

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

DAVID SMITH,)	
)	Cause No:
Plaintiff,)	
)	JURY TRIAL DEMANDED
vs.)	
)	
MACHINIST DISTRICT No. 9)	
)	
Serve:)	
)	
Mark Ripetto)	
12365 St. Charles Rock Road,)	
Bridgeton, MO 63044)	
)	
Defendant.)	

**PETITION FOR VIOLATION OF THE MISSOURI MINIMUM WAGE LAW AND
WRONGFUL TERMINATION**

Plaintiff David Smith brings this claim under the Missouri Minimum Wage Law (“MMWL”), Mo. Rev. Stat. § 290.500 *et seq.*, Missouri common law, and wrongful termination under the exception to the employment at will doctrine for exercising worker’s compensation rights, Mo Rev. Stat. § 287.780. In support thereof, Plaintiff states:

GENERAL ALLEGATIONS

1. Plaintiff is a citizen of the State of Missouri and currently resides at 10721 Sibley Court, Saint Louis, MO 63136.
2. Machinist District 9 (“Defendant” or “District 9”) is a Missouri business located at 12365 St. Charles Rock Road, Bridgeton, MO 63044.
3. At all times relevant to the allegations in this Petition, Plaintiff was an employee within the meaning of Mo. Rev. Stat. § 290.500(3) and § 287.020.

4. At all times relevant to the allegations in this Petition, Defendant was and is an employer within the meaning of Mo. Rev. Stat. § 290.500(4) and § 287.030.

5. Venue in this Court is proper because the allegations that give rise to this Petition occurred in St. Louis County, Missouri.

FACTUAL ALLEGATIONS

6. Defendant is a Machinist and Aerospace Union. Defendant provides resources, supports, and event space for Union meetings, parties, and other events. Defendant's events are set up and cleaned up by janitorial staff.

7. Plaintiff was employed by ABM, a janitorial management company, from July 27, 1997 to March 10, 2010. ABM was contracted by Defendant to provide janitorial services.

8. Plaintiff received several raises at ABM when ABM had a contract with Defendant. Roger Kleinschmidt, one of Defendant's managers, recommended ABM management give Plaintiff raises for all his hard work done for Defendant.

9. Because of this reputation as a hard worker, Defendant hired Plaintiff on March 10, 2010. Plaintiff left ABM and began working for Defendant at that time.

10. After Plaintiff started working for Defendant, other employees, such as Debbie Watson from the Welfare Department, and Roger Kleinschmidt, told Plaintiff he was a very hard-working employee. Roger Kleinschmidt told Plaintiff that he wished the District had hired him directly sooner. Roger Kleinschmidt also told Plaintiff that he wished he had employees like him, stating, "I could use two or three more Davids!"

11. At all times relevant to this Petition, Defendant employed Plaintiff as part of the building maintenance staff. As part of building maintenance staff, Plaintiff's job duties included setting up and cleaning up after meetings, parties, and shows. This often involved lifting and

moving heavy objects, such as tables, platforms, and chairs. Plaintiff also shoveled snow and helped make repairs around the building.

12. Plaintiff made \$42,300.00 annually at the time of his termination.

13. Plaintiff used Defendant's equipment and tools to complete his tasks and job duties.

The tools and equipment were kept on-site.

14. Plaintiff began each day by reporting to the building maintenance supervisor, James Crenshaw. James Crenshaw gave Plaintiff a list of tasks to complete each day. Plaintiff would be written up or suspended without pay if the list was not completed.

15. No employees reported to Plaintiff and Plaintiff did not direct the work of any District employees.

16. Plaintiff was not responsible for hiring, firing or determining the salaries of his co-workers. Plaintiff had no control over scheduling. Plaintiff's own schedule was made for him by James Crenshaw.

17. Plaintiff was generally scheduled to work eight-hour shifts.

18. However, Plaintiff often worked after his shift ended.

19. Sometimes this was required because the employee scheduled after Plaintiff did not arrive on time or at all. Sometimes this was required because the task-list given to Plaintiff by Mr. Crenshaw took longer than eight hours to complete.

