

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SUSAN L. ROWE, CHRISTINE M. KLEIBER, TAMMY D. BURDEN, JULIE A. SCHROPP, STACEY L. GOOD, individually and on behalf of themselves and others similarly situated,

Plaintiffs,

v.

KIMBERLY KAY REYNOLDS, in her official capacity as Governor State of Iowa, JAMES M. KURTENBACH, in his official capacity with Iowa Department of Administrative Services; and the STATE OF IOWA,

Defendants.

Case No.: _____

**CLASS ACTION COMPLAINT
AND
JURY DEMAND**

Plaintiffs, Susan L. Rowe, Christine M. Kleiber, Tammy D. Burden, Julie A. Schropp, Stacey L. Good, individually, and on behalf of all other similarly situated Registered Nurses, for their Complaint against Defendants Kimberly Kay Reynolds, in her official capacity, James M. Kurtenbach, in his official capacity, and the State of Iowa, and allege as follows:

1. The Plaintiffs are current or former employees of the State of Iowa and bring this action on behalf of themselves and other similarly situated current or former Registered Nurse employees of the said Defendants, for injunctive relief and to recover overtime compensation and interest thereon from the State of Iowa, liquated damages, attorney fees and costs under the provisions of The Fair Labor Standards Act of 1938, as amended, hereinafter referred to as the Act and Iowa Code 91A Iowa Wage Payment Collection.

2. All Plaintiffs are citizens of the United States and residents of the State of Iowa.

3. All Plaintiffs are current or former employees of the State of Iowa, and have been improperly classified, since July 1, 2017 through and including the present, by Defendants as employees that are exempt from the overtime provisions of the Fair Labor Standards Act of 1938, as amended and Iowa Code 91A Iowa Wage Payment Collection.

4. The other similarly situated individuals represented by the named Plaintiffs are current or former Registered Nurse employees of the State of Iowa, who have been improperly classified, since July 1, 2017 through and including the present, by Defendants as employees that are exempt from the overtime provisions of the Fair Labor Standards Act of 1938, as amended and Iowa Wage Payment Collection.

Jurisdiction

5. The FLSA and Iowa Code 91A IWPCCL authorize court actions by private parties to recover damages for violation of its wage and hour provisions or failure to timely pay wages. Jurisdiction in this Court over Plaintiff's FLSA claim is based on 29 U.S.C. § 216(b), and on Iowa Code 91A, IWPCCL.

6. Venue in Polk County is proper as this action is brought against the Defendants Reynold, Kurtenbach and the State of Iowa, a governmental entity with its principal place of business located in Des Moines, Iowa.

Parties

7. Plaintiffs Susan L. Rowe, Christine M. Kleiber, Tammy D. Burden, Julie A. Schropp and Stacey L. Good (herein collectively "Plaintiffs") bring this lawsuit as a collective action and/or class action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, and the Iowa Wage Payment Collection Law ("IWPCCL"), Iowa Code § 91A.1 *et seq.*, to recover unpaid wages owed to themselves and similarly situated registered nurses employed by Defendant

State of Iowa. Each Plaintiff's consent to bring this action pursuant to 29 U.S.C. § 216(b) is attached hereto in "Exhibit 1."

8. Plaintiff, Susan L. Rowe is a resident of Iowa and is employed by Defendant State of Iowa as a Registered Nurse at Woodward Resource Center and is paid \$40.32 per hour.

9. Plaintiff Christine M. Kleiber is a resident of Iowa and is employed by Defendant State of Iowa as a Registered Nurse at Iowa Medical and Classification Center and is paid \$34.87 per hour.

10. Plaintiff, Tammy D. Burden is a resident of Iowa and is employed by Defendant State of Iowa as a Registered Nurse at Iowa State Prison and is paid \$39.94 per hour.

11. Plaintiff, Julie A. Schropp is employed by Defendant State of Iowa as a Registered Nurse at Iowa Medical and Classification Center and is paid \$40.32 per hour.

12. Plaintiff, Stacey L. Good is employed by Defendant State of Iowa as a Registered Nurse at Iowa Medical and Classification Center and is paid \$34.36 per hour.

