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By _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BERDITA L. BAILEY)
)
and)
)
SUE RHODUS)
)
Plaintiffs,)
)
v.)
)
WAL-MART STORES, INC.,)
)
and)
)
WAL-MART STORES, INC., dba)
SAM'S CLUB AND WAL-MART)
)
and)
)
MARIE WARD,)
)
and)
)
NATHAN CLARK)
)
Defendants.)

CAUSE NO. IP00-1398-C-B/S

ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

The Defendants respond as follows to the First Amended Complaint:

Admissions And Denials

1. Plaintiffs bring this action against Wal-Mart Stores, Inc., individually and doing business as Wal-Mart and/or Sam's Club (hereinafter collectively referred to as "Wal-Mart") and Marie Ward and Nathan Clark, as Wal-Mart store managers, for engaging in a pattern and practice of widespread wage abuses including failing to record and pay for all of the time it requires

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its employees to work and for failing to permit employees to take rest/lunch breaks. As a result of such pattern and practice, the Defendants have violated Indiana common and statutory laws as described more particularly below.

ANSWER: Defendants admit that Plaintiffs have brought suit. Defendants deny that they violated any law with respect to Plaintiffs and deny any remaining allegation of Paragraph 1.

2. Plaintiff Berdita Bailey worked at the Wal-Mart store on East Main in Richmond, Indiana from approximately September of 1997 to April of 1999. She worked, at various times, as a sales associate and a stocker. During her employment with Wal-Mart she worked approximately five hours a week off the clock at the direction and behest of her employer. This included being asked to do work after clocking out and waiting on customers while clocked out on her lunch breaks. In addition, when Ms. Bailey worked overtime she would not be properly paid for all of it. Plaintiff Bailey is a resident of Indiana.

ANSWER: Defendants admit that Plaintiff Bailey was employed by Wal-Mart Stores, Inc. from time to time as a sales associate and stocker at its store on East Main in Richmond, Indiana from September 10, 1997, to April 15, 1999. Defendants are without sufficient information to admit or deny the state of Plaintiff Bailey's current residence. Defendants deny the remaining allegations of Paragraph 2.

3. Plaintiff Sue Rhodus worked at the Richmond, Indiana store from 1998 to 1999. At the time of her employment, she was unmarried and was employed under the name of Sue Benavides. She worked in the snack bar and as a cashier. Plaintiff Rhodus worked approximately 2-3 hours off the clock per week during non-holiday times and more during the holiday shopping

periods. This included being asked to do work after clocking out and waiting on customers while clocked out on her lunch breaks. In addition, when Ms. Rhodus worked overtime she would not be properly paid for all of it. When Plaintiff Rhodus worked, she was usually not able to take rest or meal breaks. Plaintiff Rhodus is a diabetic, requiring her to periodically check her blood sugar. Wal-Mart was given notice of this medical need, but Plaintiff Rhodus was usually not allowed to check her blood sugar. On at least two different occasions, due to her inability to take breaks and/or check her blood sugar, Plaintiff Rhodus collapsed and passed-out, requiring medical attention. Plaintiff Rhodus is a resident of Indiana.

ANSWER: Defendants admit that Plaintiff Rhodus (formerly Benavides) was employed by Wal-Mart Stores, Inc. from time to time as a sales associate and cashier at Wal-Mart's store on East Main in Richmond, Indiana from June 11, 1997, to May 23, 1998, and that Wal-Mart believes Plaintiff Rhodus is diabetic. Defendants are without sufficient information to admit or deny the state of Plaintiff Rhodus' current residence. Defendants deny the remaining allegations of Paragraph 3.

4. Defendant Wal-Mart Stores, Inc., is a Delaware corporation with its headquarters in Bentonville, Arkansas. Wal-Mart Stores, Inc., is in good standing and is doing business within the State of Indiana with over 89 Wal-Mart stores, Sam's Club stores, distribution centers or locations in Indiana. Wal-Mart Stores, Inc., is an "employer" within the meaning of the statutory and common law of Indiana.

ANSWER: Defendants admit the allegations of the first two sentences of Paragraph 4. Defendants deny that Wal-Mart Stores, Inc. is an "employer" under certain provisions

of Indiana law including, without limitation, provisions related to payment of minimum wage and overtime, and deny any remaining allegation of Paragraph 4.

5. Defendant Marie Ward was a store manager for a Wal-Mart store located in Richmond, Indiana. Plaintiffs have reason to believe she is still an employee of Wal-Mart Stores, Inc.