20. If the daily task list was not completed, Plaintiff could be written up or suspended without pay.

21. While working at ABM under contract with Defendant, Plaintiff received overtime pay for all hours worked over 40 in a workweek.

22. However, after March of 2010, Defendant did not pay Plaintiff overtime pay when he worked over 40 hours a week, even though his job duties were the same.

23. On or around late 2012 or early 2013, Sue Biggs, the labor manager, told Plaintiff and the other staff members that she believed they would start receiving overtime soon. However, Plaintiff still did not receive overtime pay.

24. There was a time clock in the office. Defendant did not permit Plaintiff to report his time via the time clock. Instead, human resources provided Plaintiff with pay stubs that did not reflect his overtime hours.

25. Plaintiff repeatedly asked his supervisor, James Crenshaw, the CO, Mark Connor, and Tim Young, from HR, about overtime.

26. For example, in October 2016, several employees sustained injuries that caused them to be out of work for several weeks. Defendant required Plaintiff to work extra hours to cover for those employees. Even though this required Plaintiff to work over 40 hours in a workweek, he did not receive overtime pay.

27. When Plaintiff questioned Tim Young about the shortage in pay, he told Plaintiff he was not eligible for overtime.

28. When Plaintiff questioned Mark Connor about the shortage in pay, he echoed Tim Young and said, "You have a job, you have great benefits, what more could you want?"

29. At that time, Tim Young and Mark Connor also joked that Plaintiff and the other staff members were not allowed to use the time clock, which reported overtime hours for the ABM employees. Tim Young and Mark Connor both laughed at Plaintiff when he asked about the time clock. Tim Young stated, "You don't get to use the time clock, it is only for ABM employees. You all should just be glad you have a job."

30. Plaintiff brought up the overtime issue again in October 2017, since he was still not getting paid for his overtime hours. Plaintiff was working overtime at the time and commented to Tim Young, “It’s a shame I can’t use the time clock.” Tim Young told Plaintiff, “You ought to be to be glad you have a job. If you want to use that clock, there’s the door.”

31. Because of the comments by Tim Young and Mark Connor, Plaintiff feared he would be fired for asking about overtime.

32. Plaintiff sustained several injuries at work while employed by Defendant. Plaintiff injured his right foot in 2010, which resulted in three-to-four weeks off work. Plaintiff injured his neck twice, once in August of 2015 and again in May of 2015. Both neck injuries resulted in major surgeries. Plaintiff also tore his right meniscus in October of 2016. Plaintiff sustained these injuries in the course of his duties for Defendant.

33. On October 31, 2017, Plaintiff injured himself while lifting a table during his shift. Plaintiff notified his supervisor and the Human Resources director he needed to go to the emergency room.

34. The physicians at the emergency room informed Plaintiff he tore his left meniscus.

35. Immediately after Plaintiff sustained this injury, Plaintiff filed a worker’s compensation claim.

36. After the incident on October 31, 2017, Plaintiff forwarded paperwork from his doctor that indicated Plaintiff tore his meniscus at work and required four days off work to recover. On November 3, 2017, Plaintiff received a letter from Mark Connor via U.S. mail indicating he was terminated from the District.

COUNT I: VIOLATION OF THE MISSOURI MINIMUM WAGE LAW

37. Plaintiff hereby incorporates all previous paragraphs as if fully set forth herein.

38. At all relevant times, Plaintiff was an employee entitled to the rights, protections, and benefits provided under the MMWL, R.S.Mo. § 290.500, *et seq.*

39. At all relevant times, Defendant was an employer within the meaning of the MMWL.

40. Pursuant to the MMWL, employees are entitled to be paid at least minimum wage for all hours worked in each workweek, and also to be compensated at a rate of not less than one and one-half (1½) times the regular rate at which such employees are employed for all work performed in excess of forty (40) hours in a workweek.

41. Defendant, pursuant to policy and practices, violated the MMWL by refusing to pay Plaintiff the overtime wages to which he is legally entitled.

