

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DAVID RANGEL *
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*

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*

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TROY LEE TESTERMAN *
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*

Civil Action Number: 2010 CA 007908 B

KEITH HEERD *
53 Mile Trail *
Fairfield, PA 17320 *
*

Request for Jury Trial

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BRANDON BARD *
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MICHAEL NORTON RUDASILL *
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Baltimore, MD 21211 *

BRYAN HOWARD *
5 Pine Lane *
New Oxford, PA 17350 *

PLAINTIFFS *

v. *

UTILITY LINES CONSTRUCTION *
SERVICES, INC. *
708 Blair Mill Rd. *
Willow Grove, PA 19082 *

Serve on resident agent *
CT Corporation System *
1015 15th St., N.W. Ste. 1000 *
Washington, DC 20005 *

DEFENDANT *



SECOND AMENDED COMPLAINT FOR WAGES OWED

Plaintiffs, employees of the Defendant, respectfully submit this Second Amended Complaint to this Court because the Defendant has failed to pay them the wages due and owing to them under the laws of the District of Columbia, specifically, the District of Columbia Minimum Wages Law (“MWL”), D.C. Code Ann. §§ 32-1001 – 32-1015, and the District of Columbia Payment and Collection of Wages Law (“PCWL”), D.C. Code Ann. §§ 32-1301 – 32-1310. They are asserting individual claims for wages owed.

THE PARTIES

1. The Plaintiffs performed services in the District of Columbia, but were required to travel in Defendant’s vehicles that were maintained outside the District of Columbia.
2. All Plaintiffs worked as hourly employees for the Defendant.
3. All Plaintiffs regularly spent more than 50% of their working time in the District of Columbia.
4. All Plaintiffs serviced the Potomac Energy & Power Company (“PEPCO”), a major customer of the Defendant.
5. Plaintiffs worked in the District of Columbia when working for Defendant in servicing PEPCO.
6. Plaintiffs satisfy all prerequisites for maintaining individual claims under the District of Columbia MWL.
7. Plaintiffs satisfy all prerequisites for maintaining individual claims under the District of Columbia PCWL.
8. Defendant is a for-profit business that does business in the District of Columbia.
9. The Defendant is Plaintiffs’ employer.
10. Defendant is based and headquartered in the State of Pennsylvania.
11. Defendant is not incorporated in the District of Columbia.

12. Defendant's principal place of business is in the State of Pennsylvania.
13. Defendant makes more than \$1,000,000 in revenue in servicing customer PEPCO in the District of Columbia.
14. Defendant is an "employer" within the meaning of that term as defined in § 32-1002(3) of the District of Columbia MWL and § 32-1301(1) of the District of Columbia PCWL.
15. Plaintiffs are covered "employees" under § 32-1002(2) of the District of Columbia MWL and under § 32-1301(2) of the District of Columbia PCWL.

FACTUAL BACKGROUND

16. Plaintiffs are non-exempt employees within the meaning of the District of Columbia MWL § 32-1004.
17. Defendant employs Plaintiffs as its employees.
18. Plaintiffs performed and still perform similar job duties for the Defendant.
19. Plaintiffs have and have had similar job responsibilities when working for the Defendant.
20. Plaintiffs are subject to the same work rules, policies and procedures of the Defendant.
21. Plaintiffs work and have worked under the same supervisors employed by Defendant.
22. Plaintiffs are and were subject to the same work rules, policies and procedures.
23. None of the Plaintiffs is or was paid by the Defendant for required travel time, to and from one of Defendant's facilities in Maryland or Pennsylvania, or, from and to customer PEPCO's worksite in the District of Columbia.
24. All of the Plaintiffs were required to travel in Defendant's vehicles, either as a driver or as a passenger, from its out-of-state facility to the PEPCO worksite in the District of Columbia.

25. The Defendant's vehicles in which the Plaintiffs' travelled weighed less than 10,000 pounds.
26. The Defendant's vehicles were equipped with the tools and equipment necessary for the Plaintiffs to do their job in servicing PEPCO in the District of Columbia.
27. Plaintiffs were never given the option of taking the work vehicles to their homes after they completed work.
28. Plaintiffs were required to pick-up and drop-off the work vehicles at Defendant's various locations each and every work day, when they completed their work in the District of Columbia.
29. Plaintiffs were subject to discipline if they did not pick up and return the work vehicle to Utility Line's facilities at the end of the day.
30. Plaintiffs were subject to discipline by Defendant when travelling in Defendant's vehicles.
31. Plaintiffs were never told that travelling in the Defendant's vehicle to and from PEPCO was optional.
32. Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke were also not paid for required data entry work that they performed off the work-site in the District of Columbia.
33. Plaintiffs supervisors were aware that the "off-the-clock" data entry work was being done, and that employees were not being paid for such work.
34. None of the Plaintiffs hired or fired employees.
35. None of the Plaintiffs were paid on a salary basis; all were paid on an hourly basis.
36. Further, when the Plaintiffs worked more than 40 hours in a workweek, they were not paid the proper overtime rate for the required travel time.
37. As a result of Defendant not paying wages to Plaintiffs for required "off-the-clock"

data entry work, Plaintiffs were not paid for all hours worked.