ANSWER: Defendants admit that Marie Ward was a store manager at a Wal-Mart store located in Richmond, Indiana, and is an employee of Wal-Mart. Defendants deny any remaining allegation of Paragraph 5.

6. Defendant Nathan Clark is/was a store manager for a Wal-Mart store located in Richmond, Indiana and is a resident of the State of Indiana.

ANSWER: Defendants admit the allegations of Paragraph 6, except they deny Mr. Clark was a store manager at the Richmond, Indiana store during the employment of Plaintiffs Bailey or Rhodus.

7. It is through Wal-Mart's direction and control of the activities of its managers and assistant managers in the State of Indiana, beginning with its District Managers, controlled and supervised by Wal-Mart and Sam's Club Regional and Division Managers as well as its store managers and assistant managers, that the Defendants are able to, and do, carry out their illegal scheme and plan to violate the employment laws and regulations, and violate the contract laws of the State of Indiana. Defendant Wal-Mart, its store managers, assistant managers, district managers, regional managers and divisional managers in the State of Indiana have, in the past, and are now scheming, combining and conspiring to violate Indiana's laws as stated hereinafter. Plaintiffs, upon belief and knowledge of the facts now known, allege that the Defendants could not attain high profit

margins in its stores without off-the-clock unpaid hours by its employees. The assent and knowledge of these practices are known throughout the company.

ANSWER: Defendants deny the allegations of Paragraph 7.

8. Plaintiffs bring this action on behalf of themselves and all others similarly situated. Plaintiffs represent a class of persons who, within the applicable period of limitations prior to the commencement of this action were and/or are employed by Wal-Mart Stores, Inc., in Indiana. They bring this case as a class action pursuant to Rule 23 of the Indiana Rules of Civil Procedure on behalf of a class ("the Class") consisting of all current and former Indiana employees of defendant Wal-Mart who have been required and/or permitted to work off-the-clock without compensation within the applicable period of limitations. There are over 20,000 present and formerly employed Wal-Mart employees in Indiana. Given the all-pervasive nature and extent of Defendant's failure to comply with Indiana employment law, it is clear that the members of the Class are so numerous that joinder of all members is impractical.

ANSWER: Defendants admit that Wal-Mart has over 20,000 current or former employees in Indiana, that Wal-Mart formerly employed Plaintiffs Bailey and Rhodus, and that Plaintiffs are purporting to maintain this lawsuit as a class action. Defendants deny that Plaintiffs are entitled to bring this suit as a class action and deny the remaining allegations of Paragraph 8.

9. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. There are questions of law and fact common to the Class such as:

a. Whether the work performed by the Named Plaintiffs and the Class is included in the type of work Wal-Mart employed the Plaintiffs and the Class to perform.

b. Whether Wal-Mart and the other Defendants have engaged in a pattern and/or practice in Indiana of permitting the Named Plaintiffs and the Class to work off-the-clock without compensation.

c. Whether Wal-Mart and the other Defendants have engaged in a pattern and/or practice in Indiana of encouraging the Named Plaintiffs and the Class not to report all time worked.

d. Whether Wal-Mart and the other Defendants have engaged in a pattern and/or practice in Indiana of threatening the Named Plaintiffs and the Class with discharge, demotion or discrimination or otherwise intimidating the Named Plaintiffs and the Class if they do not work off-the-clock.

e. Whether Wal-Mart and the other Defendants have failed to permit meal and rest periods as required by Indiana law.

f. Whether Wal-Mart failed to properly compensate the Named Plaintiffs and the Class in connection with interruptions in the meal or rest breaks as set forth in Wal-Mart's stated policy and its company-wide agreements;

g. Whether Wal-Mart and the other Defendants failed to keep true and accurate time records for all hours worked by its employees and/or altered time records.

h. Whether Wal-Mart and the other Defendants willfully failed to pay the Named Plaintiffs and the Class for the work the Defendants permitted them to perform.

i. Whether Wal-Mart, its District Managers, the other named Defendants, and others, have schemed, planned and conspired to act together and have acted together to violate the laws and regulations of the State of Indiana relating to wages for hourly employees.

j. Whether Wal-Mart, and the other defendants, have tortiously interfered with Wal-Mart's contracts with its employees and/or violated the laws and regulations of Indiana relating to wages and breaks for hourly employees for the personal benefit of management and personnel.

k. Whether the actions of the Defendants rise to the level justifying punitive damages.

ANSWER: Defendants deny the allegations of Paragraph 9.

10. The Named Plaintiffs' claims are typical of the claims of the members of the Class since Named Plaintiffs and the other members of the Class were hourly employees and, like others in the Class, sustained damages arising out of the Defendants' wrongful conduct and violation of law.

