

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

- 1. VERNON KIRBY)
- 2. MICHAEL GILLAM)
- 3. ALYSSA SATTERWHITE)
- 4. BRADLEY GRAY)
- 5. CHRISTOPHER WALLACE)
- 6. JACOB MILLER)
- 7. KRYSTLE CURTIS)
- 8. LILIANA DELGADO-MORALES)
- 9. JEREMY MATLOCK)
- 10. MATTHEW PARROTTE)
- 11. PAIGE MOORE)
- 12. NATHAN FLAHERTY)
- 13. REBECCA WATTS)
- 14. SHAWN NOWAKOWSKI)
- 15. WARREN TAYLOR)
- 16. ABIGAILE TOLER)

Civil Action No. 3:25cv32
JURY TRIAL DEMANDED

Plaintiffs,)

v.)

CITY OF FREDERICKSBURG,)
VIRGINIA)

Defendant.)

COMPLAINT

Plaintiffs, by and through their counsel, respectfully submit their complaint against the City of Fredericksburg, Virginia, and state as follows:

PARTIES

1. The Plaintiffs are current and former employees of the Defendant, City of Fredericksburg, Virginia (“Defendant” or “City”), who bring this action under the Fair Labor Standards Act (“FLSA”) against Defendant, on behalf of themselves and other similarly situated

employees, because of Defendant's unlawful deprivation of Plaintiffs' rights to overtime compensation.

2. Defendant operates the Fredericksburg Fire Department, the department responsible for emergency medical responses, firefighting, and other emergency services in the City of Fredericksburg.

3. At all times material herein, Defendant has employed the Plaintiffs in the positions of Paramedic, Emergency Medical Technician ("EMT"), Emergency Medical Technician – Advanced ("EMT-A"), Paramedic Trainees, and Emergency Medical Services Lieutenants, in the Fredericksburg Fire Department. The exact dates of the Plaintiffs' employment are in the custody and control of the Defendant and the Defendant knows the precise dates that each of the Plaintiffs has served in these positions during the recovery period.

4. The Plaintiffs bring this action for backpay compensation, liquidated damages, attorneys' fees and costs, and other relief available under the FLSA, as amended, 29 U.S.C. § 201, *et seq.*

5. The Plaintiffs who are identified in the caption of the Complaint have given their written consent to be party Plaintiffs in this action, pursuant to 29 U.S.C. § 216(b). Such written consents are appended to this Complaint as Exhibit A.

6. At all times material herein, all Plaintiffs have been "employees" within the meaning of the FLSA, 29 U.S.C. § 203(e)(1). However, they are not, and have not been, employees "in fire protection activities" within the meaning of 29 U.S.C. § 203(y), as they do not have the "legal authority and responsibility to engage in fire suppression," nor are they substantially "trained in fire suppression."

7. Defendant is a municipal corporation under the laws of the Commonwealth of Virginia, with the power to sue and be sued in its own name, and, at all times material herein, Defendant has been a “public agency” and “employer” within the meaning of the FLSA, 29 U.S.C. § 203(x), 203(d). Defendant is, and was at all times material hereto, an employer within the meaning of Virginia Code Section 9.1-700 *et seq.* Defendant has a principal office and place of business located within the United States District Court for the Eastern District of Virginia, at the Fredericksburg City Hall, 715 Princess Anne Street, Fredericksburg, VA 22401.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over Plaintiffs’ FLSA action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b). The Court has supplemental jurisdiction over Plaintiffs’ Virginia law claim pursuant to 28 U.S.C. § 1367.

9. A substantial part of the events giving rise to Plaintiffs’ claims occurred in this District. The unpaid wages sought in this action were earned in this District. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

FACTS

10. From the time period of January 17, 2022, through the present, as well as before, Plaintiffs have worked for the Defendant. Specifically, the City employs or has employed Plaintiffs as Emergency Medical Personnel in the positions of “Paramedics,” “Emergency Medical Technicians,” “Emergency Medical Technicians – Advanced,” and “Paramedic Trainees” (hereinafter collectively “Plaintiff Emergency Medical Positions”) in the Fredericksburg Fire Department (hereinafter referred to as “The Fire Department”).

