

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

HEATHER KOENIG, individually and on
behalf of all those similarly situated,
11 North Island Road
Bayville, NJ 08721

Plaintiff,

v.

WELLS FARGO, N.A.
730 Jamaica Blvd.
Toms River, NJ 08757

Defendant.

INDIVIDUAL AND COLLECTIVE ACTION
FOR UNPAID OVERTIME UNDER FLSA

INDIVIDUAL AND CLASS ACTION FOR
UNPAID OVERTIME AND WAGES
UNDER NEW JERSEY WAGE AND HOUR
LAW AND NEW JERSEY WAGE
PAYMENT LAW

No.

JURY TRIAL DEMANDED

INDIVIDUAL, COLLECTIVE, AND CLASS ACTION CIVIL COMPLAINT

Named Plaintiff Heather Koenig (hereinafter referred to as “Named Plaintiff”), individually and on behalf of all those similarly situated, by and through undersigned counsel, hereby complains as follows against Defendant Wells Fargo, N.A. (hereinafter referred to as “Defendant”).

INTRODUCTION

1. Named Plaintiff has initiated the instant action to redress Defendant’s violations of the Fair Labor Standards Act (“FLSA”) and the New Jersey Wage and Hour Law and Law and the New Jersey Wage Payment Law (hereinafter said New Jersey laws are collectively referred to as the “New Jersey Wage Laws”), and the New Jersey Family Leave Act (“NJFLA”). Named Plaintiff asserts that Defendant failed to pay Named Plaintiff and those similarly situated proper overtime compensation in violation of the FLSA and New Jersey Wage Laws, and failed to pay wages to Named Plaintiff and those similarly situated for certain hours worked in

violation of the FLSA and New Jersey Wage Laws. Named Plaintiff further asserts that Defendant fired her while on NJFLA-protected leave.

JURISDICTION AND VENUE

2. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

3. This 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, the FLSA. This Court has supplemental jurisdiction over related state law claims because they arise out of the same circumstance and are based upon a common nucleus of operative fact.

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

5. Venue is properly laid in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), because Defendant resides 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

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

7. Named Plaintiff is an adult individual with an address as set forth above.

8. Defendant is a bank that operates numerous branches in New Jersey, including a branch at the address as set forth in the caption.

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

FLSA COLLECTIVE ACTION ALLEGATIONS

10. In addition to bringing this action individually, Named Plaintiff brings this action for violations of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all tellers, bankers, and other similar non-exempt employees presently and formerly employed by Defendant subject to Defendant's unlawful pay practices and policies and who worked for Defendant at any point in the three years preceding the date the instant action was initiated (the members of this putative class are referred to as "Class Plaintiffs").

11. Named Plaintiff and Class Plaintiffs work and/or worked for Defendant in the United States within the last three years.

12. Named Plaintiff and Class Plaintiffs are similarly situated, have substantially similar job duties, have substantially similar pay provisions, and are all subject to Defendant's unlawful policies and practices as discussed *infra*.

13. There are numerous similarly situated current and former employees of Defendant who were compensated improperly for overtime work in violation of the FLSA and who would benefit from the issuance of a Court Supervised Notice of the instant lawsuit and the opportunity to join in the present lawsuit.

14. There are numerous similarly situated current and former employees of Defendant who Defendant failed to pay for pre- and post-shift activities and who would benefit from the issuance of a Court Supervised Notice of the instant lawsuit and the opportunity to join in the present lawsuit.

15. Similarly situated employees are known to Defendant, are readily identifiable by Defendant, and can be located through Defendant's records.

16. Therefore, Named Plaintiff should be permitted to bring this action as a collective action for and on behalf of herself and those employees similarly situated, pursuant to the “opt-in” provisions of the FLSA, 29 U.S.C. § 216(b).

CLASS ACTION ALLEGATIONS

17. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

18. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Named Plaintiff brings her claim for relief to redress Defendant’s violations of the New Jersey Wage Laws on behalf of herself and those similarly situated.

