant's June 30, 2010 deadline, which confirmed that she suffered from a serious medical condition which prevented her from working during the relevant time period.
23. Upon information and belief, Defendants had already hired Plaintiff's replacement in May; well before Plaintiff could have submitted her FMLA certification.
24. Further, Defendants did not wait until the actual 15 day deadline before terminating her employment, even assuming they actually sent out her FMLA papers as alleged—a month after the injury on April 19, 2010.
25. Moreover, as the June 3, 2010 letter indicates, they decided to consider her leave as FMLA leave even before receiving the certification, and even though her leave terminated 4 days later, on June 7, 2010, which meant that Defendants were now allowing Plaintiff her FMLA rights without even requiring certification, yet cutting them short by over a month by counting the period of time during which they admittedly failed to send out her FMLA forms—March 16, 2010 though April 19, 2010; and they never stated that her employment was reinstated or otherwise rescinded her termination.
26. Upon information and belief, the unlawfully premature termination on May 4, 2010 was merely a pretext of terminating Plaintiff on the grounds of absenteeism and failing to comply with the requirements of her FMLA leave, instead of the actual

reason for Plaintiff's termination—for filing a worker's compensation claim, or to deter her from continuing the same.

27. Further, after receiving her certified FMLA paperwork, and after a notice of litigation was sent to Defendants, Defendants, on July 2, 2010 sent Plaintiff a letter stating that Plaintiff was to report to light duty on July 12, 2010, while knowing that Plaintiff had not been released to any type of work by her physician, that she would be unable work on account of her medical condition. (See attached as Exhibit "4" which is a letter informing Plaintiff to return to "light duty," the meaning of which was never discussed or explained to Plaintiff, on July 12, 2010.)
28. Upon information and belief, the July 2, 2010 letter was merely an attempt to create the false impression that Plaintiff had failed to mitigate her damages and was written in contemplation of litigation to obscure the fact that Defendants terminated Plaintiff's employment months before, by terminating her again on July 15, 2010 for not returning to work, even though as of July 6, 2010 her doctors explicitly stated she was she was unable to work. (See attached as exhibit "5" a letter terminating Plaintiff's employment on July 15, 2010 for not returning to "light duty.")
29. That at all times material, throughout her employment as a payroll administrator, Plaintiff worked approximately 50 hours per week, but was not compensated at time and one half for each hour over 40 worked, nor was she was she compensated at all for such additional hours. (See attached as affidavit "6," affidavit of Eugenia White).
30. That Plaintiff was a nonexempt employee within the meaning of the Fair Labor Standards Act of 1938, 29 U.S.C § 201 *et. seq.*; in that she was paid on an hourly

basis of \$22.82, and she was not permitted to use discretion or independent judgment with regard to matter of business significance, or in general.

31. That Defendant was an employer engaged in interstate commerce within the meaning of the same. 29 U.S.C. § 203(d).
32. That Plaintiff was also a nonexempt employee under the Illinois Minimum Wage Law for reasons stated in paragraph 30, 820 ILCS § 105/3(d).

**COUNT-I**  
**-Violation of the Fair Labor Standards Act-**

33. Plaintiff re-alleges and incorporates paragraphs 1 through 32 as stated above herein, and states further.
34. Defendants, Wolin and Levin, Inc. and Robert Levin, individually, violated the FLSA in failing to provide Plaintiff with time and one half of her hourly rate as mandated by the statute.
35. That Defendants failed to keep proper records pursuant to 29 U.S.C. § 211(c).
36. That Defendant's actions were willful within the meaning of the statute in that they misclassified Plaintiff's job description as one as being exempt from the FLSA under the "white collar" exemption when her actual duties primary duties consisted of menial tasks such as data entry for payroll, and in that they had a written policy of violating the Act. See Exhibit 1 pp. 14, 15, 16 ¶¶1-2.

**WHEREFORE**, Plaintiff, through her attorney, Ryan Scott Nalley, requests that Judgment be entered on her behalf against Wolin and Levin Inc. and Robert Levin, individually and that the following relief be granted.

