

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Joyce Mazaras-Gjin, Michael Dennison, Susan Dunlap, Kevin Feathers, Barbara Gallagher, Oliver Holmes, Rob Howe, Ed Jensen, Nancy Lisovich, Barbara Margarite, Arthur Moses, Jennifer Piernik, John Rosanna, Phil Pusateri

Plaintiffs,

v.

Family Dollar Stores, Inc.  
Family Dollar Stores of Pennsylvania, Inc.

Defendant.

CIVIL DIVISION

CASE NO. GD-13-022316

COMPLAINT

**JURY TRIAL DEMANDED**

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**COMPLAINT**

Joyce Mazaras-Gjin, Michael Dennison, Susan Dunlap, Kevin Feathers, Barbara Gallagher, Oliver Holmes, Rob Howe, Ed Jensen, Nancy Lisovich, Barbara Margarite, Arthur Moses, Phil Pastouri, Jennifer Piernik, and John Rosanna (“Plaintiffs”), by and through their counsel Elizabeth Pollock-Avery, Esq. of Kraemer Manes & Associates LLC, and Margaret Schuetz Coleman of the Law Offices of Timothy P. O’Brien file this Complaint against Family Dollar Stores, Inc. and Family Dollar Stores of Pennsylvania, Inc. (“Defendants”) alleging the following:

## **I. Nature of the Action**

1. Plaintiffs bring this lawsuit against Defendants seeking all available relief under the Pennsylvania Minimum Wage Act ("PMWA"), 43 P.S. § 333.101, et seq and Pennsylvania Wage Payment and Collection Law of 1961 ("WPCL"), as amended, 43 Pa. Cons. Stat. Ann. §§ 260.1-260.45 .

2. The following allegations are based on personal knowledge of the Plaintiffs.

3. Plaintiff brings this Complaint to recover unpaid wages and overtime compensation and, where applicable, liquidated damages, pursuant to the Pennsylvania Minimum Wage and the Pennsylvania Wage and Collection Act of 1961.

4. Plaintiffs are entitled to unpaid overtime wages for all hours worked over 40 per week which the Defendant willfully refused to pay pursuant to the PMWA and the Wage Payment and Collection Law.

## **II. The Parties**

5. Plaintiffs are adult individuals residing in Pennsylvania and are current and former employees of Defendant.

6. Defendant Family Dollar Stores, Inc. is a business entity conducting business in the Commonwealth of Pennsylvania and having a corporate headquarters located at 10401 Monroe Road, Matthews, North Carolina, 28105.

7. Defendant Family Dollar Stores of Pennsylvania, Inc. is a corporation incorporated within Pennsylvania whose registered office address is in Dauphin County, Pennsylvania.

8. Defendants are "employers" within the meaning of the WPCL and the PMWA.

### **III. Facts**

9. All previous paragraphs are incorporated as though fully set forth herein.

10. Defendants operate discount stores located, among other places, Western Pennsylvania.

11. Plaintiffs are either employed or were formerly employed by Defendants.

12. Plaintiffs are or were employed as “Store Managers.”

13. Within each Pennsylvania Store, Defendants employ at least one worker who is paid a fixed salary and holds the job title of Store Manager.

14. Pursuant to Defendants’ uniform and companywide policies and practices, the primary duty of Plaintiffs and other Store Managers is *not* the management of their store or any department or subdivision thereof.

15. Store Managers lack discretion over the stores’:

- a. Merchandise selection;
- b. Prices;
- c. Sales promotions; and
- d. Layouts.

16. Defendants’ stores are setup exclusively by the Home Office and District Managers. For example, each store is provided a schematic layout and diagram of the store which shows

- a. Where each shelf must be;
- b. What product goes on each shelf;
- c. How all merchandise is to be displayed;
- d. How all signs, merchandising, and display information is to be used;
- e. How each “end cap” (the end of an aisle or gondola) should be displayed; and

f. What promotional product goes on the end cap.

