

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

NICOLE COLLYMORE and FAISAL
MALIK, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

NORTH SHORE UNIVERSITY
HOSPITAL,

Defendant.

No. 16-cv-6584

**COMPLAINT FOR VIOLATION OF
FAIR LABOR STANDARDS ACT AND
NEW YORK LABOR LAW**

JURY TRIAL DEMANDED

Plaintiffs Nicole Collymore and Faisal Malik (“Plaintiffs”), by their undersigned counsel, allege as follows:

NATURE OF THE ACTION

1. This is a collective action under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* (the “FLSA”), and a class action under the New York Labor Law (the “NYLL”) against Defendant North Shore University Hospital (“North Shore” or “Defendant”) for failure to pay for all hours worked and/or failure to pay overtime to Plaintiffs and all similarly situated employees, including all nurses, nurse practitioners, physician assistants, and any other employee of Defendants who works 12-hour shifts (“Flex Shifts”) and works a wholly or partially unpaid “13th Shift” (the “Employees” or the “Class”).

2. Plaintiffs and the Class are non-exempt, hourly-paid employees who work three 12-hour shifts per week, thus working twelve 12-hour shifts per month. Defendant, however, requires Plaintiffs and the Class to work an additional shift (the “13th Shift”) once per month, which is mostly or entirely unpaid. As a result of requiring Plaintiffs and the Class to work the 13th Shift, Defendant fails to pay Plaintiffs and the Class for all hours worked and/or at overtime rates for hours worked over 40 in a work week, in violation of the FLSA and the NYLL.

Defendant's requirement of a 13th Shift is a regular practice and has been ongoing since Plaintiffs began working for Defendant and, on information and belief, had been ongoing for years before Plaintiffs' employment.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. §1331 and 29 U.S.C. §216(b). This Court has jurisdiction over Plaintiffs' NYLL claims pursuant to 28 U.S.C. §1367.

4. Venue is proper in this District because Defendant resides in this District, and a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, including but not limited to Plaintiffs' employment by Defendant and the employment of other Class members by Defendant.

THE PARTIES

5. Plaintiff Nicole Collymore is a citizen of the State of New York, residing in Hempstead. Plaintiff is a non-exempt, hourly-paid Registered Nurse and has been employed by Defendants in this position since in or about 2010. Plaintiff works on the Flex Shift. Plaintiff, on a regular basis, is required to work the 13th Shift and, like the other members of the Class, is not paid at overtime rates for that shift. Plaintiff's current hourly pay rate is \$53.11, and Plaintiff receives a differential rate of \$55.42 for certain shifts. Accordingly, assuming Plaintiff does not work a shift with a differential, Plaintiff's overtime rate of time-and-one-half her regular rate is \$79.66. Although Plaintiff is not paid at overtime rates, or potentially at all, for overtime hours during her 13th Shift, Plaintiff is paid at overtime rates for hours worked over 40 when she works overtime on shifts other than the 13th Shift.

6. In the work week beginning on Sunday, August 14, 2016 and ending on Saturday, August 20, 2016, Plaintiff worked a 13th Shift and was not paid for some or all of the 13th Shift. In total, Plaintiff worked 46 hours during the week of August 14-20, yet her pay stub does not reflect any pay at time-and-one-half her regular hourly rate as required by the FLSA and the NYLL. Moreover, Plaintiff's time card for the two-week pay period in which August 14-20 was included shows that Plaintiff worked 80.5 hours—46 hours in the week of August 14-20 and 34.5 hours in the week of August 21-27—yet her pay stub shows that she was only paid for 75 hours (all at her regular rate and not her overtime rate). For the 6 hours of unpaid overtime Plaintiff worked in the week of August 14-20, Plaintiff would be owed \$477.96 ($\79.66×6), plus liquidated damages under both the FLSA and the NYLL.

7. Plaintiff Nicole Collymore's written consent to bring this action, pursuant to 29 U.S.C. §216(b), is attached hereto as Exhibit A.

8. Plaintiff Faisal Malik is a citizen of the state of New York, residing in Valley Stream. Plaintiff Malik was employed full-time by Defendants from in or about 2011 or 2012 through August, 2015 and is currently employed on a part-time basis by Defendants. Plaintiff Malik, like Plaintiff Collymore, was employed as a non-exempt, hourly-paid Registered Nurse from the beginning of his employment through 2014, and as a non-exempt, hourly-paid Nurse Practitioner from 2014 through 2015. Plaintiff worked on the Flex Shift and, on a regular basis, was required to work the partially or fully unpaid 13th Shift. Although Plaintiff was not paid at overtime rates, or potentially at all, for overtime hours during his 13th Shift, Plaintiff was paid at overtime rates for hours worked over 40 when he worked overtime on shifts other than the 13th Shift.

9. Plaintiff Faisal Malik's written consent to bring this action, pursuant to 29 U.S.C. §216(b), is attached hereto as Exhibit A.

