

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**DAVID M. DRISCOLL, individually and on behalf of  
all others similarly situated,**

**Plaintiffs,**

**-against-**

**THE GEORGE WASHINGTON UNIVERSITY,**

**Defendant.**

**1:12-CV-00690-ESH**

**SECOND AMENDED  
CLASS ACTION  
COMPLAINT**

**Jury Trial Demanded**

**I. INTRODUCTION**

1. After years of treating Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates as exempt and not paying overtime wages to people employed in those titles, The George Washington University (“GWU”) reclassified the titles and began paying overtime pay in 2011. As part of the reclassification, GWU made nominal back overtime payments to the reclassified employees that were not based on the overtime hours the individuals worked and that did not include liquidated damages or interest payments. Prior to the reclassification, GWU failed to pay the reclassified employees all the wages they were due each pay period. These practices resulted in violations of the Fair Labor Standards Act (“FLSA”) and the laws of the District of Columbia (“D.C. Code”).
2. Plaintiff DRISCOLL seeks unpaid wages, liquidated damages, costs, interest, and attorneys’ fees as well as declaratory relief, and he brings this claim individually and on behalf of other similarly situated employees under the collective action provisions of the

FLSA, 29 U.S.C. § 216(b).

3. Plaintiff DRISCOLL also brings individual and representative claims under D.C. Code § 32-1012 *et seq.*, as a class action pursuant to Fed. R. Civ. P. 23, on behalf of a class of all Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates whom GWU did not pay all the wages they were due during the three years preceding the filing of this action and the date of final judgment in this matter.
4. Plaintiff DRISCOLL also brings individual and representative claims under D.C. Code § 32-1302 *et seq.*, as a class action pursuant to Fed. R. Civ. P. 23, on behalf of a class of all Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates whom GWU did not pay all the wages they were due during the three years preceding the filing of this action and the date of final judgment in this matter.
5. Plaintiff DRISCOLL also brings an individual claim that GWU discriminated against him in violation of the FLSA's anti-discrimination provisions, 29 U.S.C §215(c), by firing him for questioning GWU's method of calculating the back wage payments it made pursuant to its reclassification.

## **II. JURISDICTION & VENUE**

6. Jurisdiction is conferred upon this Court by 29 U.S.C. §216(b) of the Fair Labor Standards Act ("FLSA"), by 28 U.S.C. §1331, this action arising under laws of the United States, and by 28 U.S.C. §1337, this action arising under Acts of Congress regulating commerce. Jurisdiction over the Plaintiffs' claims for declaratory relief is conferred by 28 U.S.C. §§2201 and 2202.

7. This Court also has jurisdiction over Plaintiffs' claims under D.C. Code pursuant to 28 U.S.C. §§ 1332 and 1367.
8. The amount in controversy in this matter exceeds the sum or value of \$5,000,000, exclusive of interest and costs.
9. At least one member of the proposed class is a citizen of a state different from that of GWU.
10. Plaintiffs' claims involve matters of national or interstate interest.
11. Citizenship of the members of the proposed classes is dispersed among many states including Virginia, Maryland, and the District of Columbia.
12. Greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are not citizens of the District of Columbia.
13. GWU resides in the District of Columbia and is subject to personal jurisdiction in the District of Columbia.
14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) and (b).
15. GWU resides in this District.
16. Plaintiffs labored for GWU within this District.
17. A substantial part of the events and omissions giving rise to these claims occurred in this District.

### **III. PARTIES**

#### **A. Named Plaintiff**

18. Plaintiff DRISCOLL was an employee of GWU and worked for it in the District of Columbia.
19. Plaintiff DRISCOLL was engaged in commerce in his work for GWU.

20. Plaintiff DRISCOLL's consent to sue under the FLSA and D.C. Code is attached to this Complaint.

**B. Represented Parties under the FLSA**

21. The term "Plaintiffs" as used in this Complaint refers to the Named Plaintiff and any additional represented class members pursuant to the collective action provision of 29 U.S.C. §216(b).

22. The Named Plaintiff brings the First Cause of Action as a collective action under the collective action provisions of the FLSA as set forth in 29 U.S.C. §216(b) on behalf of all current and former Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates who have worked for GWU within the past three years preceding the filing of a consent to sue by such persons and the date of final judgment in this matter.

**C. Represented Parties under FRCP 23**

23. Plaintiff DRISCOLL brings the Third and Fourth Causes of Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and a class of persons consisting of all Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates who worked for GWU in the District of Columbia between the period commencing three years preceding the filing of this action and the date of final judgment in this matter ("Class Members").

24. Excluded from the Class Members are GWU's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in GWU; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely

and otherwise proper requests for exclusion from the Class.

**D. Defendant**

25. Defendant The George Washington University (“GWU”) is a domestic non-profit corporation incorporated in the District of Columbia that lists its principle place of business as 2121 I Street, NW Washington, DC 20052.
26. GWU is a private, coeducational comprehensive university.
27. GWU grossed more than \$500,000 in each of the last five calendar years.
28. GWU is an enterprise engaged in interstate commerce for purposes of the FLSA.
29. All actions and omissions described in this complaint were made by GWU directly or through its supervisory employees and agents.

