UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ALEXANDRIA PARROTTA,

Plaintiff,

Case No. 2:24-cv-00056

Hon. Robert J. Jonker

v.

ISLAND RESORT AND CASINO,

Defendant.

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There is no other pending or resolved civil action arising out of this transaction or occurrence alleged in the complaint. Pursuant to Fed. R. Civ. Proc. 15(a)(1), Plaintiff is amending its pleading once as a matter of course.

FIRST AMENDED COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff Alexandria Parrotta (hereinafter referred to as "Plaintiff"), by and through her attorneys, HURWITZ LAW PLLC, hereby alleges as follows:

INTRODUCTION

1. Plaintiff brings this action under the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 201 *et seq*. for unpaid overtime wages, liquidated damages, prejudgment interest, attorneys' fees, and other relief against Defendant Island Resort and Casino (hereinafter referred to as "Defendant"). After working for Defendant as an Executive Chef for nine years, Plaintiff was forced to resign after she returned from maternal leave and requested a flexible schedule to allow her to nurse her newborn child. Defendant's refusal to provide Plaintiff with reasonable break times to nurse her child constitutes a violation of the FLSA, as amended by the PUMP Act. Moreover, Plaintiff was unlawfully misclassified as overtime-exempt and deprived of significant overtime wages contrary to the FLSA. Despite her title of Executive Chef, Plaintiff performed little, if any, truly managerial work and instead performed similar job duties to her subordinates.

PARTIES AND JURISDICTION

2. Plaintiff is an individual residing in Bark River, Delta County, Michigan.

3. Defendant is a hotel and casino headquartered in Harris, Menominee County, Michigan. Defendant is owned and operated by the Hannahville Indian Community, a federally recognized tribe headquartered in Harris, Menominee County, Michigan.

4. The U.S. District Court for the Western District of Michigan has subject matter jurisdiction over claims under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq*. pursuant to 28 U.S.C. § 1331.

5. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391, because it is the district in which Defendant resides.

BACKGROUND

The PUMP Act

6. The purpose of the PUMP Act was "[t]o amend the [FLSA] to expand access to breastfeeding accommodations in the workplace, and for other purposes."

7. Relevantly, the PUMP Act amended the FLSA to include § 218d, which provides that:

> (a) An employer shall provide —
>
> > ''(1) a reasonable break time for an employee to express breast milk for such employee's nursing child for 1 year after the child's birth each time such employee has need to express the milk"

29 U.S.C. § 218d.

8. Notably, the statute states that the "employer ***shall*** . . . provide a reasonable break time…" for nursing parents to express milk. (Emphasis added.) The word "shall" in § 218d imposes an affirmative duty on the employer to provide reasonable breaks.

9. On May 17, 2023, The U.S. Department of Labor Wage and Hour Division ("WHD") published Field Assistance Bulletin No. 2023-02 (the "FAB"), which provides guidance to agency officials responsible for enforcing the PUMP Act. The FAB provides insight into how the WHD will enforce employees' rights under the PUMP Act.

10. Regarding an employee's right to breaks to pump breast milk, the FAB emphasizes that employees are entitled to a "reasonable break ***each time*** such employee has need to pump breast milk at work for one year after the child's birth. An employer may not deny a covered employee a needed break to pump."

11. Further, an employer who violates a nursing mother's right to reasonable break times and a functional space to pump breast milk is liable "for appropriate legal or equitable remedies . . . [which] may include ***compensatory damages and make-whole relief***, such as economic losses that resulted from violations, ***and punitive damages*** where appropriate. These remedies are available regardless of whether the employee has also experienced retaliation."

12. Plaintiff seeks this Court's assistance on behalf of all nursing mothers who work and their infant children to improve breastfeeding outcomes by making clear that employers cannot deny their employees adequate lactation accommodation in the workplace.

GENERAL ALLEGATIONS

13. Plaintiff was employed by Defendant from August 2014 until October 26, 2023, in the position of Executive Chef.

14. Plaintiff was paid a salary of $52,000.00.

15. Plaintiff consistently worked at least forty-five hours per week, though Defendant did not pay her overtime compensation for the hours she worked in excess of forty hours per week.

16. Despite Plaintiff's job title of "Executive Chef", she effectively performed the duties of a Line Cook, a position classified as non-exempt.

17. Plaintiff performed non-managerial tasks most of the time, including counting inventory, placing orders with vendors, washing dishes, and preparing food. Plaintiff did not have authority to make any final hiring or firing decisions.

