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DONALD WASHINGTON and SYMONE
WILDER, on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

WALMART INC,

Defendant.

:
: PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS
:
: JULY TERM, 2022
:
: CLASS ACTION
:
: JURY TRIAL DEMANDED
:

COMPLAINT – CLASS ACTION
10- Contract: Other

NOTICE	AVISO
<p>You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiffs. You may lose money or property or other rights important to you. <i>You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.</i></p> <p>Philadelphia Bar Association Lawyer Referral and Information Service 1101 Market Street, 11th Floor Philadelphia, Pennsylvania 19107 (215) 238-1701</p>	<p>Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar un comparencia escrita o en persona o con un abogado entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Se avisado que si usted no se defiende, la corte tomara medida y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor de demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero sus propiedades u otros derechos importantes para usted. <i>Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.</i></p> <p>Asociacion De Licenciados De Filadelfia Servicio De Referencia E Informacion Legal 1101 Market Street, 11th Floor Filadelfia, Pennsylvania 19107 (215) 238-1701</p>

INTRODUCTION

Donald Washington and Symone Wilder (collectively, “Plaintiffs”) bring this class action lawsuit against Walmart Inc. (“Walmart” or “Defendant”), seeking all available relief under the Philadelphia Fair Workweek Employment Standards Ordinance (“Fair Workweek Law”), §§ 9-4600, *et seq.* The Philadelphia City Council passed the Fair Workweek Law to require retail, hospitality, and fast-food employers to provide their employees with predictable schedules with advance notice, sufficient time between shifts, and pathways to full-time employment. Walmart violated the Fair Workweek Law by failing to provide predictable schedules with at least 10 or 14-days’ notice, changing employees’ schedules at the last minute, requiring hourly employees to work shifts on two consecutive days without at least 9 hours off between shifts, and failing to offer new shifts to current employees before hiring new employees. *See* Phila. Fair Workweek L. §§ 9-4602-05, 9-4611.

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over Walmart.
2. The Fair Workweek Law authorizes “any person aggrieved by a violation” to bring a civil action in a court of competent jurisdiction against an employer violating the Fair Workweek Law. Phila. Fair Workweek L. § 9-4611(7).
3. Venue in this Court is proper under Pennsylvania Rules of Civil Procedure 1006 and 2179 because the cause of action arose in Philadelphia County. In addition, Defendant regularly conducts business in Philadelphia County. *See Lugo v. Farmers Pride, Inc.*, 967 A.2d 963, 971 (Pa. Super. Ct. 2009). This includes, *inter alia*, the continuous and regular sale of product and/or merchandise to customers located in Philadelphia County.

PARTIES

4. Plaintiff Washington is an individual residing in Philadelphia, Pennsylvania.
5. Plaintiff Wilder is an individual residing in Philadelphia, Pennsylvania.
6. Walmart is a corporation headquartered in Bentonville, Arkansas and registered to do business in the Commonwealth of Pennsylvania.

FACTS

7. There is growing recognition that unpredictable, unstable, and often insufficient work hours are a key problem facing many U.S. workers, particularly those in low-wage industries. Volatile hours not only mean volatile incomes but add to the strain working families face as they try to plan ahead for childcare or juggle schedules in order to take classes, hold down a second job, or pursue other career opportunities. *See* Economic Policy Institute, “Fair workweek’ laws help more than 1.8 million workers: Laws promote workplace flexibility and protect against unfair scheduling practices” (Jul. 19, 2018), *available at* <https://files.epi.org/pdf/145586.pdf>.

8. The Philadelphia City Council passed the Fair Workweek Law to require retail, hospitality, and fast-food employers to provide their employees with predictable schedules with advance notice, sufficient time between shifts, and pathways to full-time employment.

9. Employers were required to be compliant with the Fair Workweek Law by April 1, 2020.

10. Defendant is a retail chain that operates stores nationwide, including in Pennsylvania.

11. Based on information and belief, Defendant employs 250 or more employees and has 30 or more locations worldwide.

12. From approximately May 2021 through July 2022, Plaintiff Washington was employed as an hourly employee at the Walmart located at 4600 Roosevelt Ave., Philadelphia, Pennsylvania.

13. From approximately April 2018 through September 2021, Plaintiff Wilder was employed as an hourly employee at the Walmart located at 4600 Roosevelt Ave., Philadelphia, Pennsylvania.

