

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ROLAND CHAVEZ
372 Bath Avenue
Apt. 27
Long Branch, NJ 07740

Plaintiff,

v.

ROBERT WOOD JOHNSON HEALTH
SYSTEM
1 Robert Wood Johnson Place
New Brunswick, NJ 08903

and

ROBERT WOOD JOHNSON UNIVERSITY
HOSPITAL HAMILTON
1 Hamilton Health Place
Hamilton, NJ 08690

Defendants.

CIVIL ACTION COMPLAINT

No.

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Plaintiff Roland Chavez (hereinafter "Plaintiff"), by and through his undersigned counsel, hereby avers as follows:

Introduction

1. This action arises out of Robert Wood Johnson Health System's and Robert Wood Johnson University Hospital Hamilton's (hereinafter "Defendants") violations of the Fair Labor Standards Act ("FLSA"), the New Jersey Wage Payment Law, the New Jersey Wage and Hour Law, and the Conscientious Employee Protection Act ("CEPA"). Specifically, shortly after Plaintiff complained of wage and hour violations, Defendants fired Plaintiff. Plaintiff asserts he was terminated for complaining of wage and hour violations. As a direct consequence of Defendants' actions, Plaintiff has suffered damages as set forth herein.

Jurisdiction and Venue

2. This Court may properly maintain personal jurisdiction over Defendants because Defendants' contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice.

3. The Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims herein arise under laws of the United States. This Court has supplemental jurisdiction over Plaintiff's state law claims because they arise out of the same circumstance and are based upon a common nucleus of operative fact.

4. Venue is properly laid in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), because Defendants reside in and/or conduct business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

Parties

5. The foregoing paragraphs are incorporated herein as if set forth in full.

6. Plaintiff is an adult with an address as set forth above.

7. Defendant Robert Wood Johnson Health System is an entity that operates in New Jersey.

8. Defendant Robert Wood Johnson University Hospital Hamilton is an entity that operates in New Jersey.

9. Upon information and belief, because of their interrelation of operations, common management, centralized control of labor relations, common ownership, common financial controls, and other factors, Defendants are sufficiently interrelated and integrated in their

activities, labor relations, ownership, and management that they may be treated as a single employer for purposes of the instant action.

10. At all times relevant herein, Defendants acted by and through their agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for the benefit of Defendants.

Factual Background

11. The foregoing paragraphs are incorporated herein as if set forth in full.

12. Plaintiff was employed by Defendants as a “PRN” for Defendants.

13. Throughout his employment, Defendants regularly shorted Plaintiff in his paycheck by not paying him for all the hours he worked.

14. In September of 2011, Plaintiff complained to Defendants’ management regarding Defendants’ failure to pay him proper overtime for pay-period ending September 10, 2011. Specifically, Plaintiff complained to Defendants’ management that he was only paid for 23.5 hours of overtime even though, according to the time card detail provided on the paycheck, he had worked 28 hours of overtime during the pay-period. This paycheck irregularity cost Plaintiff \$40.50.

15. Defendants’ management informed Plaintiff that they would not provide him more overtime pay during that week because Defendants contended that they deserved a credit against the overtime owed to him because they paid him additional compensation for working Labor Day, September 5, 2011.

16. On his very next paycheck, issued September 30, 2011, Defendants issued Plaintiff a paycheck providing compensation for the pay-period ending September 24, 2011. The paycheck provides a time card detail which shows Plaintiff working 135.75 hours. However,

without explanation, Defendants only paid Plaintiff for 134.5 hours of work. This paycheck irregularity cost Plaintiff \$33.75.

17. Plaintiff complained about this deduction to Defendants' management. He requested that Defendants audit his and other workers' paystubs as he believed Defendants frequently underpaid its employees.

18. On October 28, 2011, Defendants issued Plaintiff a paycheck providing compensation for pay-period ending October 22, 2011. This paycheck included \$11.25 as "Retro Pay," compensation which was supposed to compensate Plaintiff for the numerous errors which had occurred in his previous paychecks.

