

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Debra A. Rogers, individually and on
behalf of all similarly situated individuals,

Case No.: _____

Plaintiff,

v.

COLLECTIVE ACTION COMPLAINT

Xcel Energy, Inc. and Northern States
Power Co. – Minnesota,

Jury Trial Demanded

Defendants.

PRELIMINARY STATEMENT

1. Plaintiff Debra A. Rogers (“Plaintiff”) brings this lawsuit, individually and on behalf of all similarly situated individuals, as a collective action against her former employers, Xcel Energy, Inc. and Northern States Power Co. – Minnesota (collectively, “Defendants”), for unpaid overtime wages resulting from Defendants’ violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et seq.

2. Plaintiff and the similarly situated individuals are or were employed by Defendants as Supervisors. Plaintiff and the similarly situated individuals were misclassified by Defendants as exempt employees, and therefore have been improperly denied overtime compensation as required by the FLSA.

3. Defendants have committed widespread violations of the FLSA by failing to pay these employees overtime compensation when they work more than forty hours in a workweek.

JURISDICTION AND VENUE

4. This Court has original jurisdiction under 28 U.S.C. § 1331 to hear this Complaint and to adjudicate these claims because this action is brought under the FLSA, 29 U.S.C. § 201 et seq.

5. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events giving rise to these claims occurred in this district.

PARTIES

6. Plaintiff Debra A. Rogers is an adult resident of Maple Grove, Minnesota. She worked for Defendants from April 18, 1980, to January 22, 2012. Plaintiff worked for Defendants as a Supervisor at several locations, including at Defendants' facilities in Shorewood, Waconia and Minneapolis, Minnesota.

7. Plaintiff brings this action individually and on behalf of all similarly situated individuals nationwide (the "FLSA Collective"), pursuant to the FLSA, 29 U.S.C. § 216(b).

8. Plaintiff and the FLSA Collective are or were Defendants' "employees," as defined by the FLSA, 29 U.S.C. § 203(e).

9. Defendant Xcel Energy, Inc. ("Xcel Energy") is a domestic corporation with its headquarters in Minneapolis, Minnesota. Xcel Energy is the parent company of Northern States Power Co. – Minnesota.

10. Defendant Northern States Power Co. – Minnesota ("NSP") is a domestic corporation with its headquarters in Minneapolis, Minnesota. NSP is a wholly owned subsidiary of Defendant Xcel Energy.

11. Defendants are public utility companies primarily engaged in the generation, purchase, transmission, distribution and sale of electricity and natural gas.

12. Defendants operate in interstate commerce by, among other things, providing these servicing in multiple states, including Minnesota.

13. Defendants' gross annual sales made or business done has been \$500,000 or greater.

14. Defendants are Plaintiff and the FLSA Collective's "employers," within the meaning of the FLSA, 29 U.S.C. § 203(d).

FACTUAL ALLEGATIONS

15. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

16. Defendants are public utility companies engaged in the generation, purchase, transmission, distribution and sale of electricity and natural gas.

17. Plaintiff and the FLSA Collective work or have worked for Defendants as Supervisors within the past three years.

18. As Supervisors, Plaintiff and the FLSA Collective's primary job duty was to schedule and dispatch Defendants' work crews to perform installation, maintenance, repair, and other work out in the field.

19. Plaintiff and the FLSA Collective would receive work orders from Defendants, detailing the equipment and personnel needed for a particular field assignment.

20. Plaintiff and the FLSA Collective would then fulfill the work orders by making the appropriate preparations, and scheduling and dispatching the appropriate personnel and equipment to each job, as dictated by the work orders.

21. Plaintiff and the FLSA Collective's primary duty was not management.

22. Plaintiff and the FLSA Collective did not customarily or regularly direct the work of two or more other employees.

23. Plaintiff and the FLSA Collective did not have the authority to hire or fire other employees, and their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees were not given particular weight.

24. Plaintiff and the FLSA Collective's primary duty was not the performance of office or non-manual work directly related to the management or general business operations of Defendants or Defendants' customers.

25. Plaintiff and the FLSA Collective's primary duty did not include the exercise of discretion or independent judgment with respect to matters of significance.