19. Specifically, Named Plaintiff seeks to bring this action on behalf of all tellers, bankers, and other similar non-exempt positions presently and formerly employed by Defendant in New Jersey subject to Defendant’s unlawful pay practices and policies and who worked for Defendant at any point in the three years preceding the date the instant action was initiated (the members of this putative class are also referred to as “Class Plaintiffs”).

20. Named Plaintiff and Class Plaintiffs are similarly situated, have substantially similar pay provisions, and are all subject to Defendant’s unlawful policies and practices as described herein.

21. The class is so numerous that the joinder of all class members is impracticable. Named Plaintiff does not know the exact size of the class, as such information is in the exclusive control of Defendant; however, on information and belief, the number of potential class members is at least several hundred.

22. Named Plaintiff’s claims are typical of the claims of Class Plaintiffs, because Named Plaintiff, like all Class Plaintiffs, was employed by Defendant within the last three years in New Jersey (1) whom Defendant forced to work off-the-clock and (2) whom Defendant

required to work more than 40 hours per workweek and then failed to pay proper overtime wages as required by New Jersey Wage Laws.

23. Similarly situated employees are known to Defendant, are readily identifiable by Defendant, and can be located through Defendant's records.

24. Therefore, Named Plaintiff should be permitted to bring this action as a class action for and on behalf of herself and those employees similarly situated.

FACTUAL BACKGROUND

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

26. On or about October 5, 2011, Defendant hired Named Plaintiff as a bank teller at its Tom River, New Jersey branch.

27. Defendant paid Named Plaintiff \$13.65 per hour.

28. Named Plaintiff regularly worked full workweeks, which consisted of five, 8-hour shifts, excluding unpaid meal breaks.

29. Accordingly, Named Plaintiff regularly worked at least 40 hours during her regularly scheduled shift times each workweek.

30. Named Plaintiff also worked additional hours outside her regularly scheduled shift times, as detailed herein, which resulted in her regularly working in excess of 40 hours each workweek.

31. However, due to Defendant's policies and practices, as detailed herein, Defendant failed to pay Named Plaintiff for hours spent working outside her regularly scheduled shift times, which resulted in Defendant failing to pay Named Plaintiff overtime wages for all hours worked in excess of 40 hours in a workweek.

32. Class Plaintiffs regularly worked/work full workweeks, which consisted/consist of five, 8-hour shifts, excluding unpaid meal breaks.

33. Accordingly, Class Plaintiff regularly worked/work at least 40 hours during their regularly scheduled shift times each workweek.

34. Class Plaintiff also worked/work additional hours outside their regularly scheduled shift times, as detailed herein, which resulted/result in Class Plaintiffs regularly working in excess of 40 hours each workweek.

35. However, due to Defendant's policies and practices, as detailed herein, Defendant failed/fails to pay Class Plaintiffs for hours spent working outside their regularly scheduled shift times, which resulted/results in Defendant failing to pay Class Plaintiffs overtime wages for all hours worked in excess of 40 hours in a workweek.

Overtime Violations (Unpaid Pre-Shift Time)
(Named Plaintiff and Class Plaintiffs v. Defendant)

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

37. Named Plaintiff regularly worked at least 40 hours each workweek.

38. Defendant's policies require/required that employees open the bank each day the bank is open for business.

39. Defendant's policies required/require that two employees open the bank each day the bank is open for business.

40. Defendant routinely required Named Plaintiff to assist in opening the bank at the location where she was employed.

41. Defendant routinely required/requires Class Plaintiffs to assist in opening the bank at the location where they were/are employed.

42. Per Defendant's policies and procedures, when Named Plaintiff was assigned to open the bank, Plaintiff was required to engage in pre-shift security procedures, both inside and outside the bank building, prior to the bank opening for business.¹

43. Named Plaintiff spent approximately fifteen (15) minutes per shift on pre-shift security activities.

44. Defendant required Named Plaintiff to complete time sheets.

45. Defendant paid Named Plaintiff according to the hours recorded on her time sheets.

46. Defendant regularly required Named Plaintiff to record her official shift start-time of 8:00AM as the time when she began working rather than the actual time she began work each morning, which was usually 7:45AM.