18. Plaintiff's primary duties did not require advanced knowledge of a predominantly intellectual character, nor did these duties require the consistent exercise of discretion and judgement. 29 C.F.R. § 541.301(e)(2).

19. Plaintiff was unlawfully misclassified as "exempt" and deprived of proper overtime compensation for hours worked in excess of forty per week.

20. Plaintiff was deprived of wages in exact amounts to be determined at trial, but at a minimum, she is owed no less than $87,750.00 in unpaid overtime compensation during her employment.

21. Throughout her employment, though she typically worked in excess of forty hours per week, Plaintiff was afforded a flexible working schedule.

22. In or about 2023, Plaintiff informed her manager that she was pregnant and that she intended to take maternal leave to care for her child. She applied for and was granted such leave.

23. In or about July 2023, Plaintiff's maternal leave began and she gave birth to her child.

24. In or about October 2023, Plaintiff returned to work after her maternal leave.

25. Upon her return, Plaintiff was informed by Director of Food and Beverage, Steven Gakstatter, that she would be required to work shifts of 12:00pm until 8:00pm, with no opportunity to adjust these times.

26. The following day, Plaintiff met with Mr. Gakstatter and requested that her flexible schedule granted to her prior to her leave be reinstated, in order to nurse her newborn child.

27. In response, Mr. Gakstatter refused and demanded that Plaintiff resign.

28. As a result of Mr. Gakstatter's coercion, Plaintiff resigned on October 26, 2023.

COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT OF 1938 ("FLSA")
(UNPAID OVERTIME WAGES)

29. Plaintiff incorporates the allegations in the foregoing paragraphs.

30. The FLSA applies to Defendant.

31. "The FLSA is a statute of general applicability[,]" and "[s]uch generally applicable statutes typically apply to Indian tribes." *Snyder v. Navajo Nation*, 382 F.3d 892, 894– 95 (9th Cir. 2004).

32. A federal statute of general applicability that is silent on the issue of applicability to Indian tribes will only not apply to Defendant if: (1) the law "touches exclusive rights of self-governance in purely intramural matters"; (2) the application of the law to the tribe would "abrogate rights guaranteed by Indian treaties"; or (3) there is proof "by legislative history or some other means that Congress intended [the law] not to apply to Indians on their reservation...." *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985).

33. The first exception applies "only in those rare circumstances where the immediate ramifications of the conduct are felt primarily within the reservation by members of the tribe and where self-government is clearly implicated." *Snyder*, 382 F.3d at 895.

34. The tribal self-governance exception is designed to except internal matters such as the conditions of tribal membership, inheritance rules, and domestic

relations from the general rule that otherwise applicable federal statutes also apply to Indian tribes." *Natl. Lab. Rel. Bd. v. Little River Band of Ottawa Indians Tribal Govt.,* 788 F.3d 537, 552 (6th Cir. 2015).

35. The first exception does not apply in this case because Defendant's casino enterprise is not a "purely intramural matter" nor does it involve issues of tribal membership, inheritance rules, or domestic relations. *Coeur d'Alene,* at 116.

36. Defendant is/was engaged in routine activities of a commercial character.

37. "The right to conduct commercial enterprises free of federal regulation is not an aspect of tribal self-governance." *Little River Band of Ottawa Indians Tribal Govt.* at 553 (*See, e.g., Fla. Paraplegic Ass'n,* 166 F.3d at 1129 (finding tribal gaming facility "does not relate to the governmental functions of the Tribe")).

38. "Indian tribes are not shielded from general federal statutes because the application of those statutes may incidentally affect the revenue streams of tribal commercial operations that fund tribal government." *Little River Band of Ottawa Indians Tribal Govt.* at 553.

39. In 2022, Defendant, Island Resort & Casino reported net earnings of approximately $59,637,900.[1]

[1] https://www.michigan.gov/mgcb/-/media/Project/Websites/mgcb/Tribal-Gaming/AnnualReports/2022-Tribal-Gaming-Annual-Report-Final-4623.pdf?rev=6d7f0711fc594c52afb08cfec8b01db0&hash=FA45D7B59ECC6A3EE8526C392313B137

40. Plaintiff is not a member of the tribe and works for a restaurant that primarily services non-members.

41. Application of the FLSA to the tribe would not "abrogate rights guaranteed by Indian Treaties. *Id.*

42. Nor is there proof "that Congress intended not to apply [the FLSA] to Indians on their reservation. *Id.*

43. The Supreme Court has long been suspicious of tribal authority to regulate the activities of non-members and is apt to view such power as implicitly divested, even in the absence of congressional action. *Little River Band of Ottawa Indians Tribal Gov't* at 544 (citing *Plains Commerce Bank v. Long Family Land & Cattle Co.,* 554 U.S. 316, 327, 128 S.Ct. 2709, 171 L.Ed.2d 457 (2008)).