**IV. CLASS ACTION ALLEGATIONS**

30. The Class Members identified above are so numerous that joinder of all members is impracticable.
31. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of GWU.
32. Upon information and belief, the size of the Class numbers more than 100 persons.
33. GWU acted or refused to act on grounds generally applicable to the Class Members, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.
34. The Third and Fourth Causes of Action are properly maintainable as class actions under Federal Rule of Civil Procedure 23(b)(3). There are questions of law and fact common to the Class Members that predominate over any questions solely affecting individual Class

Members, including but not limited to:

- a. whether GWU failed to pay Class Members their wages due in each pay period;
  - b. whether GWU failed and/or refused to pay the Class Members overtime pay for all hours worked in excess of 40 hours per workweek;
  - c. whether GWU'S policy of failing to pay Class Members the wages they were due each pay period was instituted willfully or with reckless disregard of the law;
  - d. whether GWU correctly calculated and compensated the Class Members for hours worked;
  - e. whether GWU failed to keep true and accurate time records for all hours worked by the Class Members;
  - f. what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;
  - g. the nature and extent of Class-wide injury and the appropriate measure of damages for the Class Members.
35. Plaintiff DRISCOLL's claims are typical of the claims of the Class Members he seeks to represent. DRISCOLL and the Class Members work or have worked for GWU and have been subjected to its policy and pattern or practice of failing to pay all wages due in each pay period. GWU acted and refused to act on grounds generally applicable to the Class Members, thereby making declaratory relief with respect to the Class Members appropriate.
36. Plaintiff DRISCOLL will fairly and adequately represent and protect the interests of the Class Members.
- a. Plaintiff DRISCOLL understands that, as class representative, he assumes a

responsibility to the Class Members to represent their interests fairly and adequately.

- b. Plaintiff DRISCOLL recognizes that as class representative he must represent and consider the interests of the Class Members just as he would represent and consider his own interests.
  - c. Plaintiff DRISCOLL understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over those of the Class Members.
  - d. Plaintiff DRISCOLL recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Class Members.
  - e. Plaintiff DRISCOLL understands that in order to provide adequate representation, he must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in his possession, and testify, if required, in a deposition and in trial.
37. Plaintiff DRISCOLL has retained counsel competent and experienced in complex class action employment litigation.
38. A class action is superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The Class Members have been damaged and are entitled to recovery as a result of GWU's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual

members of each class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about GWU's practices.

## **FACTS**

39. Plaintiff DRISCOLL began his employment with GWU on or about April 12, 2010, as an Executive Coordinator. He left employment with GWU on or about February 22, 2012.
40. GWU employed class members as Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and/or Executive Associates.
41. Driscoll and other Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates were hired to work a 40-hour workweek.
42. GWU paid Driscoll and other Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates what it referred to as a "job hourly rate" based on an annual compensation divided by a 40 hour work week. When Driscoll was hired, GWU paid him a job hourly rate of \$18.68 which represented an annual compensation rate of \$39,000. His job hourly rate increased to \$19.51 in December 2010.
43. GWU classified DRISCOLL and other Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates as exempt employees under the FLSA and D.C. Code and did not pay them overtime wages for all hours worked over 40 in a week.
44. Driscoll and other Executive Aides, Executive Assistants, Executive Coordinators,



Executive Support Assistants, and Executive Associates regularly worked more than 40 hours a week. Driscoll worked overtime in most weeks and he and other class members were required to work overtime on weekends several times during the course of the year.

45. During the course of 2011, GWU reclassified Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates, including Driscoll, to non-exempt employees under the FLSA and D.C. Code and began to pay them overtime wages for all hours worked over 40 in a week. Driscoll's reclassification took effect in December 2011. Prior to the reclassification, GWU did not pay Driscoll for his overtime work.
46. Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates job duties did not change as a result of the reclassification.
47. Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates continued to perform the same job duties as non-exempt employees as they did as exempt employees.
48. After reclassifying the Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates as non-exempt, GWU made a payment to them for back overtime wages it claimed were earned over the period two years prior to the reclassification. GWU paid Driscoll \$232.98 in back overtime pay less taxes and withholdings for a net payment of \$160.58.
49. GWU improperly used a "half-time" method to calculate the back overtime wage payments because it did not meet the prerequisites to using that method. GWU should have paid overtime wages calculated at time and one-half the regular rate of pay required

under both the FLSA and the D.C. Code.