47. Accordingly, Defendant evaded paying Named Plaintiff for all hours worked and overtime wages, by prohibiting her from recording the time she spent performing pre-shift security duties.

48. Per Defendant's policies and procedures, when Class Plaintiffs were/are assigned to open the bank, Class Plaintiffs were/are required to engage in pre-shift security procedures, both inside and outside the bank building, prior to opening the bank for business.

49. Class Plaintiffs spent/spend approximately fifteen (15) minutes on uncompensated pre-shift security activities during each shift in which they are required to open the bank.

50. Defendant required/requires Class Plaintiffs to complete time sheets.

51. Defendant paid/pays Class Plaintiff according to the hours recorded on their time sheets.

¹ Named Plaintiff has not listed each security procedure which Defendant required/requires because doing so could potentially expose Defendant to security risks. Should this Court or Defendant seek Named Plaintiff to provide more detailed information regarding the pre-shift activities, Named Plaintiff is prepared to do so.

52. Defendant required/requires Class Plaintiffs to record their official shift start-time as the time when they began/begin working rather than the actual time they began/begin work each morning, which was/is usually 15 minutes prior to their official shift start-time.

53. Accordingly, Defendant evaded/evades paying Class Plaintiffs for all hours worked and overtime wages, by prohibiting them from recording the time they spent/spend performing pre-shift duties.

54. Much of said uncompensated time consists of time worked in excess of 40 hours per workweek, and accordingly, by failing to pay Named Plaintiff and Class Plaintiffs for this time, Defendant failed to pay proper overtime compensation.

55. Class Plaintiffs each worked at least one workweek in the past three (3) years in which they worked over 40 hours, but were not compensated for overtime wages due to Defendant's policy of not paying for time spent performing pre-shift security duties.

56. The aforementioned conduct has caused damages to Named Plaintiff and Class Plaintiffs.

Overtime Violations (Unpaid Post-Shift Time)
(Named Plaintiff and Class Plaintiffs v. Defendant)

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

58. Defendant's policies require/required that employees close the bank each day the bank is open for business.

59. Defendant routinely required Named Plaintiff to assist in closing the bank at the location where she was employed.

60. Defendant routinely required/requires Class Plaintiffs to assist in closing the bank at the location where they were/are employed.

61. Per Defendant's policies and procedures, when Named Plaintiff was assigned to close the bank, Named Plaintiff was required to engage in post-shift security procedures, both inside and outside the bank building, after the bank closed for business.²

62. None of the time Named Plaintiff spent engaging in any of these post-shift activities after the bank was closed was paid by Defendant; all such work was performed "off-the-clock."

63. Named Plaintiff spent approximately fifteen (15) minutes per shift on post-shift security activities.

64. Defendant regularly required Named Plaintiff to record her official shift end-time of 5:00PM as the time when she ceased working rather than the actual time she ceased working each evening, which was usually 5:15PM.

65. Accordingly, Defendant evaded paying Named Plaintiff for all hours worked and overtime wages by prohibiting her from recording the time she spent performing post-shift duties.

66. Per Defendant's policies and procedures, when Class Plaintiffs were/are assigned to open the bank, Class Plaintiffs were/are required to engage in post-shift security procedures, both inside and outside the bank building, after the bank closed for business.

67. None of the time Class Plaintiffs spent/spend engaging in any of these post-shift activities after the bank closes for business each evening was/is paid by Defendant; all such work was/is performed "off-the-clock."

68. Class Plaintiffs spent/spend approximately fifteen (15) minutes on post-shift security activities during each shift in which they were/are required to close the bank.

² Named Plaintiff has not listed each security procedure which Defendant required/requires because doing so could potentially expose Defendant to security risks. Should this Court or Defendant seek Named Plaintiff to provide more detailed information regarding the post-shift activities, Named Plaintiff is prepared to do so.

69. Defendant regularly required/requires Class Plaintiffs to record their official shift end-time as the time when they ceased/cease working rather than the actual time they ceased/cease working each evening, which was/is usually 15 minutes after their official shift end-time.