- a. That Plaintiff be awarded her hourly rate, plus one half of same for all hours over 40 worked in each work week, plus an equal additional amount in

liquidated damages pursuant to 29 U.S.C. §216(b) for the previous 3 years of employment; plus interest, the cost of the instant litigation and reasonable attorney's fees pursuant to statute.

- b. For pre-judgment and post judgment interest.
- c. Any other remedy this Court deems proper.

**COUNT II**  
**-Violation of the Illinois Minimum Wage Law-**

37. Plaintiff re-alleges and incorporates paragraphs 1 through 36 as stated herein above and states further.

38. That Defendants, Wolin and Levin, Inc. and Robert Levin, individually, violated section 4a of the Illinois Minimum Wage in failing to pay Plaintiff her hourly rate plus an additional one half of her hourly rate for all hours worked over 40 in each work week. 820 ILCS § 105/4(a).

39. That Defendants are liable to Plaintiff for all unpaid minimum wages and overtime wages pursuant to the Illinois Minimum Wage Law.

**WHEREFORE**, Plaintiff requests, through her attorney, Ryan Scott Nalley, that a finding of liability be entered against Defendants Wolin and Levin Inc. and Robert Levin, individually, for violating the Illinois Minimum Wage Law and to grant Plaintiff the following statutory and other relief against both Defendants:

- a. Compensation in the amount of one half of Plaintiff's hourly rate for all hours worked in excess of 40 in each work week for the previous 3 years plus a 2% penalty for each month that such payments have gone under paid pursuant to 820 ILCS § 105/12; and for all costs and attorney's fees in prosecuting the instant action. *Id.*



- b. For pre-judgment and post judgment interest.
- c. For any other relief this Court deems proper.

**COUNT III**  
**-Retaliatory Discharge-**

40. Plaintiff re-alleges and incorporates herein paragraphs 1 through 39 as stated above, and states further.
41. That it is against public policy in Illinois to discharge an employee for claiming worker's compensation. *See Kelsay v. Motorola, Inc.*, 74 Ill.2d 172, 384 N.E.2d 353, 23 Ill.Dec. 559 (1978) (Supreme Court upheld wrongful discharge claim based on retaliation for filing workers' compensation claim because discharge for that reason violated public policy).
42. That Plaintiff was engaging in protected activity in claiming benefits that were due to her pursuant to the Illinois Worker's Compensation Act.
43. Defendant, Wolin and Levin, Inc, terminated Plaintiff in whole or in part in retaliation for making a worker's compensation claim.
44. That Defendant acted in a willful and malicious manner in terminating Plaintiff's employment in an attempt to deter Plaintiff from continuing her claim, and in their attempt to set a pretext by failing to send Plaintiff her FMLA papers, or alternatively, terminating her employment on the alleged grounds of absenteeism before the requisite due date.

**WHEREFORE**, Plaintiff through her attorney, Ryan Scott Nalley, requests that this Court find Defendant, Wolin and Levin Inc., liable for Retaliatory Discharge and enter the following relief against both Defendants.

- a. All back wages and front wages, and loss of future earnings as a result of the Defendant's unlawful termination of Plaintiff.

- b. Compensation for emotional distress, and damage to representation, and loss of employment.
- c. For punitive damages for the Defendant's willful and wanton retaliatory actions
- d. All costs and reasonable attorney's fees
- d. Any other legal or equitable remedy this Court deems proper.

**COUNT IV**

**-Interference With Plaintiff's Family Medical Leave Benefits, 29 U.S.C. §2614(a)(1)**

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45. Plaintiff re-alleges and incorporates herein paragraphs 1 through 44 as stated above and states further.
46. That Defendants violated the FMLA by failing to send Plaintiff papers within 5 days of Plaintiff notifying her employer of her illness pursuant to 29 U.S.C. § 2617.29 and 29 C.F.R. § 825.300(b)(c) and instead waited over a month when, on April 19, 2010, Defendant allegedly sent Plaintiff FMLA paperwork to be certified within 15 days of her receipt of the same.
47. Additionally, on May 4, 2010, which was prior to the 15 day time period, Defendant fired Plaintiff for absenteeism.
48. That Defendants interfered with Plaintiff's rights under the Family Medical Leave Act by failing to timely provide her with the proper forms within a reasonable time period, by terminating her knowing that she had a serious medical condition and before she had a chance to turn in forms (assuming they were actually mailed), or before the requisite 15 day time period for submitting said forms; by replacing her

employment within her allotted 12 week entitlement to leave, and in inflating her insurance premiums.

