

RICHARD T. NEWTON, et al.,) Case No. 3:09-cv-05887-VRW
)
Plaintiffs/Petitioners,)
)
v.)
)
ARNOLD SCHWARZENEGGER, et al.,)
)
Defendants/Respondents.)
)
_____)

NOTICE OF FLSA COLLECTIVE ACTION REGARDING FURLOUGHS

TO: All current or former Bargaining Unit 6 (“BU6”) employees who worked for the California Department of Corrections and Rehabilitation (“CDCR”) or the California Department of Mental Health (“DMH”) at any time on or after the February 1, 2009 implementation of state employee furloughs.

RE: Fair Labor Standards Act (“FLSA”) lawsuit filed against GOVERNOR ARNOLD SCHWARZENEGGER, CDCR, DMH, and CONTROLLER, *et al.* (Defendants).

THIS NOTICE AND OPT-IN FORM HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, THE HONORABLE VAUGHN R. WALKER, UNITED STATES DISTRICT JUDGE. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF PLAINTIFFS’ CLAIMS OR DEFENDANTS’ DEFENSES. BY AUTHORIZING THIS NOTICE AND OPT-IN FORM, THE COURT NEITHER ENCOURAGES OR DISCOURAGES YOU FROM JOINING THIS LAWSUIT.

1. Introduction: This Notice is to inform you that you are potentially “similarly situated” to the named Plaintiffs in this lawsuit, to advise you how your rights may be affected

by this lawsuit, and to instruct you on the procedures necessary to participate in this lawsuit, if you choose to do so.

2. Description of lawsuit: In describing the claims and defenses asserted in this Collective action, the Court has taken no position regarding the merits of any claim or defense. This lawsuit was filed on December 16, 2009, in the United States District Court for the Northern District of California. The action was filed by Plaintiffs RICHARD T. NEWTON, FRANK M. MCNEAL, and SEAN A. BEATON, against California's GOVERNOR ARNOLD SCHWARZENEGGER, the CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION ("CDCR"), the DEPARTMENT OF MENTAL HEALTH ("DMH"), and California's CONTROLLER ("CONTROLLER"). The Plaintiffs are current Correctional Officers. The lawsuit seeks declaratory relief regarding Defendants' responsibilities, under the federal Fair Labor Standards Act ("FLSA"), for allegedly failing to properly pay Plaintiffs for straight time and overtime hours worked by Plaintiffs and other BU6 employees on their furlough days¹. The complaint alleges that the manner in which Defendants implemented furloughs in the state departments named in this lawsuit violates the FLSA. Specifically, Plaintiffs allege the BU6 employees are being ordered to report to work on their furlough days with the promise that they will be compensated with equivalent time off in the future. Plaintiffs also allege that Defendants' implementation of furloughs violates the FLSA's wage and hour, overtime, and record keeping requirements. Plaintiffs bring this action on behalf of themselves individually as employees, and on behalf of other similarly situated BU6 employees of Defendants.

The CONTROLLER Defendant, answering in his official capacity as the Controller of the State of California, denies violating FLSA rules and regulations.

Defendants, GOVERNOR ARNOLD SCHWARZENEGGER, CDCR, and DMH deny

¹ The following classifications, *inter alia*, make up BU6: Board Coordinating Parole Agent, Casework Specialist, Community Services, Correctional Counselor I, Correctional Counselor II Specialist, Correctional Officer, Fire Captain-Correctional Institution, Fire Service Training Specialist, Medical Technical Assistant, Medical Technical Assistant (Psychiatric), Parole Agent I, Parole Agent II Specialist, Youth Correctional Counselor, Youth Correctional Officer, and Parole Services Associate.

violating any and all FLSA rules and regulations and deny any and all claims alleged by Plaintiffs.

3. The Current State of this Lawsuit: The lawsuit is in its pre-trial stages. The Court conditionally has certified this case, and has allowed it to proceed as a collective action under the FLSA. If you choose to opt-in, you may be required to participate in the discovery process. You may be required to answer written questions, under oath, concerning the overtime hours you claim, if any, that you worked and for which you claim you were not compensated properly. You may also be required to answer questions under oath, in an oral deposition and/or give testimony at a trial and travel at your own expense to do so. The opportunity to opt-in to the collective actions closes on September 22, 2010.

4. FLSA Collective Action: Your Right to Join or Not Join this Lawsuit: If you worked as a Bargaining Unit 6 employee at any time on or after February 1, 2009, you have the right to opt-in to this collective action for declaratory relief. To participate in the lawsuit, you must sign and submit the attached “Opt-In Form: Consent to Join Legal Action Against Defendants for Alleged Violations of the Fair Labor Standards Act” (“ Opt-In Form”) After you sign the Opt-In Form , you should promptly return it, by fax or first class mail to CCPOA, Attention: FLSA Litigation, 755 Riverpoint Drive, Suite 200, West Sacramento, California 95605. The fax number is (916) 340-2948. If you choose to be represented by Plaintiffs’ counsel, you must contact Plaintiffs’ counsel in sufficient time to have Plaintiffs’ counsel file an Opt-In Form with the Federal Court on or before September 22, 2010. If you fail to file an Opt-In Form with the Federal Court on or before the above deadline, you may not be able to participate in this lawsuit.

5. Consequence of Decision to Join or Decline to Join Lawsuit: If you choose to join this suit, you will be bound by any resulting Judgment or settlement of the case, whether it is favorable or unfavorable to you. If you choose not to join this suit, and do not submit an Opt-In Form , you will not be bound by the Judgment or settlement, whether it is favorable or unfavorable.

6. No Retaliation for Participating in the Lawsuit: Federal law prohibits the State

from taking adverse action against persons who have exercised their rights under the FLSA to participate in this lawsuit.

7. Legal Representation in the Lawsuit: The existing Plaintiffs in this case are represented by the California Correctional Peace Officers Association Legal Department. These attorneys are identified as Daniel M. Lindsay; James P. Harrison; Jennifer L. Ragan; Leanne M. Kent and Jessica J. Hawthorne. For more information about this Notice, or the procedure for joining this action, you may refer to CCPOA's website at www.ccpoa.org, or contact CCPOA by telephone at (916) 340-5033.

You also have the right to be represented by separate counsel, at your own expense. To do so, you need to file a Notice of Appearance with the Court, and serve it upon the above named attorneys. If you do not do so, and continue as an opt-in member of the FLSA collective, you will be represented by the above named attorneys.

DO NOT CONTACT THE COURT DIRECTLY ABOUT THIS LAWSUIT.