70. Accordingly, Defendant evaded paying Named Plaintiff for all hours worked and overtime wages, by prohibiting her from recording the time she spent performing post-shift duties.

71. Much of said uncompensated time consists of time worked in excess of 40 hours per workweek, and accordingly, by failing to pay Named Plaintiff and Class Plaintiffs for this time, Defendant failed to pay proper overtime compensation.

72. The aforementioned conduct has caused damages to Named Plaintiff and Class Plaintiffs.

Wrongful Termination
(Named Plaintiff v. Defendant)

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

74. In or around the end of 2012 or beginning of 2013, Named Plaintiff became pregnant.

75. On or about June 28, 2013, Named Plaintiff began an FMLA-protected medical leave due to sciatica caused by her pregnancy.

76. On September 18, 2013, Named Plaintiff underwent a C-section and gave birth to her child.

77. On or about September 24, 2013, Defendant sent Named Plaintiff a letter stating that she had exhausted her entitlement to FMLA leave.

78. Thereafter, Named Plaintiff remained out of work on Medical Leave, pursuant to Defendant's "Extended Absence Policy."

79. On or about October 29, 2013, Defendant sent a letter to Named Plaintiff stating that her medical leave, pursuant to Defendant's Extended Absence Policy, would end on November 12, 2013, but that "as of November 12, 2013, you have 480 hours available under the New Jersey Family Leave Act for use toward your family leave."

80. Accordingly, Named Plaintiff's NJFLA-protected leave was set to end on February 4, 2015.

81. Thereafter, Named Plaintiff contacted Defendant and Liberty Mutual, the company hired by Defendant to manage its employees' leaves, to confirm that she was taking a NJFLA-protected leave.

82. On or about January 29, 2014, Defendant sent Named Plaintiff a letter stating that it had terminated her employment, effective January 28, 2014, for failing to provide medical documentation and being on an "unapproved leave of absence" since November 13, 2013.

83. Defendant fired Named Plaintiff even though Named Plaintiff's NJFLA-protected leave did not end until the following week.

COUNT I
Violations of Fair Labor Standards Act ("FLSA")
(Failure to pay Overtime Compensation)
(Named Plaintiff and Class Plaintiffs v. Defendant)

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

85. At all times relevant herein, Defendant has and continues to be an employer within the meaning of the FLSA.

86. At all times relevant herein, Defendant was/is responsible for paying wages to Named Plaintiff and Class Plaintiffs.

87. At all times relevant herein, Named Plaintiff and Class Plaintiffs were/are employed with Defendant as “employees” within the meaning of the FLSA.

88. Under the FLSA, an employer must pay an employee at least one and one half times his or her base rate for each hour worked in excess of forty hours per workweek.

89. Defendant’s violations of the FLSA include, but are not limited to: not paying Named Plaintiff and Class Plaintiffs any overtime pay for overtime hours for hours spent on pre- and post-shift activities.

90. Defendant’s conduct in failing to pay Named Plaintiff and Class Plaintiffs properly was and is willful and was not based upon any reasonable interpretation of the law.

91. As a result of Defendant’s unlawful conduct, Named Plaintiff and Class Plaintiffs have suffered damages as set forth herein.

COUNT II
Violations of New Jersey Wage Laws
(Failure to pay Overtime Compensation)
(Named Plaintiff and Class Plaintiffs v. Defendant)

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

93. At all times relevant herein, Defendant has and continues to be an employer within the meaning of the New Jersey Wage Laws.

94. At all times relevant herein, Defendant was/is responsible for paying wages to Named Plaintiff and Class Plaintiffs.

95. At all times relevant herein, Named Plaintiff and Class Plaintiffs were/are employed with Defendant as “employees” within the meaning of the New Jersey Wage Laws.

96. Under the New Jersey Wage Laws, an employer must pay an employee at least one and one half times his or her base rate for each hour worked in excess of forty hours per workweek.

97. Defendant's violations of the New Jersey Wage Laws include, but are not limited to, not paying Named Plaintiff and Class Plaintiffs for time worked on pre- and post-shift activities.