42. Pursuant to R.S.Mo. § 290.527, Plaintiff seeks damages equal to all unpaid wages due within two (2) years preceding the filing of this Petition plus periods of equitable tolling, liquidated damages, costs, and reasonable attorneys' fees. Plaintiff also seeks an award of pre-judgment and post-judgment interest at the applicable legal rate.

COUNT II: QUANTUM MERUIT

43. Plaintiff incorporates by reference, as if fully set forth herein, all preceding paragraphs of this Complaint.

44. Plaintiff performed work, for which Defendant received a benefit, without receiving full compensation.

45. Defendant appreciated the fact of the benefit conferred upon it by Plaintiff.

46. The acceptance and retention of said benefit by Defendant is inequitable in light of the fact that Plaintiff was uncompensated and under-compensated for the benefits conferred upon Defendant, as more fully described above.

47. The payment requested by Plaintiff for the benefits produced by him is based on customary and reasonable rates for such services or like services at the time and in the locality where the services were rendered.

48. Plaintiff seeks damages equal to all unpaid wages due within the five (5) years preceding the filing of this Complaint plus periods of equitable tolling. Plaintiff also seeks an award of pre-judgment and post-judgment interest at the applicable legal rate.

COUNT III: UNJUST ENRICHMENT

49. Plaintiff incorporates by reference, as if fully set forth herein, all preceding paragraphs of this Complaint.

50. Plaintiff performed work, for which Defendant received a benefit, without receiving full compensation.

51. Defendant appreciated the fact of the benefit conferred upon it by Plaintiff.

52. The acceptance and retention of said benefit by Defendant resulted in unjust enrichment in light of the fact that Plaintiff was uncompensated and under-compensated for the benefits conferred upon Defendant, as more fully described above.

53. Plaintiff seeks damages equal to all unpaid wages due within the five (5) years preceding the filing of this Complaint plus periods of equitable tolling. Plaintiff also seeks an award of pre-judgment and post-judgment interest at the applicable legal rate.

COUNT IV: WRONGFUL TERMINATION IN VIOLATION OF RSMO § 287.780

54. At all relevant times, Plaintiff incorporates by reference, as if fully set forth herein, all preceding paragraphs of his Petition.

55. Plaintiff entered in the performance of his duties in March 2010 and duly performed all the terms and conditions of his duties until November 3, 2017, at which time Defendant wrongfully discharged Plaintiff.

56. Plaintiff was ready, willing and able to continue in his position and to perform all the terms and conditions of that position.

57. The activities described in Paragraphs 30-33 are prohibited by Missouri Revised Statute §287.780.

58. Defendant is an employer within the meaning of Missouri Revised Statute §287.030.

59. Plaintiff was an employee within the meaning of Missouri Revised Statute §287.020.

60. Just prior to his termination, as described in paragraphs 32-34, Plaintiff filed a worker's compensation claim for injuries sustained during the course of employment, within the meaning of Missouri Revised Statute §287.020.

61. Defendant fired Plaintiff as retaliation for seeking financial redress for his injuries sustained at work.

62. Plaintiff's termination was in violation of Missouri law, which prohibits employees from being terminated in retaliation of his exercising compensation rights.

63. As a result of his termination, Plaintiff has sustained lost wages and other benefits of employment, emotional pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court to enter judgment in his favor and against Defendant and thereafter:

A. Declare the conduct engaged in by Defendant to be in violation of Plaintiff's rights;

B. Award Plaintiff such damages as are fair and reasonable, including lost wages and other benefits of employment, compensatory damages, emotional distress damages, punitive damages, liquidated damages, pre and post judgment interest, front pay, all in an amount over \$25,000.00;

C. Restore Plaintiff to his rightful position with Defendant or, in lieu of reinstatement, order front salary and benefits for the period remaining until normal retirement;

D. Award Plaintiff equitable relief of back salary and fringe benefits up to the date of reinstatement and prejudgment interest for that entire period, or front salary and benefits accrual;

E. Award Plaintiff his costs and attorneys' fees; and

F. Grant such other relief as it may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues triable by a jury in the complaint.

Law Offices of Thomas E. Kennedy, III, L.C.

By: /s/ Sarah Jane Hunt

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