50. The use of the “half-time” method resulted in class members receiving only one-third or less of the back overtime wages due under the FLSA and D.C. Code.
51. The payments for back wages were not based on the overtime hours the Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates actually worked. The overtime hours GWU used to determine back wages were less than the actual overtime hours class members worked.
52. Although Driscoll regularly worked overtime including one two-week period in which he worked and reported more than 50 hours of overtime work, GWU based his back overtime wages on a total of 24 hours of overtime for his entire time of employment.
53. The payments for back wages did not include liquidated damages.
54. The payments for back wages did not include interest.
55. GWU’s unlawful conduct, as set forth in this Class Action Complaint, has been intentional, willful, and in bad faith, and has caused significant damages to Class Members.
56. GWU was aware or should have been aware that the law required it to pay non-exempt employees, including Executive Aides, Executive Assistants, Executive Coordinators, Executive Support Assistants, and Executive Associates, overtime wages for all work-hours it suffered or permitted in excess of 40 per workweek.
57. From the very outset of GWU’s reclassification, Driscoll complained about the back overtime payment the University offered him. He wrote a series of e-mails to GWU’s Human Resources department questioning GWU’s use of the FLSA’s half-time method of calculating overtime and the initial FLSA exempt classification of his position. He

also asserted that he was not being paid for all the overtime hours he had worked.

58. When he did not receive adequate answers, he continued his e-mail campaign asking Human Resources to explain the calculation of his back overtime pay and complaining that GWU failed to compensate him for all his overtime work. Eventually, he wrote a series of e-mails to the University's Director of Compensation.
59. He directed Human Resources not to deposit the back overtime wage offer into his direct deposit account because he was challenging the University's wage calculation and hours of work used.
60. After GWU deposited his back overtime pay nonetheless, Driscoll spoke with the Director of Compensation, complaining that the amount of overtime GWU estimated was grossly inadequate and that he did not intend to accept it. He complained that GWU had deposited the wages against his wishes.
61. In February 2011, he wrote to the Human Resources representative and the Director of Communication presenting them with evidence that he had worked more overtime hours than GWU had included in his back overtime pay. He also challenged GWU's original exempt classification of his position.
62. When neither Human Resources nor the Director of Communication responded to the evidence of his overtime hours, Driscoll persisted, refusing to accept the silence.
63. Driscoll's last e-mail to the Human Resources representative and the Director of Communication was on February 21, 2012. He was terminated the next day.

**FIRST CAUSE OF ACTION  
(FLSA—OVERTIME WAGES)**

64. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

- 65. GWU failed to pay overtime wages due to Plaintiffs as required by the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* and its implementing regulations.
- 66. GWU's failure to pay proper overtime wages was willful within the meaning of the FLSA.
- 67. GWU's failure to comply with the FLSA overtime protections caused Plaintiffs to suffer loss of wages and interest thereon.

**SECOND CAUSE OF ACTION  
(FLSA—RETALIATION)**

- 68. Plaintiff DRISCOLL re-alleges and incorporates by reference all allegations in all preceding paragraphs.
- 69. GWU discriminated against Plaintiff DRISCOLL by discharging him because he questioned its payment of back overtime wages in violation of the FLSA, 29 U.S.C. §215.
- 70. GWU's discrimination caused Plaintiffs DRISCOLL to suffer loss of wages and interest thereon.

**THIRD CAUSE OF ACTION  
(D.C. CODE—OVERTIME WAGES)**

- 71. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.
- 72. GWU failed to pay overtime wages due to the Plaintiffs as required by D.C. Code §32-1001 *et seq.*
- 73. GWU's failure to comply with District of Columbia wage-and-hour protections caused Plaintiffs to suffer loss of wages and interest thereon.

**FOURTH CAUSE OF ACTION  
(D.C. CODE—FAILURE TO PAY WAGES WHEN DUE)**

74. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.
75. GWU failed to pay Class Members all the wages they were due each pay period in violation of D.C. Code §32-1302.
76. GWU's failure to comply with the District of Columbia Payment and Collection of Wages Law caused the Class Members to suffer loss of wages and interest thereon.

**WHEREFORE**, Plaintiffs requests that this Court enter an Order:

- A. Declaring that the GWU violated the FLSA;
- B. Declaring that the GWU's violations of the FLSA were willful;
- C. Granting judgment to Plaintiffs and represented parties for their claims of unpaid wages as secured by the FLSA, as well as an equal amount in liquidated damages and their costs and reasonable attorneys' fees; and
- D. Granting judgment to Plaintiff DRISCOLL for his claim of discrimination and awarding statutory, compensatory, liquidated, and exemplary damages, his costs and reasonable attorneys' fees, and pre-judgment and post-judgment interest, and ordering such other injunctive and equitable relief as the Court may deem just and proper; and
- E. With respect to the Third and Fourth Causes of Action:
  - i. Certifying these causes of action as a class actions;
  - ii. Designating Plaintiff DRISCOLL as Class Representative;
  - iii. Declaring that the practices complained of herein are unlawful under D.C. Code;
  - iv. Ordering appropriate equitable and injunctive relief to remedy GWU's violations of D.C. Code, including but not necessarily limited to an order enjoining GWU from continuing its unlawful practices;

- v. Awarding damages, liquidated damages, appropriate statutory penalties, and restitution to be paid by GWU according to proof;
- vi. Awarding pre-judgment and post-judgment interest, as provided by law;
- vii. Ordering such other injunctive and equitable relief as the Court may deem just and proper; and
- viii. Awarding Plaintiffs attorneys' fees and costs of suit, including expert fees and costs.

Dated: July 17, 2012

Respectfully Submitted,

/s/ Dan Charles Getman

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