19. Defendants did not provide Plaintiff any explanation as to how it computed the \$11.25 which was provided to Plaintiff as "Retro Pay."

20. Moreover, the October 28, 2011 paycheck provided Plaintiff compensation for 132.25 hours of work. That paycheck's time card detail evidenced Plaintiff working 132.75 hours. This paystub irregularity cost Plaintiff \$13.50.

21. Accordingly, following Plaintiff being issued his October 28, 2011 paycheck, Plaintiff again complained to Defendants' management, again requesting that Defendants audit his and others' paychecks because of concerns that Defendants were not providing full compensation to their employees.

22. On or about November 4, 2011, Plaintiff was terminated from his employment with Defendants.

23. Defendants fired Plaintiff, allegedly for "unsatisfactory work performance."

24. Plaintiff had not received any previous written warnings alleging that he engaged in unsatisfactory work performance.

25. Plaintiff was in fact terminated because he complained about Defendants' unlawfully withholding overtime compensation from his and other employees' paychecks, in violation of the FLSA, the New Jersey Wage and Hour Law, the New Jersey Wage Payment Law, and CEPA.

First Cause of Action
Fair Labor Standards Act ("FLSA")
(Retaliation)

26. The foregoing paragraphs are incorporated herein as if set forth in full.

27. Plaintiffs' aforementioned complaints that Defendants were failing to pay Plaintiff and others for all their overtime hours constitutes protected activities under the FLSA.

28. Defendants' conduct in terminating Plaintiff for such conduct violated the law.

29. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered damages as set forth herein.

Second Cause of Action
New Jersey Wage and Hour Law and New Jersey Wage Payment Law
(Retaliation)

30. The foregoing paragraphs are incorporated herein as if set forth in full.

31. Plaintiffs' aforementioned complaints that Defendants were failing to pay Plaintiff and other for all their overtime hours constitute protected activities under the New Jersey Wage and Hour Law and the New Jersey Wage Payment Law.

32. Defendants' aforementioned conduct is in violation of the New Jersey Wage and Hour Law and New Jersey Wage Payment Law.

33. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered damages as set forth herein.

Third Cause of Action
Conscientious Employee Protection Act
(Retaliation)
(Pled in the Alternative)

34. The foregoing paragraphs are incorporated herein as if set forth in full.

35. Plaintiffs' aforementioned complaints that Defendants were failing to pay Plaintiff and others for all their overtime hours constitute protected activities under the New Jersey Conscientious Employee Protection Act.

36. Defendants' actions in terminating Plaintiff for engaging in such conduct violated the CEPA.

37. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered damages as set forth herein.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A Defendants are to be prohibited from continuing to maintain its illegal policy, practice, or custom in violation of the FLSA, the New Jersey Wage and Hour Law, the New Jersey Wage Payment Law, and the CEPA;

D. Defendants are to compensate, reimburse, and make Plaintiff whole for any and all pay and benefits he would have received had it not been for Defendants' illegal actions, including but not limited to past lost earnings and future lost earnings.

E. Plaintiff is to be awarded liquidated/punitive damages, pursuant to the FLSA, the NJ Wage and Hour Law, the NJ Wage Payment Law, and/or the CEPA;

F. Plaintiff is to be awarded emotional distress damages;

F. Plaintiff is to be accorded any and all other equitable and legal relief as the Court deems just, proper, and appropriate;

G. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal law.

Respectfully submitted,

SWARTZ SWIDLER, LLC

By: /s/ Justin L. Swidler
Justin L. Swidler, Esq.
Richard S. Swartz, Esq.
1878 Marlton Pike East. Ste. 10
Cherry Hill NJ, 08003
856-685-7420 (office)
856-685-7417 (facsimile)

Dated: December 7, 2011