38. Further, when Plaintiffs worked more than 40 hours in a workweek, they were not paid the proper overtime rate for the required “off-the-clock” data entry work.

39. Plaintiffs worked in excess of 40 hours in a workweek, but were not paid overtime wages for all hours worked in excess of 40 hours.

DAMAGES

40. Defendant is in sole possession of the documents and records that contain information that should establish the precise wages owed to each Plaintiff.

41. Defendant’s failure to pay Plaintiffs the proper overtime wages and wages for all hours worked was not done in good faith.

42. Defendant did not rely on any advice or guidance from the District of Columbia government in not paying the Plaintiffs the wages owed to them under the MWL and PCWL.

43. Defendant did not obtain a written legal opinion or guidance statement from a law firm that advised the Defendant that Defendant did not have to pay Plaintiffs for the required travel time, as required under the laws of the District of Columbia.

44. Defendant’s conduct in not paying the Plaintiffs the wages for all hours worked, and overtime wages, was intentional, willful and reckless, and in disregard for the rights of workers under the MWL and PCWL.

45. There is no bona fide dispute that the Defendant violated the MWL and PCWL.

46. The precise amount of damages incurred by Plaintiffs will only be known through discovery.

47. None of the Plaintiffs have waived, surrendered, released or relinquished any rights for the wages owed to them under the laws of the District of Columbia.

VIOLATIONS OF LAW

Count I – Individual Claim for Required Travel Time, Violations of the District of Columbia Payment and Collection of Wages Law, Failure to Pay Wages for All Hours Worked

48. All allegations of this Complaint are incorporated fully in this Count.
49. Plaintiffs are entitled to be compensated for all hours worked under the District of Columbia PCWL, D.C. Code Ann. §§ 32-1302 and 32-1308.
50. Defendant failed to compensate Plaintiffs for all hours worked in connection with required travel time from Defendant’s facilities, located outside the District of Columbia, to the PEPCO worksite in Washington, D.C.
51. Plaintiffs’ travel time is “working time” within the meaning of that term as defined in the District of Columbia MWL, D.C. Code Ann. § 32-1002(10) (“working time means all the time the employee...is required to travel in connection with the business of the employer.”).
52. Defendant’s actions in failing to pay wages for all hours worked were not the result of a bona fide dispute under the District of Columbia PCWL, D.C. Code Ann. § 32-1304.
53. Defendant refused and still refuses to pay all of the wages owing to Plaintiffs
54. There is no bona fide dispute as to the wages owed to Plaintiffs.
55. Defendant failed to pay Plaintiffs for all hours worked, at the time Defendant was required to pay them, under the District of Columbia PCWL.
56. Relief requested - Plaintiffs request that: (a) Defendant be ordered to pay Plaintiffs for all hours worked in connection with required travel time; (b) liquidated damages be awarded to Plaintiffs; (c) Plaintiffs be awarded pre- and post-judgment interest; and (d) attorney fees and costs be awarded to undersigned counsel. In addition, Plaintiffs request that the Court: (a) enter a declaratory judgment that the Defendant violated

Plaintiffs' rights under the District of Columbia PCWL; (b) enjoin Defendant to comply with the PCWL; and (c) award such further injunctive relief that the Court deems just and proper.

Count II –Individual Claim for Required “Off-The-Clock” Work, Violations of the District of Columbia Payment and Collection of Wages Law, Failure to Pay Wages for All Hours Worked

57. All allegations of this Complaint are incorporated fully in this Count.
58. Plaintiffs Moore and Cooke are entitled to be compensated for all hours worked under the District of Columbia PCWL, D.C. Code Ann. §§ 32-1302 and 32-1308.
59. Defendant failed to compensate Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke for all hours worked in connection with required data entry work that they performed off the work-site in the District of Columbia.
60. Defendant's actions in failing to pay wages for all hours worked were not the result of a bona fide dispute under the District of Columbia PCWL, D.C. Code Ann. § 32-1304.
61. Defendant refused and still refuses to pay all of the wages owing to Plaintiffs Moore and Cooke.
62. There is no bona fide dispute as to the wages owed to Plaintiffs Moore and Cooke.
63. Defendant failed to pay Plaintiffs Moore and Cooke for all hours worked, at the time Defendant was required to pay them, under the District of Columbia PCWL.
64. Relief requested - Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke request that: (a) Defendant be ordered to pay Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke for all hours worked in connection with required “off the clock” work; (b) liquidated damages be awarded to Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke; (c) Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke be awarded pre- and post-judgment interest; and (d) attorney fees and costs be awarded to undersigned counsel. In

addition, Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke request that the Court: (a) enter a declaratory judgment that the Defendant violated Plaintiffs' rights under the District of Columbia PCWL; (b) enjoin Defendant to comply with the PCWL; and (c) award such further injunctive relief that the Court deems just and proper.

