

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

HAMPDEN, ss.

CIVIL ACTION NO.: 24CV607

JAMES CAREY, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS ELECTRIC
COMPANY,

Defendant.

CLASS ACTION COMPLAINT AND JURY DEMAND

I. INTRODUCTION

1. Employers in Massachusetts must pay their employees weekly or bi-weekly all wages earned by them within six days of the termination of the pay period in which such wages were earned. *See* The Massachusetts Wage Act (the “Wage Act”), M.G.L. c. 149 § 148.

2. Here, Defendant, Massachusetts Electric Company (“Defendant”), maintained a policy, practice, and agreement with its non-union, exempt, salaried management employees whereby such employees earned “Premium Pay” on an hourly basis for certain categories of work, in addition to their usual salary, and at a rate of pay equal to or higher than an hourly approximation of their usual salary.

3. Defendant paid its non-union, exempt, salaried management employees monthly, and failed to pay Plaintiff, James Carey (“Plaintiff”), and all other employees similarly situated (“Late Pay Class” or “Late Pay Class Members”), for all Premium Pay earned by each such employee within six days of the termination of the pay period in which such wages were earned.

4. Defendant also failed to pay Plaintiff and all other similarly situated employees (“Straight Time Premium Pay Class” or “Straight Time Premium Pay Class Members”) for all earned straight time Premium Pay wages by failing to notify and/or train Plaintiff and the Straight Time Premium Pay Class Members on how to properly code their Premium Pay time into Defendant’s timekeeping software, resulting in the non-payment of said wages, and Defendant also failed to ensure payment of these earned straight time Premium Pay wages despite knowledge that the incorrect payroll code was routinely being utilized by Plaintiff and the Straight Time Premium Pay Class Members.

5. Defendant’s conduct resulted in the late payment and/or non-payment of earned wages to hundreds of Massachusetts workers, depriving them of millions of dollars in wages.

6. Accordingly, Defendant is liable to Plaintiff and the Late Pay Class and the Straight Time Premium Pay Class (collectively, the “Classes”) for three times the amount of the late paid and/or unpaid wages, plus interest, costs, and attorneys’ fees, even if Plaintiff and/or the Class Members were paid prior to the commencement of litigation. *See* M.G.L. c. 149 § 150; *see also Reuter v. City of Methuen*, 184 N.E.3d 772, 781 (Mass. 2022).

II. PARTIES

7. Defendant, Massachusetts Electric Company, is a domestic gas and electric public utility company, with a principal office located at 170 Data Drive, Waltham, Middlesex County, MA 02451. Defendant’s Massachusetts Registered Agent is Corporation Corporate Services, Inc., located at 84 State Street, Boston, Suffolk County, MA 02109.

8. Plaintiff, James Carey, is an adult resident of Hampden County, Massachusetts.

III. JURISDICTION

9. This Court has jurisdiction over this matter pursuant to M.G.L. c. 149 §§ 148; 150 and M.G.L. c. 223A §§ 2; 3.

10. Venue is proper pursuant to M.G.L. c. 223 § 1.

11. On September 17, 2024, Plaintiff received authorization from the Massachusetts Office of the Attorney General, Fair Labor Division, to pursue his claims for late paid and/or unpaid wages, on behalf of himself, and on behalf of all other similarly situated employees, against Defendant (copy of Private Right of Action Authorization attached as Exhibit “A”).

IV. FACTS

12. Defendant is a gas and electric public utility company that provides electric services to customers in Massachusetts, and it is headquartered in Waltham, Middlesex County, Massachusetts.

13. Defendant is a wholly-owned subsidiary of National Grid USA.

14. Defendant employs approximately 6,000 employees in Massachusetts. Upon information and belief, approximately 600 of these employees are non-union, salaried, exempt, management employees.

15. Defendant has employed Plaintiff since on or about May 5, 2010.

16. At all times relevant to this action, Plaintiff was employed by Defendant as a Senior Transmission Overhead Line Supervisor.

17. At all times relevant to this action: Defendant paid Plaintiff and the Classes on a monthly basis; Defendant paid Plaintiff and the Classes on the on third Friday of each month; and Plaintiff’s paystubs reflected that this payment was in consideration for all hours worked between the first day and last day of the month.

18. For example, on July 19, 2024, Defendant remitted payment to Plaintiff for the pay period commencing July 1, 2024, and ending on July 31, 2024.