10. Defendant North Shore University Hospital ("Defendant" or "North Shore"), located at 300 Community Drive, Manhasset, New York, is an 806-bed hospital with a staff of over 3,000 physicians. North Shore is part of Northwell Health, previously known as the North Shore-LIJ Health System, the third largest non-profit secular healthcare system in the United States, based on number of beds. North Shore admits over 61,000 patients each year, with over 27,000 annual surgeries performed and over 5,700 births per year taking place at North Shore. Plaintiffs estimate that the hospital employs more than 1,000 nurses, many of whom work on the Flex Shift and work a partially or fully unpaid 13th Shift, as well as hundreds or thousands of other employees who also work a Flex Shift and a fully or partially unpaid 13th Shift.

COLLECTIVE ALLEGATIONS

11. Plaintiffs bring the First Count as a collective action pursuant to Section 216(b) of the FLSA, 29 U.S.C. §216(b) on behalf of themselves and other similarly situated employees (the "Collective" or the "Employees"), which shall include:

All employees of Defendant, including all nurses, nurse practitioners, physician assistants, and any other employee, who work on Flex Shifts and work a 13th Shift, from November 28, 2013 through the date the end of the Fair Labor Standards Act opt-in period.

12. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and the Collective. There are likely hundreds of similarly situated current and former employees of Defendant who have been underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendant, are readily identifiable, and can be located through Defendant's records that Defendant is required to

create and maintain under applicable federal and state law. Notice should be sent to the Collective pursuant to 29 U.S.C. §216(b).

CLASS ACTION ALLEGATIONS

13. Plaintiffs brings this class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of the following class of employees (the “Class”):

All employees of Defendant, including all nurses, nurse practitioners, physician assistants, and any other employees, who work on Flex Shifts and work a 13th Shift, from November 28, 2010 through the date a judgment is entered in this action.

14. Members of the Class are so numerous that joinder of all members would be impracticable. Plaintiffs estimate that there are hundreds or thousands of members of the Class.

15. Questions of law and fact are common to all the members of the Class that predominate over any questions affecting only individual members, including:

- a. Whether Defendant failed to pay Plaintiffs and the Class for all hours worked up to 40 per workweek;
- b. Whether Defendant failed to pay Plaintiffs and the Class at overtime rates for hours worked over 40 per workweek;
- c. Whether Defendant’s conduct violated the NYLL; and
- d. The amount by which Plaintiffs and the Class were damaged and/or whether Plaintiff and the Class are entitled to liquidated damages and prejudgment interest.

16. The claims of Plaintiffs are typical of the claims of the members of the Class. Plaintiffs have no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs.

17. Plaintiffs will protect the interests of the Class fairly and adequately, and Plaintiffs have retained attorneys experienced in class action litigation.

18. A class action is superior to all other available methods for this controversy because:

a. The prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests;

b. The prosecution of separate actions by the members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, which would establish incompatible standards of conduct for defendant;

c. Defendant acted or refused to act on grounds generally applicable to the Class; and questions of law and fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

d. Employees who are currently employed by Defendant are likely to fear retaliation and/or the loss of their employment, and thus will likely not commence their own actions.

SUBSTANTIVE ALLEGATIONS

19. Plaintiffs and the Employees are non-exempt, hourly paid employees who work on the Flex Shift and work three shifts per week.

20. Approximately once per month, Plaintiffs and the Employees are/were required to work a 13th Shift—one extra shift in a week—and are not paid for some or all of the hours worked on that 13th Shift.

21. For example, Plaintiff Nicole Collymore was required to work four shifts during the week of August 14-20, 2016, for a total of 46 hours worked that week, yet she was not paid for some or all of the 13th Shift and no overtime pay appears on her pay stub for that week. Plaintiff Nicole Collymore has worked 13th Shifts throughout her employment by Defendant and is either not paid at all or was paid at her regular hourly rate, rather than at overtime rates, for the 13th Shifts despite the fact that the 13th Shift caused Plaintiff to work over 40 hours in a work week.

22. Plaintiff Faisal Malik frequently worked a 13th Shift and, like Plaintiff Nicole Collymore, was not paid at overtime rates, or at all, for the 13th Shift despite the fact that the 13th shift caused him to work more than 40 hours in a work week.

23. Plaintiffs were not the only Flex Shift employees who were required to work the 13th Shift while being denied overtime pay for hours worked over 40 in a work week. Rather, as Plaintiffs learned through extensive, repeated discussions with dozens of other employees, all or substantially all employees who work a 12-hour Flex Shift are required to work the unpaid 13th Shift. These employees, like Plaintiffs, are not paid for working the 13th Shift despite the fact that the 13th Shift causes them to work over 40 hours per work week. The 13th Shift requirement is imposed on all Employees.

24. Notably, “sister” hospitals of Defendant that are also part of Northwell Health but, unlike North Shore, are unionized, do not impose the requirement for an unpaid 13th Shift on their flex shift employees.

25. Plaintiffs are not exempt from the overtime requirements of the FLSA and the NYLL. Among other reasons, Plaintiffs and others similarly situated are not paid on a “salary basis.” Rather, they are paid on an hourly basis and their pay may be reduced based on the quantity of hours worked. Plaintiff Nicole Collymore’s pay has been reduced for missed work time including a sick day. This deduction was made pursuant to a uniformly-applied policy, contained in Defendant’s employee handbook, that states that employees are not paid for sick days if they call in less than two hours before their shift begins.

