

COPY

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT

WILLA HAMMITT BROWN and
KIMBERLY TOPPING, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Defendant.

CIVIL ACTION NO. 2581-CV-00143

RECEIVED

02/21/25

CONSOLIDATED WITH:

KIMBERLY TOPPING, on behalf of
themselves and all others similarly situated,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE d/b/a HARVARD
UNIVERSITY,

Defendant.

CIVIL ACTION NO. 2581-CV-00190

**FIRST AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT AND JURY DEMAND**

OVERVIEW

1. This action is brought by Plaintiff Willa Hammitt Brown, who was employed as a preceptor at Harvard University from July 2, 2015 to January 31, 2023, and Plaintiff Kimberly Topping, who was employed at Harvard from Spring 2020 to the present, including as an adjunct lecturer from August 2022 to present.

2. Employers in Massachusetts must pay their employees weekly, bi-weekly, or semi-monthly. *See* The Massachusetts Wage Act (the “Wage Act”), M.G.L. c. 149 § 148.¹ The Supreme Judicial Court has held that these strict requirements are intended to protect employees, who are dependent “upon the prompt payment of their wages.” *Commonwealth v. New York Cent. & H.R.R.R. Co.*, 206 Mass. 417, 424 (1910). The Court has also observed that even “a minor violation” of these requirements can have “severe financial consequences” for employees in the Commonwealth. *Reuter v. City of Methuen*, 489 Mass. 465, 468 (2022).

3. Here, Defendant, President and Fellows of Harvard College d/b/a Harvard University (“Harvard”), maintains a policy of paying certain employees only once at the end of each month, even though these employees did not elect to be paid monthly. At times, employees were paid even less frequently, such as at the end of a course. At a minimum, Defendant’s policy results in all wages earned in the first half of each month being paid late in violation of the Wage Act.

4. Defendant’s illegal payroll policies have resulted in late payment and the unlawful withholding of millions of dollars in wages over the last three years, causing harm to Plaintiffs and all others similarly situated.

5. Brown and Topping, individually and on behalf of all similarly situated employees, seek compensation for the late payments in violation of the Massachusetts Wage Act, statutory liquidated damages for the late payments, attorneys’ fees and costs, and other remedies set forth below.

PARTIES

¹ The only exception to this requirement is that some administrative or professional employees may be paid once per month, if they specifically “elect” this method of payment. M.G.L. c. 149 § 148. Plaintiffs do not concede that this exception applies to them or to the members of the proposed class. Defendant bears the burden of establishing that this exception applies.

6. Willa Hammitt Brown (“Brown”) is a resident of Minneapolis, Minnesota.

7. Kimberly Topping (“Topping”) is a resident of Middlesex County, Massachusetts.

8. Brown and Topping bring this action individually and on behalf of all others similarly situated, pursuant to M.G.L. c. 149 § 150 and Mass R. Civ. P. 23. Brown and Topping seek to represent a class of employees of Harvard University who have been paid monthly at any time in the statutory period.²

9. The President and Fellows of Harvard College is the governing body of Harvard University, an institution of higher education located in Cambridge, Massachusetts.

JURISDICTION AND VENUE

10. Under M.G.L. c. 212, § 3, the Superior Court has jurisdiction because the Plaintiffs are likely to recover more than \$50,000 for themselves and the proposed class. Both Brown and Topping have filed complaints with the Massachusetts Attorney General and obtained a private right of action.

11. Venue is appropriate in Middlesex County Superior Court pursuant to M.G.L. c. 223, § 1 and 2 because Harvard University is located in Middlesex County and because the acts that gave rise to this dispute took place in Middlesex County.

FACTUAL ALLEGATIONS

12. Brown was employed by Harvard University as a preceptor from July 2, 2015 until January 31, 2023.

13. Topping has been employed by Harvard as an adjunct lecturer since August 2022.

² Throughout the Amended Complaint, Plaintiffs refer to Harvard’s policy as providing “monthly” wage payments, although at times Harvard paid wages less frequently, such as at the end of a course. The primary consideration is that Harvard did not pay Plaintiffs weekly, bi-weekly, or semi-monthly, as required by the Wage Act, and references to “monthly” wage payments are intended to encompass all untimely payments.

Topping's employment with Harvard began in Spring of 2020.

14. Harvard paid Brown on a monthly basis instead of weekly, bi-weekly, or semi-monthly.

15. Harvard paid Topping on a monthly basis instead of weekly, bi-weekly, or semi-monthly when they performed work as an adjunct lecturer. Upon information and belief, Harvard paid Topping even less frequently than monthly for their work facilitating online courses.