19. At all times relevant, Defendant has maintained a Premium Pay Policy for Non-Union Employees (“Premium Pay Policy”).

20. Pursuant to the Premium Pay Policy, Defendant agreed to pay its non-union, exempt, salaried management employees at their straight time hourly rate for all hours worked over 40 hours in a regular work week for Scheduled Work and Routine Emergencies. Defendant also agreed to pay its non-union, exempt, salaried management employees at one and one-half times their regular hourly rate for all hours worked over 40 hours in a regular work week for Major Events.

21. Pursuant to the Premium Pay Policy, Scheduled Work is defined as “all non-emergency customer work, work plan projects, preventive maintenance programs and follow-up work (i.e., permanent repairs) and all other scheduled work activities not included in routine emergency work.”

22. Pursuant to the Premium Pay Policy, Routine Emergencies are defined as “storms (not declared as a major event), major equipment failure (e.g., substation failure), public hazards (e.g., wires down, poles, motor vehicle accidents), imminent failure of equipment and/or operation of critical systems (e.g., underground cable systems or transformer replacements. Routine Emergencies can also be scheduled work at the direction of a controlling authority, Independent System Operator (ISO), Regional Control Center (RCC) or System Operations Dispatch (SOD), which must be performed outside the normal Monday through Friday work week due to system conditions.”

23. Pursuant to the Premium Pay Policy, Major Events are defined as “any event impacting a significant number of customers or causing significant risk to customers or employees,” which “will usually include an event greater than 24 hours in duration for full system service restoration and supervisors and crews are required to stay overnight to support the event.”

24. Pursuant to the Premium Policy, all Premium Pay hours must be entered by

employees into their timekeeping system by the 15th day of each month.

25. Pursuant to the Premium Policy, Premium Pay wages that are earned from the 16th day of the previous month, through the 15th day of the current month, are included in the current month's paycheck.

26. For example, in any given month where Plaintiff or the Late Pay Class Members earned Premium Pay wages between the 16th day and final day of the month, Defendant did not tender this payment until the third Friday of the subsequent month.

27. As a result of Defendant's payroll policy, Defendant failed to pay Plaintiff and the Late Pay Class Members for all Premium Pay wages earned between the 16th day and the final day of the month within six days of the termination of the pay period in which such wages were earned, in violation of the Wage Act. *See* M.G.L. c. 149 § 148.

28. For Defendant to comply with the Wage Act, Premium Pay hours worked between the 16th day and the final day of the month must have been paid no later than six days following the termination of the pay period in which such wages were earned. *Id.*

29. For example, for Defendant to comply with the Wage Act, any Premium Pay wages earned by Plaintiff between July 16, 2024 and July 31, 2024 must have been paid to Plaintiff no later than August 6, 2024.

30. By paying Plaintiff for his earned Premium Pay wages on August 19, 2024, Defendant paid these earned Premium Pay wages approximately 13 days late in violation of the Wage Act. *Id.*

31. Defendant's failure to pay Plaintiff and the Late Pay Class for their Premium Pay wages that they earned between the 16th day and the final day of the month within six days of the termination of the pay period in which such wages were earned, renders Defendant liable for

three times the amount of the late paid wages, plus interest, costs, and attorneys' fees. *See* M.G.L. c. 149 § 150.

32. In addition, Defendant's Premium Pay Policy fails to specifically articulate which payroll code that Plaintiff and the Straight Time Premium Pay Class Members should have used to enter Premium Pay hours calculated at their straight time hourly rates for all hours worked over 40 hours in a regular work week for Scheduled Work and Routine Emergencies.

33. Upon information and belief, Defendant failed to properly train Plaintiff and the Straight Time Premium Pay Class as to the method of entering Straight Time Premium Pay time in Defendant's time keeping system to ensure that they would be paid for all straight time Premium Pay hours worked.

34. As a result, Plaintiff and the Straight Time Premium Pay Class utilized the payroll entry code "1000," to reflect Premium Pay hours worked for Scheduled Work and Routine Emergencies.

35. Upon information and belief, payroll code "1000" was the code that Plaintiff and the Straight Time Premium Pay Class utilized to reflect their regular hourly rate of pay in Defendant's time keeping system.

36. However, upon information and belief, Plaintiff and Straight Time Premium Pay Class were required to utilize payroll code "1074" to represent Premium Pay calculated at their straight time hourly rate for all hours worked in excess of 40 hours in a regular work week for Scheduled Work and Routine Emergencies.

37. Given the formatting of the Premium Pay Policy, Plaintiff and the Straight Time Premium Pay Class concluded that payroll code "1074" was only to be used when Scheduled Work or Routine Emergencies occurred on a date or time that would otherwise be a scheduled holiday for Plaintiff and/or the Straight Time Premium Pay Class Members.