13. The Defendant Kimberly Kay Reynolds, sued in this action in her official capacity, is the current Governor of the State of Iowa, the employer of Plaintiffs and Plaintiffs class. As the Governor of the State of Iowa, employer herein, it is the responsibility, obligation and duty of Defendant Governor Reynolds to put into effect procedures for and to require payment of proper overtime pay to the employees of the State of Iowa and otherwise comply in this regard with both federal and state law.

14. The Defendant James M. Kurtenbach, sued herein in his official capacity, is the newly appointed Director of Iowa Department of Administrative Services, who will officially assume those Director duties on July 1, 2019. As the Director of Administrative Services for the State of Iowa, employer herein, it is the responsibility, obligation and duty of Defendant Mr.

Kurtenbach to put into effect procedures for and to require payment of proper overtime pay to the employees of the State of Iowa and otherwise comply in this regard with both federal and state law.

15. The State of Iowa is a governmental entity, within the territorial jurisdiction of this Court, having its principal office and its place of business located in Des Moines, Polk County, Iowa and is an employer within the meaning of Section 3(d) of the Act and Iowa Code Chapter 91A. Defendant employs or has employed the Plaintiffs and other similarly situated employees as alleged herein. It is the responsibility, obligation and duty of the State of Iowa, as employer, to put into effect procedures for and to require payment of proper overtime pay to the employees of the State of Iowa and otherwise comply in this regard with both federal and state law.

General Allegations

16. At all times relevant hereto, Plaintiffs have been or are employed as Registered Nurses working for the State of Iowa.

17. Plaintiffs historically have been, in the years prior to July 1, 2017, covered by the provisions of a Collective Bargaining Agreement (CBA) between the Defendant, State of Iowa and American Federation of State, County and Municipal Employees, a trade union (“AFSCME”).

18. The provisions of the CBA in effect in years prior to July 1, 2017, and the other provisions of Iowa law and regulation, provided for the Plaintiffs, and the Plaintiff class herein, to be hourly employees, not-exempt from the overtime obligations and payment.

19. Under the provisions of the CBA in effect in years prior to July 1, 2017, Plaintiffs, and members of Plaintiff class, received payment of overtime for work performed as employees of the State of Iowa.

20. Effective July 1, 2017, the State of Iowa entered into a CBA again with AFSCME on behalf of the Plaintiffs and the Plaintiffs class.

21. The July 1, 2017 effective CBA, and the CBA agreed in 2019, and the regulations, have continued in the provision of the Plaintiffs as hourly employees by similarly, as before, and continue to set forth the pay grades and hourly rates to be paid to Plaintiffs.

22. Pursuant to the FLSA and the IWPCCL employee Registered Nurses paid on an hourly basis are required to be paid overtime for hours worked in excess of 40 hours per week.

23. Despite the Plaintiffs, and Plaintiff Registered Nurse class, constituting non-exempt hourly employees, the Defendants have failed and refused to pay, and continue to fail and refuse to pay, to the Plaintiffs and the Plaintiff class proper overtime wage payments.

24. Furthermore, pursuant to the FLSA and IWPCCL Registered Nurses primarily performing non-professional duties shall also be entitled to overtime pay.

25. The Plaintiffs and Plaintiffs' Registered Nurse Class herein were both hourly employees and/or primarily performing non-professional duties, both during normal work hours and during overtime hours.

26. The Plaintiffs, and members of the Plaintiff Registered Nurse Class, were, and are, at times, required to work overtime performing duties along side with, and not different from, the duties of non-exempt employees.

27. Defendants have paid the State of Iowa employed Registered Nurses wages at the same hourly rate for *all* their work time without premium pay for overtime hours.

28. Plaintiffs, and members of Plaintiff Class, have regularly worked in excess of 40 hours per week and were not paid time and a half overtime as provided by the FLSA and IWCPL.

Class and Collective Action Allegations

FLSA Collective Action Allegations

29. Plaintiff brings Counts under the FLSA and IWPCCL as an “opt-in” collective action on behalf of similarly situated Plaintiffs pursuant to 29 U.S.C. § 216(b).