ANSWER: Defendants deny the allegations of Paragraph 10.

11. The Named Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained counsel that is competent and experienced in class and complex litigation and similar issues involving the named Defendants.

ANSWER: Defendants deny the allegations of Paragraph 11.

12. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

ANSWER: Defendants deny the allegations of Paragraph 12.

13. Questions of law or fact common to members of the class predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impractical. Furthermore, since the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation make it impractical for the class members to individually seek redress for the wrongs done to them. The Named Plaintiffs envision no difficulty in the management of this action as a class action.

ANSWER: Defendants deny the allegations of Paragraph 13.

14. The Defendants have created conditions that foster off-the-clock work throughout its stores in Indiana. This unlawful conduct by the Defendants is not isolated and sporadic but rather widespread and repeated.

ANSWER: Defendants deny the allegations of Paragraph 14.

15. The Defendants' patterns and practices are to induce employees to not clock in all of the time they work. The Defendants give employees work assignments that the Defendants know or should know their employees cannot complete within their scheduled hours. The Defendants create pressure on their employees to complete their work assignments through intimidation, threats of discharge, and demotion while at the same time they preclude such employees from clocking in hours worked and necessary to accomplish their assignments outside their regular work schedule. Consequently, employees must work after clocking out at the end of or before their shifts, and through lunch and rest periods. The Defendants have also engaged in the practice of "locking in" employees overnight. The practice involves physically locking employees in the store overnight so that they cannot leave the store premises. Employees are forced to clock out, and continue working or clock out and wait for someone to let them out.

ANSWER: Defendants deny the allegations of Paragraph 15.

16. The Defendants put pressure on their management to not record all of their own work time as well as to encourage its employees not to record all their time. This is done in an effort to reduce labor costs and increase profits. The Defendants award bonuses based on such factors as net profit ratios, which are effected by low payroll ratios.

ANSWER: Defendants admit that one component of a Wal-Mart Store Manager bonus involves net profit of the store. Defendants deny the remaining allegations of Paragraph 16.

17. The Defendants attempt to hide behind a written policy that purports to forbid these unlawful labor practices while at the same time maintaining conditions that foster these unlawful practices. If employees make an issue of not being paid for unrecorded time and the Defendants can no longer pretend "ignorance", the Defendants blame the employee for violating written company policy.

ANSWER: Defendants admit that Wal-Mart's policies forbid unlawful labor practices. Defendants deny the remaining allegations of Paragraph 17.

18. The Defendants know or should know that the employees are working off-the-clock by virtue of the fact that (a) its managers have been present in stores when off-the-clock work was occurring including when employees were working through lunch breaks, (b) it assigns work that cannot be accomplished during an employee's shift and makes threats or intimidating remarks if the assigned work is not completed, but refuses to allow the employee to clock in the additional time which is necessary to accomplish such work; and (c) its managers purposefully keep the store understaffed to reduce costs.

ANSWER: Defendants deny the allegations of Paragraph 18.

19. Plaintiffs reallege and reassert paragraphs 1 through 18.

ANSWER: Defendants incorporate by reference their responses to Paragraphs 1 through 18.

20. At the time Plaintiffs and the Class accepted employment with the Defendants they were hired to work at fixed hourly wage rates and were to receive rest and meal breaks. They were expressly told that they would be paid for each hour worked and they would receive rest and meal breaks if they worked a certain amount of time in a workday. More specifically, if an employee

worked three hours he/she was entitled to one fifteen minute break. If an employee worked six to seven hours, he/she was entitled to two fifteen minute breaks and one thirty minute meal break. If an employee worked in excess of seven hours he/she was entitled to two fifteen minute breaks and one sixty minute meal break. Further, Wal-Mart agreed that employees whose rest or meal breaks were interrupted to perform work were entitled to receive compensation for the entire period at their regular rate of pay and were entitled to an additional rest or meal break. Wal-Mart further agreed to provide their employees with the rest and meal breaks required under Indiana law.

ANSWER: Defendants admit that Plaintiffs were at-will employees of Wal-Mart, that Plaintiffs worked and were compensated in accordance with the provisions of the Fair Labor Standards Act, and that Wal-Mart attempts to provide its Associates with certain rest and meal breaks. Defendants deny the remaining allegations of Paragraph 20.

21. For each hour Plaintiffs and the Class worked "off-the-clock" in their tenure with the Defendants they did not receive any compensation. This violated the parties' employment agreements. Wal-Mart further breached these agreements by its failure to provide the Plaintiffs and the Class the agreed-to rest and meal breaks and failing to compensate the employees for the entire period at their regular rate of pay in instances where rest and meal breaks were interrupted to perform work.