38. Despite the fact that Defendant knew that Plaintiff and the Straight Time Premium Pay Class worked Premium Pay Hours for which they were not receiving compensation, Defendant failed to ensure that Plaintiff and the Class received payment for this time worked.

39. As a result of Defendant's payroll policy/practice, Defendant failed to pay to Plaintiff and the Straight Time Premium Pay Class for all straight time Premium Pay entered by each such employee under code "1000."

40. Defendant's failure to pay Plaintiff and the Straight Time Premium Pay Class for their Premium Pay wages that they earned, renders Defendant liable for three times the amount of the unpaid wages, plus interest, costs, and attorneys' fees. *See* M.G.L. c. 149 § 150.

V. CLASS ACTION ALLEGATIONS

Late Pay Class

41. Defendant failed to pay Plaintiff, and the Late Pay Class for all Premium Pay wages earned between the 16th day and final day of the month within six days of the termination of the pay period in which such wages were earned, as required by M.G.L c. 149 § 148.

42. Plaintiff brings this Action on behalf of himself and all other Members of the Late Pay Class.

43. The Late Pay Class is defined as follows:

All Massachusetts employees of Defendant who earned straight time Premium Pay and one and one-half time Premium Pay between the 16th day and final day of the month, but who were not paid for these Premium Pay hours within six days of the termination of the pay period in which such wages were earned, during the three years immediately preceding this lawsuit, through the date of final judgment in this matter.

44. Class certification for this Massachusetts state law claim is appropriate under Rule 23 of the Massachusetts Rules of Civil Procedure because all of the requirements of Rule 23 are met.

45. The Late Pay Class is so numerous that joinder of all Late Pay Class Members is impracticable. Upon information and belief, there are hundreds of workers who were employed by Defendant and subjected to the policies and/or practices challenged herein during the period of the claim.

46. There are questions of law and fact common to the Late Pay Class, including whether Defendant's policy and/or practice of not paying their employees for the full value of their Premium Pay wages within six days of the termination of the pay period in which such wages were earned, violated the Wage Act.

47. The claims of Plaintiff are typical of those of the Late Pay Class Members. The claims of Plaintiff encompass Defendant's challenged course of conduct. Furthermore, the claims of Plaintiff are based on the same legal theories as the claims of the putative Late Pay Class Members. The legal issues as to the violation of the Wage Act by Defendant's conduct applies equally to Plaintiff and to the Late Pay Class.

48. Plaintiff will fairly and adequately protect the interests of the Late Pay Class. The claims of Plaintiff are not antagonistic to those of the putative Late Pay Class, and Plaintiff has hired counsel skilled in the prosecution of class actions.

49. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. This proposed class action is the superior method of adjudication because it presents few management difficulties, conserves the resources of the Parties and the court system, protects the rights of each Late Pay Class Member, and maximizes recovery to Plaintiff and the Late Pay Class Members.

50. Based upon the foregoing, Defendant violated the Wage Act by failing to pay Plaintiff and the Late Pay Class Members for all Premium Pay wages earned between the last

day of the month within six days of the termination of the pay period in which such wages were earned.

Straight Time Premium Pay Class

51. Defendant failed to pay Plaintiff and the Straight Time Premium Pay Class for all straight time Premium Pay wages earned and entered by Plaintiff and the Straight Time Premium Pay Class Members under payroll code “1000.”

52. Plaintiff brings this Action on behalf of himself and all other Members of the Straight Time Premium Pay Class.

53. The Straight Time Premium Pay Class is defined as follows:

All Massachusetts employees of Defendant who earned straight time Premium Pay, but were not paid for this time because such time was entered under payroll code “1,000,” during the three years immediately preceding this lawsuit, through the date of final judgment in this matter.

54. Class certification for this Massachusetts state law claim is appropriate under Rule 23 of the Massachusetts Rules of Civil Procedure because all of the requirements of Rule 23 are met.

55. The Straight Time Premium Pay Class is so numerous that joinder of all Straight Time Premium Pay Class Members is impracticable. Upon information and belief, there are hundreds of workers who were employed by Defendant and subjected to the policies and/or practices challenged herein during the period of the claim.

56. There are questions of law and fact common to the Straight Time Premium Pay Class, including whether Defendant’s policy and/or practice of not paying their employees for the value of their straight time Premium Pay wages if entered under payroll code “1000,” violated the Wage Act.