30. The FLSA claims may be pursued by those who opt-in to this case pursuant to 29 U.S.C. § 216(b).

31. Plaintiffs, individually and on behalf of other similarly situated employees, seek relief on a collective basis challenging Defendant’s practice of failing to pay employees overtime (time and a half) wages. The number and identity of other plaintiffs yet to opt-in may be ascertained from Defendants’ records, and potential class members may be notified of the pendency of this action via mail or e-mail.

32. Plaintiff and all of Defendants’ Registered Nurse employees are similarly situated in that:

- a. They have worked as Registered Nurse’s providing care and assistance to patients at hospitals and or health care facilities;
- b. They have spent sufficient time performing non-professional duties that are routinely assigned;
- c. They have not been paid overtime wages for all of their work time in excess of 40 hours per week;
- d. They were subject to the same pay policies and practices of Defendants.

33. Plaintiff and all of Defendants’ Registered nurse employees are similarly situated.

Registered Nurse Class Allegations

34. Plaintiffs bring Count as a class action pursuant to Iowa. R. Civ. P. 1.261 *et. seq.*, on behalf of themselves and as the Class Representatives of the following persons (the “Registered Nurse Class”):

All current and former Registered Nurses employed by Defendant State of Iowa since July 1, 2017.

35. The state law claim, if certified for class-wide treatment, is brought on behalf of all similarly situated persons who do not opt-out of the Registered Nurse Class.

36. Plaintiff’s state law claim satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of a class action pursuant to Fed. R. Civ. P. 23.

37. The Registered Nurse Class satisfies the numerosity standard as it consists of at least hundreds of persons who are geographically dispersed and, therefore, joinder of all members of the Registered Nurse Class in a single action is impracticable.

38. Questions of fact and law common to the Registered Nurse Class predominate over any questions affecting only individual members. The questions of law and fact common to the Registered Nurse Class arising from Defendant’s actions include, without limitation:

- a. Whether Defendant failed to pay overtime (time and a half) wages to members of the Registered Nurse Class as required by the FLSA and IWPCCL;
- b. Whether Defendants’ failure to pay overtime wages was “intentional” within the meaning of the FLSA and IWPCCL;
- c. Whether Defendants’ Registered Nurse’s spent their work time performing non-professional duties that were routinely assigned;

39. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency,

economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claims.

40. Plaintiffs' claim is typical of those of the Registered Nurse Class in that:

- a. Plaintiffs and the Registered Nurse Class have worked as Registered Nurses for Defendant State of Iowa patient care;
- b. Plaintiffs and the Registered Nurse Class have spent their work time performing non-professional duties;
- c. Defendants have not paid Plaintiffs and the Registered Nurse Class overtime (time and a half) wages for the time they spent performing duties;
- d. Plaintiffs and the Registered Nurse Class were subject to the same pay policies and practices of Defendants;

41. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendants have acted or refused to act on grounds generally applicable to the Registered Nurse Class. Plaintiffs are adequate representatives of the Registered Nurse Class because they are members of the Registered Nurse Class and their interests do not conflict with the interests of the members of the Registered Nurse Class they seek to represent. The interests of the members of the Registered Nurse Class will be fairly and adequately protected by Plaintiffs and the undersigned counsel, who have extensive experience prosecuting complex class action litigation.

42. Maintenance of this action as a class action is superior to other available methods for fairly and efficiently adjudicating the controversy as members of the Registered Nurse Class have little interest in individually controlling the prosecution of separate class actions, no other litigation is pending over the same controversy, it is desirable to concentrate the litigation in this

Court due to the relatively small recoveries per member of the Registered Nurse Class, and there are no material difficulties impairing the management of a class action.

43. It would be impracticable and undesirable for each member of the Registered Nurse Class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Registered Nurse Class members.

COUNT I: Violation of the Fair Labor Standards Act

44. Plaintiffs restate and re-allege paragraphs 1- 43 as if stated herein.

45. Defendants are subject to FSLA's overtime requirements as stated in 29 U.S.C.A. §207.

46. Defendants have failed to pay Plaintiffs and the Plaintiff Registered Nurse Class overtime for their work that is properly to be paid under 29 U.S.C.A. §207.

