

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BRANDEN ARNOLD, CHRIS DUGAN,)
DONNY ECKERMAN, JOSEPH EVANS,)
MARK REIBENSPIES, and DAVID)
THISSEN, on behalf of themselves)
and all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
CITY OF WICHITA, KANSAS,)
)
Defendant.)
_____)

Case No.: _____

COMPLAINT

Plaintiffs Branden Arnold, Chris Dugan, Donny Eckerman, Joseph Evans, Mark Reibenspies, and David Thissen, on behalf of themselves and all others similarly situated, through undersigned counsel, state and allege for their cause of action against Defendant City of Wichita, Kansas:

1. Plaintiffs Branden Arnold, Chris Dugan, Donny Eckerman, Joseph Evans, Mark Reibenspies, and David Thissen are residents of the State of Kansas. Their written consents to join this action are filed contemporaneously as Exhibits A-F.
2. Defendant City of Wichita (COW) is a municipality subject to suit.
3. COW is covered by the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*
4. Subject matter jurisdiction is appropriate as the claims in this case arise under federal law.
5. Personal jurisdiction and venue are appropriate as the claims in this case arose in this Judicial District.

6. COW owns and operates the Wichita Fire Department (WFD).

7. For the three years preceding the filing of this action, COW has employed numerous fire investigators at WFD, including Plaintiffs Branden Arnold, Chris Dugan, Donny Eckerman, Joseph Evans, Mark Reibenspies, and David Thissen.

8. WFD fire investigators are trained, uniformed law enforcement officers with the power to arrest and enforce state law.

9. WFD fire investigators are employed to investigate fires and perform law enforcement functions.

10. WFD fire investigators do not engage in fire suppression activities.

11. WFD fire investigators are not engaged in the prevention, control, and/or extinguishment of fires.

12. WFD fire investigators are regularly scheduled to work in excess of 50 hours per workweek.

13. WFD fire investigators regularly work in excess of 50 hours per workweek.

14. Under the FLSA, employees are entitled to be compensated for all work performed in excess of 40 hours in a workweek at a rate of not less than one and one-half times the regular rate at which such employees are employed. 29 U.S.C. § 207(a).

15. The FLSA provides a special exemption available to public employers who employ law enforcement personnel, at 29 U.S.C. § 207(k):

No public agency shall be deemed to have violated subsection [207](a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if--

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

16. COW has adopted a 27-day work period for WFD fire investigators pursuant to 29 U.S.C. § 207(k).

17. COW pays WFD fire investigators on an hourly basis.

18. COW pays WFD fire investigators overtime only when they exceed 204 hours of work in designated 27 day periods.

19. Under the applicable regulations, WFD fire investigators are supposed to be paid overtime on hours in excess of 165 per 27-day period. *See* 29 C.F.R. § 553.230(c).

20. COW's policies, practices, and procedures violate the FLSA because WFD fire investigators are deprived of overtime compensation when they work more than 165 hours in a 27-day work period.

21. COW employs lawyers, professional HR staff, and WFD managers who are trained in wage and hour compliance.

22. COW knew, or should have known, that its compensation systems for WFD fire investigators is unlawful.

23. COWs willfully violated the FLSA.

24. COW owes overtime compensation to every WFD fire investigator it employed for the three years before Plaintiffs Arnold, Dugan, Eckerman, Evans, Reibenspies, and Thissen filed this action.

25. Plaintiffs Arnold, Dugan, Eckerman, Evans, Reibenspies, and Thissen seek redress for all WFD fire investigators employed for the three years before this action was filed.

26. Plaintiffs Arnold, Dugan, Eckerman, Evans, Reibenspies, and Thissen bring this Complaint as a collective action pursuant to 29 U.S.C. § 216(b), on behalf of all persons who were, are, or will be employed by COW as WFD fire investigators within the three-year period preceding the commencement of this action who have not been compensated as required by the FLSA.

Wherefore, Plaintiffs Branden Arnold, Chris Dugan, Donny Eckerman, Joseph Evans, Mark Reibenspies, and David Thissen, on behalf of themselves and all others similarly situated, pray for relief as follows:

a. Prompt issuance of notice of this action to all WFD fire investigators, as permitted by 29 U.S.C. § 216(b) and governing case law;

b. Designation of Plaintiffs Branden Arnold, Chris Dugan, Donny Eckerman, Joseph Evans, Mark Reibenspies, and David Thissen Chris Dugan and Donny Eckerman, as Representative Plaintiffs of the collective;

- c. Designation of Plaintiffs' counsel, Graybill & Hazlewood, LLC, as counsel for the collective;
- d. An award of damages for straight time and overtime compensation due to the Plaintiffs and the collective, to be paid by Defendant;
- e. An award of liquidated damages due to the Plaintiffs and the collective, to be paid by Defendant;
- f. Pre-Judgment and Post-Judgment Interest as provided by law;
- g. Costs and expenses of this action incurred herein including expert fees;
- h. Reasonable attorneys' fees; and
- i. Any and all such other and further relief as the Court deems necessary, just and proper.

Plaintiffs Branden Arnold, Chris Dugan, Donny Eckerman, Joseph Evans, Mark Reibenspies, and David Thissen demand a trial by jury.

Plaintiffs Branden Arnold, Chris Dugan, Donny Eckerman, Joseph Evans, Mark Reibenspies, and David Thissen designate Wichita, Kansas as the place of trial.

Dated: December 22, 2017

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