57. The claims of Plaintiff are typical of those of the Straight Time Premium Pay

Class Members. The claims of Plaintiff encompass Defendant's challenged course of conduct. Furthermore, the claims of Plaintiff are based on the same legal theories as the claims of the putative Straight Time Premium Pay Class Members. The legal issues as to the violation of the Wage Act by Defendant's conduct applies equally to Plaintiff and to the Straight Time Premium Pay Class.

58. Plaintiff will fairly and adequately protect the interests of the Straight Time Premium Pay Class. The claims of Plaintiff are not antagonistic to those of the putative Straight Time Premium Pay Class, and Plaintiff has hired counsel skilled in the prosecution of class actions.

59. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. This proposed class action is the superior method of adjudication because it presents few management difficulties, conserves the resources of the Parties and the court system, protects the rights of each Straight Time Premium Pay Class Member, and maximizes recovery to Plaintiff and the Straight Time Premium Pay Class Members.

60. Based upon the foregoing, Defendant violated the Wage Act by failing to pay Plaintiff and the Straight Time Premium Pay Class Members for all straight time Premium Pay wages earned and entered in Defendant's time keeping software under payroll code "1,000."

VI. LEGAL CLAIMS

COUNT I: Violation of the Massachusetts Wage Act For Late Payment of Earned Premium Pay Wages.

61. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.

62. Defendant, through its common policy and/or practice, failed to pay Plaintiff and the Late Pay Class Members for all Premium Pay wages earned between the 16th day and the final day of the month within six days of the termination of the pay period in which such wages were earned, as required by the Wage Act. *See* M.G.L. c. 149 § 148.

63. As a result, Defendant is liable to Plaintiff and the Late Pay Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees. *See* M.G.L. c. 149 § 150; *Reuter* at 781.

**COUNT II: Violation of the Massachusetts Wage Act For Non-Payment of
Earned Straight Time Premium Pay Wages.**

64. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.

65. Defendant, through its common payroll policy and/or practice, failed to pay Plaintiff and the Straight Time Premium Pay Class Members for all straight time Premium Pay hours entered in Defendant's time keeping software under payroll code "1000," in violation of the Wage Act. *See* M.G.L. c. 149 § 148.

66. As a result, Defendant is liable to Plaintiff and the Straight Time Premium Pay Class for three times the amount of the unpaid wages, plus interest, costs, and attorneys' fees. *See* M.G.L. c. 149 § 150; *Reuter* at 781.

VII. DEMAND FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, requests that the Court:

- A. Certify this Action as a class action pursuant to M.G.L. c. 149 § 148;
- B. In the alternative, certify this case as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;

- C. Appoint Named Plaintiff as Class Representative;
- D. Appoint the undersigned as Class Counsel;
- E. Award Named Plaintiff and the Class treble damages pursuant to M.G.L. c. 149 §§ 148; 150;
- F. Award Named Plaintiff and the Late Pay Class and Straight Time Premium Pay Class all pre-judgment and post-judgment interest on these damages pursuant to M.G.L. c. 149 §§ 148; 150;
- G. Award attorneys' fees and costs incurred by Plaintiff in prosecuting this Action pursuant to M.G.L. c. 149 §§ 148; 150;
- H. Award a service award to the Named Plaintiff; and
- I. Award such other relief as the Court deems just.

VIII. JURY DEMAND

Plaintiff, on behalf of himself and all others similarly situated, demands a trial by jury as to the allegations contained in this Complaint.

Dated: October 11, 2024

Respectfully submitted,

The Plaintiff,
JAMES CAREY, on behalf of himself and
all others similarly situated,
By his Attorneys,

/s/ Raymond Dinsmore

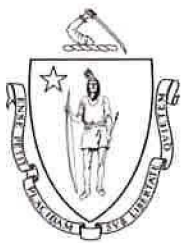
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EXHIBIT A



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September 17, 2024

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One Monarch Place, Suite 1340
Springfield, MA 01144

RE: James Carey
Request for Private Right of Action against Massachusetts Electric Company

Dear Counsel:

Thank you for contacting the Office of the Attorney General's Fair Labor Division.

Massachusetts General Laws Chapter 149, § 150, and Chapter 151, §§ 1B and 20 establish a private right of action for employees who believe they are victims of certain violations of the state wage laws.

This letter is to inform you that we are authorizing you to pursue this matter through a private civil lawsuit. If you elect to sue in civil court, you may bring an action on your own or your clients' behalf, and on behalf of other similarly situated workers.

This office will not pursue an investigation or enforcement at this time.

Sincerely,

Fair Labor Division
Office of the Massachusetts Attorney General
(617) 727-3465