98. Defendant's conduct in failing to pay Named Plaintiff and Class Plaintiffs properly was and is willful and was and is not based upon any reasonable interpretation of the law.

99. As a result of Defendant's unlawful conduct, Named Plaintiff and Class Plaintiffs have suffered damages as set forth herein.

COUNT III
Violations of New Jersey Wage Laws
(Failure to pay Wages Earned)
(Named Plaintiff and Class Plaintiffs v. Defendant)

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

101. Defendant's conduct in failing to pay Named Plaintiff and Class Plaintiffs all wages earned violated New Jersey Wage Laws.

102. As a result of Defendant's unlawful conduct, Named Plaintiff and Class Plaintiffs have suffered damages as set forth herein.

COUNT IV
Violations of the New Jersey Family Leave Act ("NJFLA")
(Interference)
(Named Plaintiff v. Defendant Wells Fargo, N.A.)

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

104. Named Plaintiff was an eligible employee under the definitional terms of the NJFLA.

105. Named Plaintiff requested NJFLA leave to bond with her newborn child.

106. As of November 2013, Named Plaintiff was employed with Defendant for at least twelve (12) months.

107. Further, Named Plaintiff had at least 1,000 hours of service with Defendant during the twelve (12) month period that preceded her November 2013 NJFLA leave.

108. Defendant is engaged in an industry affecting commerce and employed fifty (50) or more employees for twenty (20) or more calendar workweeks in 2013 and 2012.

109. Named Plaintiff was entitled to receive leave pursuant to the NJFLA for a total of twelve (12) workweeks

110. Defendant interfered with Named Plaintiff's rights under the NJFLA by failing to provide her with notice of her rights under the NJFLA.

111. Defendant's failure to provide Named Plaintiff with notice of her rights under the NJFLA prejudiced Plaintiff.

112. Defendant interfered with Named Plaintiff's rights under the NJFLA by failing to provide her with a full 12 weeks of NJFLA leave.

113. Defendant interfered with Named Plaintiff's rights under the NJFLA by firing Named Plaintiff during her NJFLA leave.

114. As a result of Defendant's unlawful actions, Named Plaintiff has and continues to suffer damages.

WHEREFORE, Named Plaintiff and Class Plaintiffs pray that this Court enter an Order providing that:

(1) Defendant is to be prohibited from continuing to maintain its illegal policy, practice, or custom in violation of federal and state wage and hour laws, and the NJFLA;

(2) Defendant is to compensate, reimburse, and make Named Plaintiff and Class Plaintiffs whole for any and all pay and benefits they would have received had it not been for Defendant's illegal actions, including but not limited to past lost earnings. Named Plaintiff and Class Plaintiffs should be accorded those benefits illegally withheld;

(3) Named Plaintiff and Class Plaintiffs are to be awarded liquidated damages as applicable under the laws they are suing under in an amount equal to the actual damages in this case;

(4) Defendant is to compensate Named Plaintiff, reimburse Named Plaintiff, and make Named Plaintiff whole for any and all pay and benefits Named Plaintiff would have received had it not been for Defendant's illegal actions in violation of the NJFLA, including but not limited to lost past earnings and future lost earnings;

(5) Named Plaintiff and Class Plaintiffs are to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law.

Respectfully Submitted,

/s/ Matthew Miller

Matthew D. Miller, Esq.

Justin L. Swidler, Esq.

Richard S. Swartz, Esq.

SWARTZ SWIDLER, LLC

1101 Kings Highway N., Ste. 402

Cherry Hill, NJ 08034

Phone: (856) 685-7420

Fax: (856) 685-7417

Date: August 28, 2015

DEMAND TO PRESERVE EVIDENCE

Defendant is hereby directed to preserve all physical and electronic information pertaining in any way to Named Plaintiff's and Class Plaintiffs' employment, to Named Plaintiff's and Class Plaintiffs' cause for action and/or prayers for relief, and to any defenses to same, including, but not limited to, electronic data storage, closed circuit TV footage, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages, any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, Twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.