ANSWER: Defendants deny the allegations of Paragraph 21.

22. Hours that Plaintiffs and the Class worked "off-the-clock," and breaks not taken, were at the direction and behest of Wal-Mart and the other Defendants, not voluntarily performed by Plaintiffs and the Class, but done with the expectation of earning their respective hourly wage rate.

ANSWER: Defendants deny the allegations of Paragraph 22.

23. By failing to pay Plaintiffs and the Class the agreed upon wage rate the Defendants breached the actual and implied employment agreements between the parties.

ANSWER: Defendants deny the allegations of Paragraph 23.

24. Plaintiff [sic] reallege and reassert paragraphs 1 through 23.

ANSWER: Defendants incorporate by reference their responses to Paragraphs 1 through 23.

25. Wal-Mart and the other Defendants, at all times material to this Complaint, were aware that Plaintiffs and the Class were working off-the-clock and/or through their rest and meal breaks, as Wal-Mart, the other Defendants, and other supervisors and managers, directed Plaintiffs and the Class to ensure that assigned work was done.

ANSWER: Defendants deny the allegations of Paragraph 25.

26. The hours that Plaintiffs and the Class worked off-the-clock were at the direction and behest of the Defendants, not voluntarily performed by Plaintiffs and the Class, but done with the expectation of earning their respective hourly wage rates. The benefits thereby conferred on the Defendants were accepted and appreciated by them.

ANSWER: Defendants deny the allegations of Paragraph 26.

27. The Defendants are liable to Plaintiffs and the Class under quantum meruit for all off-the-clock work performed by Plaintiffs and the Class for the Defendants.

ANSWER: Defendants deny the allegations of Paragraph 27.

28. Plaintiffs reallege and reassert paragraphs 1 through 27.

ANSWER: Defendants incorporate by reference their responses to Paragraphs 1 through 27.

29. The Named Plaintiffs and members of the Class have worked, and continue to work, off-the-clock (without compensation) for the Defendants. Such work constitutes a benefit to the Defendants by the Named Plaintiffs and the Class.

ANSWER: Defendants deny the allegations of Paragraph 29.

30. The benefit was and is appreciated by the Defendants by the retention of the funds of the Plaintiffs and the Class.

ANSWER: Defendants deny the allegations of Paragraph 30.

31. The benefit was accepted and is being accepted by the Defendants under such circumstances that it would be inequitable for it to be retained without payment.

ANSWER: Defendants deny the allegations of Paragraph 31.

32. Accordingly, Defendants are liable to the Named Plaintiffs and the Class for all hours worked or which will be worked in the future for which the Defendants have not paid the Named Plaintiffs and the Class.

ANSWER: Defendants deny the allegations of Paragraph 32.

33. Plaintiffs reallege and reassert paragraphs 1 through 32.

ANSWER: Defendants incorporate by reference their responses to Paragraphs 1 through 32.

34. Defendants have wrongfully deprived Plaintiffs and the Class of their money and kept said money for the Defendants' own use and enjoyment.

ANSWER: Defendants deny the allegations of Paragraph 34.

35. Plaintiffs reallege and reassert paragraphs 1 through 34.

ANSWER: Defendants incorporate by reference their responses to Paragraphs 1 through 34.

36. The named Plaintiffs, and the Class, have contracts with Wal-Mart that they will be paid for each and every hour that they work for Wal-Mart and will be provided with certain agreed-upon rest and meal breaks.

ANSWER: Defendants deny the allegations of Paragraph 36.

37. Defendants Marie Ward and Nathan Clark knew, or should have known, of such contracts as enumerated above.

ANSWER: Defendants deny the allegations of Paragraph 37.

38. Defendants Marie Ward and Nathan Clark, upon information and belief, receive or received financial compensation and bonuses from Wal-Mart for the reduction of store expenses and the lowering of overhead costs, the largest of which is payroll. In an effort to reduce store expenses and to lower overhead costs, these Defendants intentionally and improperly interfered with the performance of the contracts between Wal-Mart and the Plaintiffs and the Class. The Defendants did so by adopting and using methods by which the Named Plaintiffs, and the Class, were not paid for each and every hour they worked for Wal-mart [sic], were not provided with certain agreed-upon rest and meal breaks, and were not properly compensated in instances of interruption of rest and meal breaks to perform work.

ANSWER: Defendants admit that one component of a Wal-Mart Store Manager bonus involves net profit of the store. Defendants deny the remaining allegations of Paragraph 38.