Count III – Individual Claim for Required Travel Time, Violations of the District of Columbia Minimum Wages Law, Failure to Pay Overtime Compensation.

65. All allegations of this Complaint are incorporated fully in this Count.
66. Plaintiffs were required to work in excess of forty (40) hours during a workweek.
67. The nature of each Plaintiff's job duties made Plaintiffs non-exempt employees under the District of Columbia MWL § 32-1004, entitling them to be paid overtime for hours worked in excess of a forty-hour workweek.
68. Section 32-1003(c) of the District of Columbia MWL requires "compensation for employment in excess of 40 hours at a rate not less than 1 1/2 times the regular rate at which the employee is employed."
69. Defendant failed to compensate Plaintiffs at the proper overtime rate for all overtime hours worked in connection with required travel time from Defendant's facilities in Maryland to the PEPCO worksite in Washington, D.C.
70. Plaintiffs' travel time is "working time" within the meaning of that term as defined in the District of Columbia MWL, D.C. Code Ann. § 32-1002(10) ("working time means all the time the employee...is required to travel in connection with the business of the employer.").
71. Defendant's failure to pay Plaintiffs the proper overtime wages was not in good faith.
72. As a result of the unlawful acts of Defendant, Plaintiffs have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

73. Relief requested - Plaintiffs request that (a) Defendant be ordered to pay Plaintiffs for all overtime hours worked in connection with required travel time at the proper overtime rate; (b) liquidated damages be awarded to Plaintiffs; (c) Plaintiffs be awarded pre- and post-judgment interest; and (e) attorney fees and costs be awarded to undersigned counsel. In addition, Plaintiffs request that the Court: (a) enter a declaratory judgment that the Defendant violated Plaintiffs' rights under the District of Columbia MWL; (b) enjoin Defendant to comply with the MWL; and (c) award such further injunctive relief that the Court deems just and proper.

Count IV –Individual Claim for Required “Off-The-Clock Work”, Violations of the District of Columbia Minimum Wages Law, Failure to Pay Overtime Compensation.

74. All allegations of this Complaint are incorporated fully in this Count.

75. Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke were required to work in excess of forty (40) hours during a workweek.

76. The nature of each Plaintiffs' job duties made Plaintiffs non-exempt employees under the District of Columbia MWL, D.C. Code § 32-1004, entitling them to be paid overtime for hours worked in excess of a forty-hour workweek.

77. Section 32-1003(c) of the District of Columbia MWL requires “compensation for employment in excess of 40 hours at a rate not less than 1 1/2 times the regular rate at which the employee is employed.”

78. Defendant failed to compensate Plaintiffs Moore and Cooke at the proper overtime rate for all overtime hours worked in connection with required data entry work that they performed off the work-site in the District of Columbia.

79. Defendant's failure to pay Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke the proper overtime wages was not in good faith.

80. As a result of the unlawful acts of Defendant, Plaintiffs Ahlfeldt, Wagaman, Moore

and Cooke have been deprived overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

81. Relief requested - Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke request that: (a) Defendant be ordered to pay Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke for all overtime hours worked in connection with required "off the clock" work at the proper overtime rate; (b) liquidated damages be awarded to Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke; (c) Plaintiffs Ahlfeldt, Wagaman, Moore and Cooke be awarded pre- and post-judgment interest; and (d) attorney fees and costs be awarded to undersigned counsel. In addition, Plaintiffs request that the Court: (a) enter a declaratory judgment that the Defendant violated Plaintiffs' rights under the District of Columbia MWL; (b) enjoin Defendant to comply with the MWL; and (c) award such further injunctive relief that the Court deems just and proper.

Respectfully submitted,
ANDALMAN & FLYNN, P.C.

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REQUEST FOR JURY TRIAL

Plaintiffs request that a jury of their peers hear and decide all possible claims.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of June 2011, I served a copy of Plaintiffs' Second Amended Complaint, Inc., by First Class U.S. Mail, postage paid on the following counsel for Defendant:

Robert P. Floyd, III
Constangy, Brooks & Smith, LLP
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Fairfax, Virginia 22030

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