11. The Fire Department has two divisions - a Fire division and an EMS division, with distinct budgets. Plaintiffs work in the EMS division.

12. Plaintiffs are single-role Paramedics, EMTs, EMT-As, and Paramedic Trainees within the Fire Department.

13. Within the last three years, while assigned to the Plaintiff Emergency Medical Positions, Plaintiffs' primary job duty has been, and remains, to provide emergency medical and trauma-related assistance to the sick and injured. To that end, Plaintiffs and other similarly situated employees have diligently executed their job duties on behalf of their employer and the citizens of Fredericksburg, Virginia, responding to emergency calls, and treating critical and traumatic injuries, among other duties critical to public health and safety.

14. At all times material herein, Defendant has not provided training to Plaintiffs in fire suppression duties beyond a 48-hour awareness-style class, and the Plaintiffs are not required to be certified as Fire Fighters to work in Plaintiff Emergency Medical Positions.

15. At all times material herein, Plaintiffs are and have been assigned to medic units and respond to incidents on ambulances. Plaintiffs generally are not required to carry any fire gear on the ambulances, there are no air packs on the ambulances, and the majority of the Plaintiffs have only been issued expired fire equipment.

16. At all times material herein, at emergency scenes, EMS personnel have not donned fire gear unless it is to keep warm or to avoid injuries when performing a vehicle extrication.

17. At all times material herein, Plaintiffs have not been required to engage, nor have they engaged in fire suppression duties at fire scenes.

18. At all times material herein, although EMT and paramedic certified personnel assigned to the fire division work overtime shifts in the EMS division. personnel from the EMS division have been prohibited from working overtime shifts assigned to a fire truck on a fire shift,

19. At all times material herein, while working in Plaintiff Emergency Medical Positions on behalf of Defendant, the Plaintiffs and other similarly situated employees have been assigned to work and, in fact, have and continue to work a regular repeating schedule over a nine-day period. This schedule results in plaintiffs being on duty for one 24-hour shift, off duty for one 24-hour shift, on duty for one 24-hour shift, off duty for one 24-hour shift, on duty for one 24-hour shift, and off duty for 96 hours (*i.e.*, four 24-hour shifts). In addition, if the schedule results in a plaintiff working 11 shifts in a month, the plaintiff selects what is called a “Kelly day” from their otherwise scheduled shifts and do not work on the Kelly day.

20. As a result of this shift schedule, Plaintiffs and other similarly situated employees have been regularly scheduled to work either 48 hours or 72 hours each week (depending on how their Kelly days are scheduled). This schedule results in a nine-week pattern in which plaintiffs are scheduled for 72-hours of work each week for two weeks in a row, followed by 48-hours of work each week for three weeks in a row, followed by 72 hours of work for one week, followed by 48 hours of work each week for three weeks in a row.

21. At all times material herein, Defendant has not provided overtime compensation at a rate of one and one-half-times the regular rate using an overtime threshold of 40 hours in a seven-day workweek as required by 29 U.S.C. § 207(a).

22. At all times material herein, the Plaintiffs and other similarly situated employees have worked additional overtime and/or unscheduled overtime. The exact work periods in which this occurred can be determined by looking at the Plaintiffs’ payroll records, which are in the possession, custody, and control of Defendant.

23. Due to the regularly repeating schedules, at all times material herein, Plaintiffs and other similarly situated employees have regularly worked, and continue to regularly work in excess

of 40 hours in a week. At all relevant times, Defendant has failed to pay the Plaintiffs and other similarly situated employees overtime pay at the rate of one and one-half times their regular rate of pay for all regularly scheduled hours of work performed when the Plaintiffs have worked in excess of 40 hours in a week.