44. Defendant's "power to regulate the activities of non-members is constrained, extending only so far as 'necessary to protect tribal self-government or to control internal relations.'" *Nat'l Lab. Rels. Bd. v. Little River Band of Ottawa Indians Tribal Gov't*, 788 F.3d 537, 544 (6th Cir. 2015) (citing *Montana v. United States,* 450 U.S. 544, 564, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981)).

45. Again, Plaintiff is not a member of the Hannahville Indian Community and she performs job duties entertaining primarily non-tribal customers in a capacity that does not protect tribal self-government or control tribal internal relations.

46. In addition, Plaintiff is a former "employee" within the meaning of the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 201 *et seq*.

47. Defendant was and continues to be an "enterprise engaged in interstate commerce or in the production of goods" within the meaning of 29 U.S.C. § 203.

48. Plaintiff was unlawfully misclassified as "exempt" and deprived of proper overtime compensation for hours worked in excess of forty (40) per week.

49. Defendant's conduct in this regard was knowing and willful.

50. Plaintiff was deprived of earned wages in amounts to be determined at trial. Plaintiff is entitled to compensation for unpaid overtime wages, interest, liquidated damages, attorneys' fees and costs, and any other remedies available at law or in equity.

COUNT II
VIOLATION OF THE FLSA AND PUMP ACT
29 U.S.C. § 218d(a)(1)

51. Plaintiff incorporates the allegations in the foregoing paragraphs.

52. Plaintiff was an "employee" or "individual employed by an employer" under the Fair Labor Standards Act of 1938 ("FLSA"). 29 U.S.C. § 203(e).

53. Defendant is an "employer" within the meaning of the FLSA pursuant to 29 U.S.C. §§ 203(a), (d) and was an "employer" of Plaintiff at all times material to this proceeding.

54. The FLSA, at 29 U.S.C. § 218d(a)(1), states that an "employer shall provide: (1) a reasonable break time for an employee to express breast milk for such employee's nursing child for 1 year after the child's birth each time such employee has need to express the milk . . . ."

55. In violation of the PUMP Act, Defendant, throughout the relevant period, failed to provide reasonable break times for employees "to express breast milk for 1 year after the child's birth each time such employee needed to express milk. . . ." 29 U.S.C. § 218d(a)(2).

56. When Plaintiff requested reasonable break times to nurse her newborn child, in the form of a flexible work schedule, Defendant responded by demanding that she resign.

57. Defendant, through supervisors and management employees, failed to provide reasonable break times for Plaintiff to express breast milk in violation of the FLSA.

58. On information and belief, Defendant, through supervisors and management employees, knowingly, willfully, and systematically engaged in this unlawful practice of refusing to provide reasonable breaks to express breast milk to Plaintiff in violation of the PUMP Act.

59. Defendant violated Plaintiff's rights under the PUMP Act by failing to provide reasonable break times to express breast milk.

60. Defendant violated Plaintiff's rights under the PUMP Act by forcing her to resign rather than allow her to nurse her newborn child.

61. Defendant violated Plaintiff's rights under the PUMP Act by failing to institute policies and practices that comply with the PUMP Act.

62. Defendant is liable to Plaintiff for legal and equitable relief in the form of damages and other relief, pursuant to 29 U.S.C. § 216(b), as well as reasonable attorneys' fees, costs, and expenses. *See* 29 U.S.C. § 216(b).

DEMAND FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

a. An award of unpaid overtime wages under federal and state law;

b. An award of liquidated damages under federal and state law;

c. Prejudgment interest;

d. Attorneys' fees and costs under federal and state law; and

e. Such other relief as in law or equity may pertain.

Respectfully Submitted,
HURWITZ LAW PLLC
/s/ *Noah S. Hurwitz*
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Dated: June 10, 2024

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DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff Alexandria Parrotta by and through her attorneys, Hurwitz Law PLLC, and hereby demands a jury trial in the above-captioned matter for all issues so triable.

Respectfully Submitted,
HURWITZ LAW PLLC

/s/ *Noah S. Hurwitz*
Noah S. Hurwitz (P74063)
Attorneys for Plaintiff

Dated: June 10, 2024