14. Plaintiffs are covered employees within the meaning of the Fair Workweek Law. Phila. Fair Workweek L. § 9-4601(5).

15. Defendant is a covered employer within the meaning of the Fair Workweek Law. Phila. Fair Workweek L. § 9-4601(4).

16. When Defendant first hired Plaintiffs (or subsequently when the law became effective), Defendant did not provide them with a written good faith estimate of the hours, on-call shifts, and a subset of times and shifts of their expected regular schedule in violation of Phila. Fair Workweek L. § 9-4602(1).

17. Prior to January 1, 2021, Defendant did not always provide Plaintiffs with 10-days' notice of their work schedule and after January 1, 2021, Defendant failed to always provide Plaintiffs with 14-days' notice of their work schedule, in violation of Phila. Fair Workweek L. §§ 9-4602(3) & (4).

18. During Plaintiffs' employment, Defendant regularly changed Plaintiffs' schedule by more than 20 minutes and failed to pay them Predictability Pay in violation of Phila. Fair Workweek L. § 9-4603.

19. Defendant required Plaintiffs to work shifts spanning two calendar days and with less than 9 hours off between the shifts without consent and without paying \$40 for each such shift worked in violation of Phila. Fair Workweek L. § 9-4603(2).

20. Defendant also failed to notify Plaintiffs of the details of the available shifts, including whether the shifts are recurring and how to express interest in picking them up, before hiring new employees in violation of Phila. Fair Workweek L. § 9-4605.

21. Defendant also failed to provide Plaintiffs with written notice of its policy for offering and distributing work that is compliant with the Fair Workweek Law in violation of Phila. Fair Workweek L. § 9-4605.

CLASS ALLEGATIONS

7. Plaintiffs bring this lawsuit as a class action. They sue on behalf of hourly non-exempt employees who provide retail services to the public, and who work or worked for Defendant in the City of Philadelphia during any week within the relevant time period.

8. This action may be properly maintained as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709. Class action treatment of Plaintiffs' Fair Workweek Law claims is appropriate because, as alleged below, all of Pennsylvania class action requisites are satisfied. Class action treatment of Plaintiffs' Fair Workweek claims is appropriate because, as alleged below, all of Pennsylvania class action requisites are satisfied.

9. The class, upon information and belief, includes hundreds of individuals, all of whom are readily ascertainable based on Walmart's business records and are so numerous that joinder of all class members is impracticable.

10. Plaintiffs are class members, their claims are typical of the claims of other class members, and they have no interests that are antagonistic to or in conflict with the interests of other class members.

11. Plaintiffs and their lawyers will fairly and adequately represent the class members and their interests because, *inter alia*, (a) Plaintiffs are represented by experienced class action counsel who are well-prepared to vigorously and competently litigate this action on behalf of the class; (b) Plaintiffs and their counsel are free of any conflicts of interest that prevent them from pursuing this action on behalf of the class; and (c) Plaintiffs and their counsel have adequate financial resources to assure that the interests of the class will not be harmed.

12. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Walmart's common scheduling, timekeeping, payroll, and compensation policies, as described herein. The legality of these policies will be determined through the application of generally applicable legal principles to common facts.

13. A class action provides a fair and efficient method for adjudication of the controversy because, *inter alia*, the previously mentioned common questions of law and fact predominate over any questions affecting Plaintiffs or any individual class member; the monetary damages sought are readily calculatable and attributable to class members; maintenance of the instant litigation protects against the risk of inconsistent or varying adjudications that might result if individual class members were to commence independent actions in various courthouses throughout the Commonwealth.

14. Because Walmart conducts a substantial amount of business in Philadelphia County and the law pertains to Philadelphia employers only, this Court is an appropriate forum for the litigation of the claims of the entire class.

15. The complexities of the issues and the expense of litigating separate claims of individual class members weigh in favor of class certification. For example, in the instant action, Plaintiffs will seek and present evidence concerning Defendant's common scheduling, timekeeping, compensation, employee notifications, and payroll practices. The gathering and presentation of such evidence in multiple proceedings would be inefficient, redundant, and unjustifiably expensive. The class action device, when compared to multiple proceedings, presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court. Concentrating this litigation in one forum promotes judicial economy and efficiency and promotes parity among the claims of individual class members as well as judicial consistency. Thus, the conduct of this action as a class action conserves the resources of the parties and the court system, protects the rights of each class member, and meets all due process requirements as to fairness to Walmart. All previous paragraphs are incorporated as though fully set forth herein.