24. At all times material herein, when the Plaintiffs take paid leave, Defendant must consider leave hours to be hours of work pursuant to Va. Code § 9.1-703.

25. Defendant's actions in refusing to provide Plaintiffs and other similarly situated employees the rights and protections provided under the FLSA are willful in that Defendant showed a reckless disregard for the FLSA. For example, Defendant knowingly accepted the benefit of Plaintiffs' regularly scheduled overtime from at least January 17, 2022, without compensating Plaintiffs and other similarly situated employees at the lawful overtime rate.

VIOLATION OF SECTION 207(a) OF THE FAIR LABOR STANDARDS ACT

26. Plaintiffs re-allege, and incorporate by reference herein, paragraphs 1 through 25 of this Complaint.

27. During the times that Plaintiffs and other similarly situated employees have worked in excess of 40 hours in a workweek, Defendant failed to provide Plaintiffs and other similarly situated employees overtime pay at the rate of one and one-half times their regular rates of pay for all regularly scheduled hours Plaintiffs and other similarly situated employees have worked in excess of the hourly standards set forth under 29 U.S.C. § 207(a).

28. Plaintiffs and other similarly situated employees have been employed by Defendant as emergency medical services providers and respond to emergency situations where life, property, or the environment is at risk. However, they lack legal authority and responsibility to engage in fire suppression and substantial fire suppression training. Thus, Plaintiffs are not employees in fire

protection activities under 29 U.S.C. § 203(y). *Lockwood v. Prince George's Cnty.*, 217 F.3d 839 n. 1 (4th Cir. 2000) (citing § 203(y) test); *Lawrence v. City of Philadelphia*, 527 F.3d 299, 319 (3d Cir. 2008) (finding that paramedics not responsible for fire protection activities were not “employees in fire protection activities” for purposes of § 203(y) and were due overtime for hours over 40 in a workweek).

29. By failing to pay the Plaintiffs and other employees similarly situated the overtime pay required under the law, the Defendant has violated and is continuing to violate the provisions of the FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material herein, the Plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum period allowed under the law.

30. As a result of the Defendant's willful, unreasonable, and bad faith violations of the FLSA, there have become due and owing to the Plaintiffs an amount that has not yet been precisely determined. The employment and work records for the Plaintiffs (including time and attendance records) are in the exclusive possession, custody, and control of the Defendant and the Plaintiffs are unable to state at this time the exact amount owing to them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to the Plaintiffs and other employees similarly situated from which the amount of Defendant's liability can be ascertained.

31. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover liquidated damages in an amount equal to their backpay damages for Defendant's failure to pay overtime compensation.

32. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and applicable law, all Plaintiffs hereby demand that their claims be tried before a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

- (a) Enter judgment declaring that the Defendant has willfully and wrongfully violated its statutory obligations under federal and state law and deprived each of the Plaintiffs of his/her rights;
- (b) Order a complete and accurate accounting of all the unpaid compensation to which the Plaintiffs are entitled;
- (c) Award Plaintiffs compensatory relief in the form of unpaid compensation and liquidated damages equal to their unpaid compensation;
- (d) Award Plaintiffs interest on their unpaid compensation;
- (e) Award Plaintiffs their reasonable attorneys' fees to be paid by the Defendant, and the costs associated with bringing this action; and
- (f) Grant such other relief as may be just and proper.

DATE: January 17, 2025

Respectfully submitted,

/s/ T. Reid Coploff
Sara L. Faulman (To be admitted pro hac vice)
T. Reid Coploff (VA Bar No. 78388)
Matthew D. Purushotham (VA Bar No. 90996)
McGILLIVARY STEELE ELKIN LLP
1101 Vermont Avenue, N.W.
Suite 1000
Washington, DC 20005

Phone: (202) 833-8855
slf@mnelaborlaw.com
trc@mnelaborlaw.com
mdp@mnelaborlaw.com

Counsel for Plaintiffs