26. Moreover, Plaintiff Malik’s pay—like those of many other similarly situated employees—was docked in half-hour increments if he arrived late for work. This docking took place while Plaintiff Malik was both a Registered Nurse and a Nurse Practitioner.

COUNT I

Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*: Failure to Pay Overtime (Brought on Behalf of Plaintiffs and the Collective)

27. Plaintiffs incorporate and re-allege all of the preceding paragraphs as if they were fully set forth herein.

28. During the FLSA Class Period, Plaintiffs and others similarly situated were “employees” of Defendant within the meaning of the FLSA, 29 U.S.C. §203(e) and (g).

29. At all relevant times, Defendant has been an “employer” engaged in interstate “commerce” within the meaning of the FLSA, 29 U.S.C. §203.

30. At all relevant times, Defendant’s business has had annual gross revenues in excess of \$500,000. At all relevant times, Defendant and Plaintiffs have been engaged in interstate commerce.

31. Plaintiffs consent in writing to be parties to this action pursuant to 29 U.S.C. §216(b). Plaintiffs' written consent forms are attached hereto as Exhibit A and incorporated by reference.

32. Defendant was required to properly pay Plaintiffs and others similarly situated all wages due including applicable overtime wages for all hours worked in excess of 40 hours in a workweek.

33. During the FLSA Class Period, Defendant failed to pay Plaintiffs and the Employees all wages due including overtime wages of not less than one and one-half times the regular rate of pay for each hour worked in excess of 40 hours in a workweek to which they were entitled under the FLSA, 29 U.S.C. §207.

34. Defendant's violation of the overtime requirements of the FLSA was part of its regular business practice and constituted a pattern, practice, and/or policy.

35. As a result of Defendant's violations of the FLSA, Plaintiffs and others similarly situated have suffered damages by being denied overtime wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages in an amount equal to their unpaid wages, prejudgment and post judgment interest, reasonable attorneys' fees, and costs pursuant to 29 U.S.C. §216(b).

36. Defendant's unlawful conduct, as described above, was willful and intentional and/or was not in good faith. Defendant knew or should have known that the practices complained of herein were unlawful. Defendant knew that Plaintiffs and others similarly situated routinely worked in excess of forty hours per week and that Plaintiffs and others similarly situated were not paid for all hours worked.

37. Defendant has not made a good faith effort to comply with the FSLA with respect to the compensation of Plaintiffs and others similarly situated.

38. Because Defendant's violations of the FSLA have been willful, a three-year statute of limitations applies, pursuant to the FLSA, 29 U.S.C. §255(a).

COUNT II

New York Labor Law: Failure to Pay Straight Time and Overtime (Brought on Behalf of Plaintiffs and the NYLL Class)

39. Plaintiffs incorporate and re-allege all of the preceding paragraphs as if they were fully set forth herein.

40. Plaintiffs and the Employees were employees of Defendant within the meaning of The NYLL, Article 6, §190(2), and supporting New York regulations.

41. Defendant was an "employer" within the meaning of NYLL Article 6, §190(3), and any supporting regulations.

42. Defendant failed to pay Plaintiffs and the Employees for all hours worked up to 40 in a workweek, and overtime wages of not less than one and one-half times their regular rate of pay for each hour worked in excess of 40 hours in a workweek.

43. Defendant's failure to pay Plaintiffs and the Employees for all hours worked, and for straight time and overtime wages was willful and/or not in good faith within the meaning of NYLL, Article 19, §663. Defendant was aware of the requirements of the NYLL and continued to deprive Plaintiffs and the Employees of all wages owed.

44. Due to Defendant's violations of the NYLL, Plaintiffs and the Employees are entitled to recover from Defendant their unpaid wages, liquidated damages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant Plaintiffs and the Employees the following relief:

A. An order certifying this case as a collective action for the violations of the FLSA, as it pertains to the First claim under 29 U.S.C. §216(b) for the class of employees described herein;

B. An order certifying this case as a class action for violations of the NYLL as it pertains to the Second claim under Federal Rule of Civil Procedure 23 (a) and (b)(3) for the class of employees described herein, appointing Plaintiffs as Class Representatives, and appointing Plaintiffs' counsel as Class Counsel;

C. Award Plaintiffs and the class of employees described herein all statutory damages, compensatory damages, punitive damages, liquidated damages, pre-judgment interest, and post-judgment interest, statutory damages, and any other damages that may be just and proper;

D. Award Plaintiffs and the employees described herein their reasonable attorneys' fees, costs and expenses as authorized by law; and

E. Grant in favor of Plaintiffs and the Class such other relief as may be just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED: November 28, 2016

GARDY & NOTIS, LLP

By: s/Orin Kurtz
Mark C. Gardy
Orin Kurtz
Tower 56

126 East 56th Street, 8th Floor
New York, New York 10022
Tel: (212) 905-0509
Fax: (212) 905-0508
mgardy@gardylaw.com
okurtz@gardylaw.com

Attorneys for Plaintiff