COUNT ONE
Fair Workweek Law
Failure to Provide Written Good Faith Estimates
(Brought on behalf of Plaintiffs and the Class)

16. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

17. Walmart is an employer covered by the Fair Workweek Law.

18. Plaintiffs and the class members are employees entitled to the Fair Workweek Law's protections.

19. Defendant is required to provide each new employee (or existing employees who were current employees as of the effective date of the Fair Workweek Law) with a written good

faith estimate no later than when a new employee receives his or her first work schedule. Phila. Fair Workweek L. § 9-4602(1).

20. Defendant is also required to maintain records of the good faith estimates it provides to employees. Phila. Fair Workweek L. § 9-4602(1); Phila. Fair Workweek Reg. 3.0. Where an employer fails to maintain, retain, or produce a required record, "...it shall be presumed that the employer has violated the Chapter, absent clear and convincing evidence otherwise." Phila. Fair Workweek L. § 9-4609(1).

21. Defendant committed a violation of Section 9-4602(1) of the Fair Workweek Law when it failed to provide a written good faith estimate to Plaintiffs and the class.

22. As a result of Defendant's violations of Section 9-4602(1) of the Fair Workweek Law, Plaintiffs and the class have been deprived of a predictable schedule and are entitled to: (1) an order directing compliance; (2) unpaid compensation; (3) \$200 in presumed damages; (4) liquidated damages up to \$2,000; and (5) reasonable attorney's fees and costs. Phila. Fair Workweek L. § 9-4611(c)&(d); Phila. Fair Workweek Reg. 10.0

COUNT TWO
Fair Workweek Law
Failure to Provide Advance Notice of Work Schedules
(Brought on behalf of Plaintiffs and the Class)

23. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

24. Prior to January 1, 2021, Defendant was required to provide employees with written notice of their work schedules at least 10 days before the first day of each schedule, and after January 1, 2021, Defendant was required to provide employees with written notice of their work schedules at least 14 days before the first day of each schedule. Phila. Fair Workweek L. §§ 9-4602(3) & (4).

25. Defendant is also required to maintain records of the good faith estimates it provides to employees. Phila. Fair Workweek L. § 9-4602(1); Phila. Fair Workweek Reg. 3.0. Where an employer fails to maintain, retain, or produce a required record, "...it shall be presumed that the employer has violated the Chapter, absent clear and convincing evidence otherwise." Phila. Fair Workweek L. § 9-4609(1).

26. Defendant committed a violation of Section 9-4602 of the Fair Workweek Law each week it failed to provide Plaintiffs and the class with a written work schedule 10 or 14 days in advance.

27. As a result of Defendant's violations of Section 9-4602 of the Fair Workweek Law, Plaintiffs and the class have been deprived of a predictable schedule and are entitled to: (1) an order directing compliance; (2) unpaid compensation; (3) \$50 each time Defendant failed to provide a written Work Schedule; (4) \$25 each time Defendant failed to promptly notify employees about a schedule change; (5) \$100 each time Defendant failed to get written consent from Plaintiff for added work hours; (6) liquidated damages up to \$2,000; and (7) reasonable attorney's fees and costs. Phila. Fair Workweek L. § 9-4611(c)&(d); Phila. Fair Workweek Reg. 10.0.

COUNT THREE
Fair Workweek Law
Failure to Provide Schedule Change Premiums
(Brought on behalf of Plaintiffs and the Class)

28. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

29. Defendant is required to provide employees with Predictability Pay for changes it makes to employees' work schedules any time after the 10 or 14-day statutory schedule provision date. Phila. Fair Workweek L. § 9-4603.

30. Defendant is also required to maintain records of the good faith estimates it provides to employees. Phila. Fair Workweek L. § 9-4602(1); Phila. Fair Workweek Reg. 3.0. Where an employer fails to maintain, retain, or produce a required record, "...it shall be presumed that the employer has violated the Chapter, absent clear and convincing evidence otherwise." Phila. Fair Workweek L. § 9-4609(1).