17. Defendants recently introduced a system that made Store Manager participation in “counting stock, calculating amount to order, using MSI machine to order and transmit, calculate additional goods needed for ad bulletins and end cap programs” unnecessary. The new system or program automatically replenishes the store. Scanned items electronically and automatically report all goods and inventory to corporate. With no discretion, stores receive shipments from distribution.

18. The primary duty of the Store Managers is to perform the same non-managerial tasks that are performed by hourly store employees.

19. These non-managerial tasks include performing all Cashier tasks, including:

- a. Ring up sales on cash register, receive money/check and count correct change to customer; hold and use register key while on shift;
- b. Scan merchandise labels and place merchandise in bags;
- c. Count money in cash register when coming on and leaving shift; write and sign the Balance & Declare Slip at end of shift;
- d. Clean cash register area using cleaning solutions and paper towels; sweep mat, dressing room and entry areas as necessary;
- e. Verbally greet each customer as they enter the store; receive bags and staple labels to each bag customer brings into store;
- f. Straighten and restock gum, candy and other areas on register;
- g. Attach labels and stickers to merchandise;

- h. Place merchandise on correct clothes hangers, button/ zip and hang on rack as needed;
- i. Cut register tapes and tape to appropriate packages;
- j. Unpack shipping packages (totes) and prepare for shelf placement;
- k. Monitor dressing room, including opening door, counting merchandise and checking after customer leaves;
- l. Watch suspected shoplifters; and
- m. Ring front bell to notify other employees of situation needing help.

20. Other primary duties of the Store Managers is to perform the same non-managerial tasks that are performed by hourly store employees as Stock Clerks when needed and be able to perform all Stock Clerk tasks including but not limited to:

- a. Unload incoming freight off trucks; count incoming boxes and verify correct receipt and log in freight log;
- b. Open boxes, check for damaged goods and remove merchandise;
- c. Stock shelves with merchandise, including bulky and heavy goods;
- d. Pack merchandise, complete transfer labels and seal cartons for outgoing shipment;
- e. Maintain organization of sign and pricing area;
- f. Store and remove seasonal repacks as necessary; and
- g. Perform simple maintenance such as changing light bulbs, moving shelving and panels.

21. As a daily “snapshot” of duties, Plaintiffs spend at least 95% of their entire day on tasks including,

- a. Working the cash register;
- b. Cleaning the store;
- c. Stocking shelves;
- d. Assisting customers; and
- e. Unloading trucks.

22. Store Managers lack the discretion to unilaterally make hiring decisions.

23. Store Managers lack the discretion to unilaterally make firing decisions.

24. Defendants chronically understaffed stores.

25. Defendants prohibited store managers from allowing non-exempt employees to earn overtime.

26. As a result of the understaffing and paid overtime prohibition, Store Managers were required to work extremely extended hours to keep the store from closing.

27. Defendants knew that as a result of their actions Store Managers would be forced to work far in excess of 40 hours per week and purposely created this “time gap.”

28. Plaintiffs often worked in excess of 80 hours per week.

29. By failing to pay Plaintiffs any compensation for hours worked over 40 in a work week, Defendants have acted willfully and with reckless disregard of clearly applicable PMWA and WPCL provisions.

**Count I**  
**Violation of the Pennsylvania Minimum Wage Act - Overtime**

30. All previous paragraphs are incorporated as though fully set forth herein.

31. The PMWA defines an employee as “any individual employed by an employer.”

32. The PMWA requires that covered employees be compensated for every hour worked in a workweek.

33. The PMWA requires that employees receive overtime compensation "not less than one and one-half times" the employee's regular rate of pay for all hours worked over 40 in a workweek

34. Plaintiffs are covered employees entitled to the PMWA's protections.

36. Plaintiffs are not exempt from receiving PMWA overtime benefits because they are not "executive," "administrative," or "professional" employees, as those terms are defined under the PMWA.