16. Harvard had, and continues to have, a policy and practice of paying the Plaintiffs and other similarly situated employees and former employees once per month. The Plaintiffs did not elect, at their own option, to be paid monthly. Nor did Harvard offer them an election, at their own option, to be paid monthly.

17. For example, on October 31, 2024, Harvard paid Topping \$1,250.79 (gross) for the pay period commencing October 1, 2024 and ending October 31, 2024. Similarly, on January 31, 2023, Harvard paid Brown \$3,016.67 (gross) for the pay period commencing January 1, 2023, and ending January 31, 2023. Neither Plaintiff elected, at their own option, to be paid monthly.

18. By paying the Plaintiffs monthly, Harvard deprived them of the first half of their monthly wages during the second half of each month. During that period, the Plaintiffs did not have access to their money to save, invest, or spend on living expenses. When Plaintiffs received their wages at the end of the month, approximately half of the wages were late. When Topping was paid less frequently than monthly, all or nearly all of their wages were late.

19. The Wage Act's requirement that employees be paid at least semi-monthly is consistent with social science and economics research, which finds that more frequent paychecks lead to higher micro- and macro-economic security and well-being.

20. Upon information and belief, Harvard has an ongoing policy and practice of paying employees similarly situated to the Plaintiffs (including full-time faculty) monthly instead of bi-

weekly or semi-monthly. According to Harvard's Faculty of Arts and Sciences Appointment and Promotion Handbook, available at <https://academic-appointments.fas.harvard.edu/b-compensation>, faculty are paid on "the last working day of each month." As a result, approximately half of the wages in their monthly paychecks are paid late.

21. Upon information and belief, Harvard employees who are paid monthly did not elect at their own option to be paid in this manner.

22. On January 7, 2025, pursuant to M.G.L. c. 149 § 150, Brown filed a complaint with the Office of the Massachusetts Attorney General ("OAG"), which subsequently issued a letter authorizing her to bring a private action.

23. On January 24, 2025, Topping filed a complaint with the OAG, which subsequently issued a letter authorizing them to bring a private action.

CLASS ALLEGATIONS

24. The Plaintiffs bring this action on behalf of themselves and other Harvard employees who are similarly situated to them ("Late Payment Class").

25. The Late Payment Class consists of all Harvard employees who were paid monthly or less frequently from January 7, 2022 through the date of final judgment in this matter.

26. Pursuant to M.G.L. c. 149 § 150, the Plaintiffs are similarly situated to the members of the Late Payment Class because they were subject to Harvard's policy and practice of paying certain employees monthly instead of weekly, bi-weekly, or, for some types of employees, semi-monthly. The Plaintiffs are also similarly situated to the members of the Late Payment Class because they did not elect at their own option to be paid monthly.

27. The scope of the class can be easily and objectively discerned through Harvard's personnel and pay records.

28. The proposed class the Plaintiffs seek to represent satisfies the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure.

29. The Late Payment Class is so numerous that joinder of all members is impracticable. Upon information and belief, there are hundreds if not thousands of employees whom Harvard pays monthly. It would be impracticable to enlist every Harvard employee who was not paid timely to join this lawsuit on an individual basis.

30. There are questions of law and fact common to the class. The Plaintiffs and the other class members were all subject to similar pay schedules, which resulted in late payments every month in violation of M.G.L. c. 149 § 148.

31. The Plaintiffs' claims, as the representative Plaintiffs, are typical of the claims of the class as a whole because they and members of the proposed class were paid under the same pay schedules, which resulted in late payments at the same rate and frequency.

32. The Plaintiffs will fairly and adequately protect the interests of the class. They have retained attorneys who are qualified and experienced to effectively represent the class's interests.

33. Questions of law or fact common to the Late Payment Class predominate over questions affecting only individual members, including whether Harvard's pay schedules violate the Wage Act, resulting in consistent and recurring late payments.

34. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Given the common questions of law and fact involved in the pay practice at issue, the aggregation of individual claims into a class action is far superior to, and more efficient than, requiring individuals to litigate claims in separate lawsuits. Bringing this action as a class action will also prevent duplicative lawsuits being filed in other courts, which would impose an unnecessary burden on the court system.