31. Defendant committed a unique violation of Section 9-4603 of the Fair Workweek Law each time it failed to pay required Predictability Pay to Plaintiffs and the class when it changed Plaintiffs and the class's work schedule with less than 10 or 14 days' notice.

32. As a result of Defendant's violations of Section 9-4603 of the Fair Workweek Law, Plaintiffs and the class have been deprived of a predictable schedule and are entitled to: (1) an order directing compliance; (2) unpaid compensation; (3) unpaid Predictability Pay; (4) liquidated damages up to \$2,000; and (5) reasonable attorney's fees and costs. Phila. Fair Workweek L. § 9-4611(c)&(d); Phila. Fair Workweek Reg. 10.0.

COUNT FOUR
Fair Workweek Law
Right to Rest Between Work Shifts
(Brought on behalf of Plaintiffs and the Class)

33. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

34. Defendant is prohibited from requiring employees to work "any work hours that are scheduled or otherwise occur: (a) less than 9 hours after the end of the previous day's shift, or (b) during the 9 hours following the end of a shift that spanned two days." Phila. Fair Workweek L. § 9-4604.

35. As a result of Defendant's violations of Section 9-4604 of the Fair Workweek Law, Plaintiffs and the class have been deprived of a predictable schedule and are entitled to: (1)

an order directing compliance; (2) unpaid compensation; (3) unpaid Predictability Pay; (4) liquidated damages up to \$2,000; and (5) reasonable attorney's fees and costs. Phila. Fair Workweek L. § 9-4604; Phila. Fair Workweek Reg. 10.0.

COUNT FIVE
Fair Workweek Law
Failure to Offer Newly Available Shifts to Existing Employees
(Brought on behalf of Plaintiffs and the Class)

36. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

37. Defendant is required to notify its current employees about newly available shifts and offer them those shifts before hiring any new employees. Phila. Fair Workweek L. § 9-4605.

38. Defendant is also required to maintain records of the good faith estimates it provides to employees. Phila. Fair Workweek L. § 9-4602(1); Phila. Fair Workweek Reg. 3.0. Where an employer fails to maintain, retain, or produce a required record, "...it shall be presumed that the employer has violated the Chapter, absent clear and convincing evidence otherwise." Phila. Fair Workweek L. § 9-4609(1).

39. Defendant committed a unique violation of Section 9-4605 of the Fair Workweek Law each time it failed to offer Plaintiffs and the class the shifts it subsequently offered to a new hire in the same location.

40. As a result of Defendant's violations of Section 9-4605 of the Fair Workweek Law, Plaintiffs and the class have been deprived of a predictable schedule and are entitled to: (1) an order directing compliance; (2) unpaid compensation; (3) \$50 each pay period that Defendant failed to provide written notice of available work hours; (4) \$50 each pay period that Defendant failed to provide written notice of its policy for distributing work hours, in presumed damages; (5) \$1,000 per violation for failure to award available work hours pursuant to Section 9-4605; (6)

liquidated damages up to \$2,000; and (7) reasonable attorney's fees and costs. Phila. Fair Workweek L. § 9-4611(c)&(d); Phila. Fair Workweek Reg. 10.0.

JURY DEMAND

Plaintiffs demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the class, seek the following relief: (i) unpaid wages; (ii) unpaid Predictability Pay; (iii) presumed damages; (iv) liquidated damages; (v) prejudgment interest; (vi) litigation costs, expenses, and attorney's fees; and (vii) any other and further relief this Court deems just and proper.

Date: July 19, 2022

Respectfully submitted,

Nadia Hewka

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VERIFICATION

I, Donald Washington, hereby state:

1. I am a plaintiff in this action;
2. I verify that the statements made in the accompanying complaint are true and correct to the best of my knowledge, information and belief; and
3. I understand that the statements in the complaint are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsifications to authorities.

Dated: July 15, 2022 _____

DocuSigned by:

38759589C6914C9...

Donald Washington

VERIFICATION

I, Symone Wilder, hereby state:

1. I am a plaintiff in this action;
2. I verify that the statements made in the accompanying complaint are true and correct to the best of my knowledge, information and belief; and
3. I understand that the statements in the complaint are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsifications to authorities.

Dated: 07/18/2022

Symone Wilder

Symone Wilder