26. Defendants classified Plaintiff and the FLSA Collective as exempt employees.

27. Defendants paid Plaintiff and the FLSA Collective on a salary basis.

28. Defendants regularly required Plaintiff and the FLSA Collective to work more than forty hours in a workweek without paying them overtime compensation.

29. Defendants knew that Plaintiff and the FLSA Collective regularly worked more than forty hours in a workweek because Defendants required them to work long hours to complete their job duties, such as placing them on “storm duty.”

30. Defendants also knew that Plaintiff and the FLSA Collective regularly worked more than forty hours in a workweek because Defendants asked them at year-end to report the number of overtime hours they worked in that year, for purposes of calculating potential bonuses.

31. Defendants knew that Plaintiff and the FLSA Collective performed work that required overtime pay.

32. Defendants’ conduct has been widespread, repeated, consistent and in bad faith.

33. Defendants’ conduct has deprived Plaintiff and the FLSA Collective of overtime wages, and has caused them significant damages.

COUNT I

OVERTIME VIOLATIONS

Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

34. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

35. Pursuant to the FLSA, 29 U.S.C. § 216(b), Plaintiff files this action individually and as a collective action on behalf of all similarly situated individuals nationwide, the “FLSA Collective.” The FLSA Collective is defined as all persons who

worked as Supervisors or similar job titles for Defendants at any time within three years prior to the date this Complaint is filed.

36. Plaintiff has consented in writing to be a part of this action, pursuant to 29 U.S.C. § 216(b). Plaintiff's signed consent form is attached as Exhibit A. As this case progresses, it is likely that other individuals will sign consent forms and join as plaintiffs.

37. The FLSA requires covered employers such as Defendants to compensate all non-exempt employees at a rate not less than one and one-half times their regular rate of pay for work performed in excess of forty hours per week. 29 U.S.C. § 207.

38. Plaintiff and the FLSA Collective routinely worked for Defendants in excess of forty hours per workweek.

39. Despite the hours worked by Plaintiff and the FLSA Collective, Defendants failed to pay them overtime compensation for their overtime hours worked.

40. Plaintiff and the FLSA Collective were misclassified as exempt by Defendants and are entitled to overtime compensation at one and one-half times their regular rates of pay for all time worked in excess of forty hours per week.

41. Defendants failed to preserve records relating to these hours worked, as required by 29 C.F.R § 516.2.

42. Defendants are liable under the FLSA for failing to properly compensate Plaintiff and the FLSA Collective. Accordingly, notice should be sent to the FLSA Collective. There are numerous individuals that are similarly situated to Plaintiff who have also suffered damages due to Defendants' common policy of misclassifying these individuals as exempt and failing to pay overtime wages. These individuals would

benefit from the issuance of court-supervised notice of this lawsuit and the opportunity to join. These individuals are known to Defendants and are readily identifiable through Defendants' records.

PRAYER FOR RELIEF

43. WHEREFORE, Plaintiff, individually and on behalf of all similarly situated individuals, prays for judgment against Defendants as follows:

- A. Designate this action as a collective action and promptly issue court-supervised notice to all similarly situated individuals, pursuant to 29 U.S.C. § 216(b);
- B. Find that Defendants misclassified Plaintiff and the FLSA Collective as exempt employees;
- C. Judgment that Defendants' practices violate the FLSA;
- D. Award damages to Plaintiff and the FLSA Collective in the amount of their unpaid wages at the applicable overtime rate;
- E. Award liquidated damages to Plaintiff the and the FLSA Collective in an amount equal to their overtime damages;
- F. Award Plaintiff and the FLSA Collective with interest (to the extent liquidated damages are not awarded), costs and attorney's fees incurred in prosecuting this claim;
- G. Leave to amend the Complaint to additional plaintiffs by motion, by filing additional consent forms, or any other method approved by the Court;
- H. Leave to amend the Complaint to additional federal and state law claims; and
- I. For all such further relief as the Court deems equitable and just.

DEMAND FOR JURY TRIAL

44. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a jury trial.

Dated: October 11, 2012

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