**WHEREFORE**, Plaintiff requests that this honorable Court enter a finding against Defendants Wolin and Levin Inc. and Robert Levin, individually, for interfering with Plaintiff's FMLA rights and grant the following relief:

- a. All wages lost, as well as loss of future earnings and benefits plus interest, as a result of Defendants interference with Plaintiff's FMLA rights.
- b. Statutory liquidated damages in an additional equal amount of said wages and benefits plus interest, attorney's fees, and all litigation costs including expert witness fees pursuant to 29 U.S.C. § 2617(a)(1)(A).
- c. For any other equitable or legal remedies this Court deems just and proper, including, but not limited to reinstatement of employment with promotion to a suitable position.

**COUNT V**

**-Discrimination in violation of Family Medical Leave Act, 26 U.S.C. 2615(a)(2)-**

49. Plaintiff re-alleges and incorporates 1 through 48 herein as stated above, and states further.

50. That Defendants discriminated against Plaintiff in violation of the FMLA in whole or in part for claiming FMLA leave.

51. During such time Plaintiff was entitled to the protections of the Family Medical Leave Act, and was terminated, either wholly or in part due to her exercising such rights

**WHEREFORE**, Plaintiff through her attorney, Ryan Scott Nalley, requests that this honorable Court enter judgment against Wolin and Levin Inc.

and Robert Wolin, individually, for retaliation in violation of the FMLA and grant the following relief:

- a. an award amounting to all lost wages plus loss of future income as a result of Defendants discriminatory actions, plus interest,
- b. For an additional equal amount in liquidated damages plus costs, expert witness fees, all other litigation costs, and attorney's fees pursuant to 29 U.S.C. § 2617(a)(1)(A).
- c. For any other relief this Court deems proper, including but limited to, reinstatement and promotion to a suitable position.

**COUNT VI**

**-Violation of the Illinois Wage Payment and Collection Act-**

52. Plaintiff re-alleges and incorporates paragraphs 1 through 51 herein as stated above, and states further.

53. That Plaintiff was not only under paid in violation section 207 of the FLSA and 4a of the Illinois Minimum Wage Act which require time plus one half for all hours worked over 40 in each work week, but Plaintiff was not paid her hourly rate at all for any hours worked over 40 in a work week.

54. That Defendants violated the Illinois Wage Payment and Collection Act, 820 ILCS 115/2 in not paying Plaintiff her agreed upon hourly rate of \$22.87 for hours worked in excess of forty in any workweek since November of 2006.

WHEREFORE, Plaintiff requests that this Honorable Court enter a finding against Defendants for violating the Illinois Wage Payment and Collection Act and to enter the following relief:

- a. All unpaid wages from November of 2006 to the present day.

- b. For all costs, attorney's fees, prejudgment and post judgment interest.
- c. Any other relief this Court deems Appropriate.

**COUNT VII**  
**-The Attorney's Fees in Wage Actions-**

55. Plaintiff re-alleges and incorporates paragraphs 1 through 54 as stated herein and states further:

56. That pursuant to 705 ILCS 225/1, Plaintiff has made a written demand more than three days in advance of the filing of suit for payment of said wages alleged to be due under the relevant statutes, and that Defendant has not responded or otherwise made payment for such wages.

57. Therefore, Plaintiff is entitled to attorney's fees in the collection of all such wages pursuant to 705 ILCS 225/1

**WHEREFORE**, Plaintiff prays that this Court enter an order of attorney's fees along with any judgment for payment of wages against Defendants as well as any other equitable or legal remedy it deems proper.

**JURY TRIAL DEMANDED**

Respectfully submitted

By: /s/ Ryan Scott Nalley  
Attorney for the Plaintiff

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