47. Plaintiffs and Plaintiff Registered Nurse Class have been harmed by the failure to pay the appropriate amount.

48. The Defendants knew that this overtime was continuing in nature and the duties being performed were an integral and indispensable part of the employee's principal work activity.

49. Sovereign immunity has been waived in this matter pursuant to Iowa Code 91A.8 and 91A.10(3).

50. Defendant State of Iowa owe Plaintiffs and Plaintiff Class the wages for time and a half overtime work.

51. Defendant State of Iowa is liable for unpaid wages, liquidated wages, attorney fees and costs pursuant to 29 U.S.C.A. §216.

52. Defendants should be ordered by injunctive relief to properly classify and pay, in the future, in compliance with federal and state law as to overtime obligations.

WHEREFORE Plaintiffs, individually and on behalf of the Registered Nurse Class demand judgment against Defendants and pray for: (1) compensatory damages; (2) liquidated damages; (3) attorneys' fees and costs as allowed by 29 U.S.C.A. §201 *et. seq.*; (4) pre-judgment and post-judgment interest as provided by law; (5) injunctive relief requiring compliance with FLSA law in the future; and (6) such other relief as the Court deems fair and equitable.

**Count II: Violation of the Iowa Wage Payment Collection Law on Behalf of the
Registered Nurses**

53. Plaintiffs reassert and re-allege paragraphs 1-52 as it stated herein.

54. At all relevant times herein, Plaintiff and the Registered Nurses have been entitled to the rights, protections, and benefits provided under the IWPCCL, Iowa Code § 91.A.1 *et seq.*

55. The IWPCCL requires "employers" to pay all wages owed to their "employees" less lawful deductions. Iowa Code §§ 91.A.3 & 91.A.2(3), (4) & (7).

56. During all times relevant to this action, Defendant State of Iowa was the "employer" of Plaintiffs and the Plaintiff Registered Nurses Class within the meaning of the IWPCCL. Iowa Code § 91.A.1(4).

57. During all times relevant to this action, Plaintiffs and the Registered Nurses were Defendant State of Iowa's "employees" within the meaning of the IWPCCL. Iowa Code § 91.A.1(3).

58. Defendants have violated the IWPCCL by failing to pay Plaintiffs and the Registered Nurses for overtime hours. Code § 91.A.3.

59. Defendants have intentionally refused to pay all wages due as set forth above to Plaintiffs the Registered Nurse Class in violation of the IWPCCL. *Id.*

60. Defendants are not permitted by federal or state law to withhold or divert any portion of the wages of Plaintiffs and the Registered Nurse Class that are at issue in this suit.

61. Plaintiffs and the Registered Nurses Class are entitled to damages from the State of Iowa equal to the overtime wage due within two years preceding the filing of this Complaint plus periods of equitable tolling. Iowa Code § 91.A.8.

62. Defendants' conduct has been intentional, and therefore Plaintiffs and the Registered Nurses Class are entitled to recover an additional equal amount as liquidated damages. *Id.*

63. Plaintiffs and the Registered Nurses Class are entitled to an award of pre-judgment and post-judgment interest at the applicable legal rate.

64. Defendant State of Iowa is liable for Plaintiffs' and Plaintiffs' Class usual and necessary costs and attorneys' fees incurred in this action. *Id.*

WHEREFORE Plaintiffs, individually, and on behalf of the Registered Nurse Class demand judgment against Defendants and pray for: (1) compensatory damages; (2) liquidated damages; (3) attorneys' fees and costs as allowed by Iowa Code § 91.A.8; (4) pre-judgment and post-judgment interest as provided by law; and (5) injunctive relief to require future compliance with law; and (6) such other relief as the Court deems fair and equitable.

Demand for Jury Trial

Plaintiffs, individually and on behalf of the Plaintiff Class herein, hereby request a trial by jury of all issues triable by jury.

Respectfully submitted,

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