37. Defendants are employers required to comply with the PMWA's mandates.

38. Defendants violated the PMWA by failing to pay Plaintiffs any compensation for time spent working in excess of 40 hours during the workweek.

39. Defendants' violation of the PMWA was willful and in reckless disregard of Plaintiffs' rights under the PMWA.

## **Count II**

### **Violation of the Wage Payment and Collection Law - Unpaid Wages**

40. All previous paragraphs are incorporated as though fully set forth herein.

41. During the relevant time period, Defendants employed Plaintiffs for more hours than they were paid.

42. During the relevant time period, Defendants did not compensate Plaintiffs for work in excess of forty hours at a rate not less than one and one-half times the regular rate at which they were employed.

43. Pursuant to the WPCL, such overtime and regular pay is due and payable by Defendants to Plaintiffs on regular paydays. Defendants failed to pay Plaintiffs wages and overtime pay on regular paydays.

44. Defendants' refusal to pay Plaintiffs for hours worked on regular paydays was willful and not in good faith.

### **Count III**

#### **Violation of the Wage Payment and Collection Law – Unpaid Wage Supplements**

40. All previous paragraphs are incorporated as though fully set forth herein.

41. During the relevant time period, Defendants paid bonuses to Store Managers based on their inventory.

42. These bonuses accrued immediately after inventory was completed, but were not paid to the employee until several weeks afterwards.

43. Employees also accrued paid time off while working, insurance, and other benefits from Defendants.

44. Plaintiffs who quit or were terminated during the time period between when the bonus accrued and when the bonus was normally paid did not receive their bonuses, although they had already earned the wage supplement

45. Plaintiffs who were terminated or quit were never compensated for the paid time off or other benefits that they had accrued.

46. Pursuant to the WPCL, wage supplements and fringe benefits that are accrued before employment is terminated must be paid to employees.

47. Defendants' refusal to pay Plaintiffs earned wage supplements and fringe benefits was willful and not in good faith.

**Count IV**  
**Unjust Enrichment**

48. All previous paragraphs are incorporated as though fully set forth herein.

49. Defendants have received and benefitted from the uncompensated and undercompensated labors of Plaintiffs, such that to retain said benefit without compensation would be inequitable and rise to the level of unjust enrichment.

50. At all relevant times, Defendants devised and implemented a plan to increase their earnings and profits by fostering a scheme of securing work from Plaintiffs without paying overtime compensation at the rate required by Pennsylvania law.

51. Contrary to all good faith and fair dealing, Defendants induced Plaintiffs to perform work while failing to pay overtime compensation at the rate required by law.

52. By reason of having secured the work and efforts of Plaintiffs without paying overtime compensation at the rate required by law, Defendants enjoyed reduced overhead with respect to their labor costs, and therefore realized additional earnings and profits to their own benefit and to the detriment of Plaintiffs.

53. Defendants retained and continue to retain such benefits, contrary to the fundamental principles of justice, equity and good conscience.

**Request for Relief**

54. WHEREFORE, Plaintiffs respectfully request for this Court to grant the following relief in excess of \$35,000:

- a. Award Plaintiffs all overtime wages due, as well as liquidated damages in the amount of one hundred percent of the unpaid overtime wages, interest, including the employer's share of FICA, FUTA, state unemployment insurance, any other required employment taxes, and Plaintiffs' costs in prosecuting this action, and reasonable attorney's fees;
- b. Declare Defendants' conduct to be in violation of the Plaintiffs' rights under the PMWA and WPCL;
- c. Award Plaintiffs all unpaid wages with interest including additional damages as this court deems necessary and proper.
- d. Award Plaintiffs compensatory damages for lost wages, benefits, interest, and other remuneration, and for embarrassment, humiliation, emotional distress, and damage to reputation as well as punitive damages.
- e. Such equitable relief as may be appropriate under the circumstances; and
- f. Award such further relief as this Court deems necessary and proper.

**JURY TRIAL DEMANDED.**

Dated: November 21, 2013

Respectfully submitted,

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