LEGAL CLAIMS

COUNT I:

VIOLATION OF M.G.L. C. 149, § 148 (THE MASSACHUSETTS WAGE ACT)

35. The Plaintiffs incorporate the foregoing allegations by reference.

36. Massachusetts General Laws chapter 149 § 148 requires Massachusetts employers to pay most of their employees weekly, bi-weekly, or semi-monthly. Certain categories of employees may be paid monthly if “such employee elects at his own option to be paid monthly.”

37. Harvard employed Brown and Topping as a preceptor and adjunct lecturer, respectively. Instead of paying the Plaintiffs weekly, bi-weekly, or semi-monthly, as required by the Wage Act, Harvard paid them monthly. Harvard paid Topping even less frequently than monthly for their work in facilitating online courses. Harvard also paid and continues to pay many other employees monthly, in the same manner that it paid the Plaintiffs.

38. The Plaintiffs did not elect at their own option to be paid less frequently than semi-monthly. Upon information and belief, none of the other members of the Late Payment Class elected at their own option to be paid less frequently than semi-monthly.

39. Harvard’s practice of paying the Plaintiffs and members of the Late Payment Class less frequently than semi-monthly violates the requirements of the Wage Act. Every month, because of Harvard’s unlawful practice, the Plaintiffs and other Late Payment Class members received approximately half of their wages on time and approximately half of their wages late. When Harvard pays employees less frequently than monthly, all or nearly all of the applicable wages are paid late. This practice denies the Plaintiffs and the class members the prompt and timely payment of their wages, and the use of those wages, in violation of the Wage Act.

40. As a matter of law, Brown, Topping, and other Late Payment Class members are entitled to treble damages as liquidated damages for violating the Wage Act as described above.

41. Brown and Topping bring this claim individually and for all others similarly situated pursuant to M.G.L. c. 149, §§ 148, 150, and Mass R. Civ. P. 23.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiffs requests that the Court:

1. Enter judgment against Defendant President and Fellows of Harvard College;
2. Certify this action as a class action pursuant to Mass. R. Civ. P. 23 and M.G.L. c. 149 § 148;
3. Appoint the Plaintiffs as Class Representatives for the Late Payment Class;
4. Appoint the undersigned as Class Counsel;
5. Award treble damages to the Plaintiffs and all members of the Late Payment Class for all wages paid late;
6. Award service awards to the Plaintiffs;
7. Award pre- and post-judgment interest, to the extent appropriate;
8. Award attorneys' fees and costs pursuant to M.G.L. c. 149 §§ 148 and 150;
9. Issue a permanent injunction prohibiting Defendant from continuing its unlawful pay practice, i.e., its failure to pay certain employees bi-weekly, or semi-monthly unless they elect at their own option to be paid monthly; and
10. Any such other relief that the Court deems just.

JURY DEMAND

Plaintiffs, on behalf of themselves and others similarly situated, demand a trial by jury.

Respectfully submitted,

The Plaintiffs,
WILLA HAMMITT BROWN and
KIMBERLY TOPPING, individually and on
behalf of all others similarly situated,

By their Attorneys,

/s/ Francis J. Bingham

Francis J. Bingham (BBO No. 682502)
Brook Hopkins (BBO No. 683871)
Bingham Hopkins LLC
20 University Road, Suite 500
Cambridge, MA 02138
Telephone: (617) 798-2302
Francis.Bingham@binghamhopkins.com
Brook.Hopkins@binghamhopkins.com

/s/ Raymond Dinsmore

Raymond Dinsmore, Esq. (BBO No. 667340)
Richard E. Hayber, Esq. (BBO No. 569131)
Ryan B. Guers, Esq. (BBO No. 713870)
Hayber, McKenna, & Dinsmore, LLC
One Monarch Place, Suite 1340
Springfield, MA 01144
Telephone: (413) 785-1400
rdinsmore@hayberlawfirm.com
rhayber@hayberlawfirm.com
rguers@hayberlawfirm.com

/s/ Matthew W. Thomson

Shannon Liss-Riordan, Esq. (BBO No. 640716)
Matthew W. Thomson, Esq. (BBO No. 687745)
Lichten Liss-Riordan, P.C.
729 Boylston Street, Suite 200
Boston, MA 02116
Telephone: (617) 994-5800
hlichten@llrlaw.com
sliss@llrlaw.com
mthomson@llrlaw.com

Dated: February 21, 2025

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2025, a true copy of the above document was served via email on counsel for the President and Fellows of Harvard College (bmiller@seyfarth.com; rfisher@seyfarth.com; mmooney@seyfarth.com; bsherwood@seyfarth.com).

/s/ Francis J. Bingham

Francis J. Bingham