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COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT
CIVIL ACTION
NO. 1982CV01254

██████████ HAZZARD, individually and on behalf of others similarly situated

vs.

BRIGHAM HOME CARE SERVICES, INC. & another¹

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION**

In this putative class action, plaintiff ██████████ Hazzard contends that her former employer, defendant Brigham Home Care Services, Inc. ("Brigham"), and its co-founder and president, defendant ██████████ Kamandu ("Kamandu"), failed to properly pay her and other similarly situated nurses and home health aides for traveling between client appointments and to reimburse them for their related travel expenses. The plaintiff brings claims against the defendants on behalf of the putative class for violations of Massachusetts wage and hour laws, specifically, non-payment of wages and expenses in violation of G. L. c. 149, §§ 148 and 150 (Count I); non-payment of the minimum wage in violation of G. L. c. 151, § 1 and 454 Code Mass. Regs. § 27.04 (Count II); non-payment of overtime wages in violation of G. L. c. 151, §§ 1A and 1B (Count III); and failure to maintain proper payroll records and issue lawful paystubs in violation of G. L. c. 149, § 148, G. L. c. 151, § 15, and 454 Code Mass. Regs. § 27.07(2) (Count IV).²

The matter is before the court on the plaintiff's motion for certification of a class consisting of all individuals employed by Brigham as a licensed practical nurse ("LPN"), registered nurse ("RN"), and/or home health aide ("HHA," and, together with LPNs and RNs,

¹ ██████████ Kamandu

² In addition, the plaintiff brings a claim in her individual capacity for non-payment of earned sick time wages (Count V). This claim is impertinent to this motion.

“Health Staff”) between September 26, 2016 and the present.³ For the reasons set forth below, the motion is **ALLOWED**.

BACKGROUND

The following background is taken from the pleadings, as well as the affidavits and other materials submitted by the parties in connection with this motion.

Brigham is a home health care company that employs LPNs, RNs, and HHAs who provide in-home health care and assistance services. Brigham employed the plaintiff as an LPN from September 30, 2015 to August 2019. Each workday, she and other members of the Health Staff had multiple appointments at different clients’ homes. They traveled to and from their appointments in their personal vehicles.

Brigham pays LPNs and RNs on a per visit basis, and HHAs on an hourly basis. During the plaintiff’s employment with Brigham, Brigham did not pay her or the other Health Staff for their time spent traveling between appointments. It also did not reimburse them for their related travel expenses. The defendants maintain that Brigham would have reimbursed Health Staff for their travel expenses if they had been documented properly.

The plaintiff asserts that she and other Health Staff occasionally worked more than forty hours in a workweek, but Brigham failed to pay them overtime. The defendants maintain that the plaintiff and the other LPNs never worked more than forty hours in a workweek, and that the plaintiff, as an LPN, was exempt from overtime unlike the HHAs.⁴

³ In opposing certification, the defendant argues that the case is “subject to a Motion to Dismiss for failure to exhaust . . . administrative remedies” because the plaintiff failed to submit this matter to arbitration. Opposition at 9. There is no such motion before the court, and therefore it is not a basis to deny class certification.

⁴ The defendants’ factual and legal basis for claiming that the plaintiff was exempt from overtime is unclear. Kamandu asserts that the plaintiff was exempt because she was a “non-salaried exempt” employee. Opposition, Ex. C, para. 2. However, the defendants’ opposition states that she was exempt because she was a “salaried exempt” employee. Opposition at 3. Furthermore, they have not identified any specific legal exemption applicable to her.

Brigham's employee handbook ("Handbook") provides that "[n]onexempt salaried (hourly) employees will be paid at the rate of one and one-half times their regular hourly rate of pay for all time worked in excess of 40 hours in any one workweek." Opposition, Ex. A at 23. However, "[e]mployees paid per visit are not entitled to overtime." *Id.* In addition, the Handbook states, "Salaried Exempt" employees, defined as "[p]ositions of a managerial, administrative, or professional nature, as prescribed by federal and state labor statutes" are "exempt from mandatory overtime payments." *Id.* at 15.

The Handbook also sets forth guidelines and procedures for pre-approved business travel:

1. Travel related expenses are to be detailed on the company travel reimbursement form found in the patients' documentation in the software; Employees are fully responsible for detailing travel reimbursement in their timesheet for compensation
2. Employees who use their personal vehicles on company business will be reimbursed at \$0.30 per mile, assuming that the time and distance involved is reasonable under the circumstances; Travel expenses Reimbursement [*sic*] for employees paid per visit has already been computed in the per visit pay
3. All parking expenses and highway tolls incurred as a result of business travel will not be reimbursed[.]

Id. at 32.

DISCUSSION

In deciding a motion for class certification, the court has "broad discretion" whether to certify the putative class. *Salvas v. Wal-Mart Stores, Inc.*, 452 Mass. 337, 361 (2008). The moving party has "the burden of providing information sufficient to enable the motion judge to form a reasonable judgment" that the requirements of Mass. R. Civ. P. 23 are met. *Weld v. Glaxo Wellcome Inc.*, 434 Mass. 81, 87 (2001). Under Rule 23, (1) the class must be "so numerous that joinder of all members is impracticable," (2) there must be "questions of law or fact common to the class," (3) the representative's claims or defenses must be "typical of the claims or defenses of the class," and (4) the representative must "fairly and adequately protect

the interests of the class.” Mass. R. Civ. P. 23(a). In addition, the court must find “that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Mass. R. Civ. P. 23(b). In considering these requirements, “neither the possibility that a plaintiff will be unable to prove his allegations, nor the possibility that the later course of the suit might unforeseeably prove the original decision to certify the class wrong, is a basis for declining to certify a class which apparently satisfies the Rule.” *Salvas*, 452 Mass. at 363, quoting *Weld*, 434 Mass. at 87.

Applying the foregoing standard, the court concludes that class certification is appropriate in the present case.⁵

I. Numerosity

In order to satisfy the numerosity requirement, the class must be “so numerous that joinder of all members is impracticable” Mass. R. Civ. P. 23(a). In this context, “impracticable” means “impractical, unwise or imprudent rather than impossible or incapable of being performed.” *Brophy v. School Comm. of Worcester*, 6 Mass. App. Ct. 731, 735 (1978). The court’s practicability determination “should depend upon all the circumstances surrounding a case.” *Gammella*, 482 Mass. at 12 n.15 (citation omitted). Relevant factors include “[c]onsiderations of efficiency, limitation of judicial resources and expense to the plaintiffs”

⁵ Massachusetts wage and hour laws permit an employee to bring an action “for others similarly situated” for violations thereof. G. L. c. 149, § 150; G. L. c. 151, §§ 1B, 20. The defendants argue that the plaintiff is not “similarly situated” to the other class members, and that certification thus must be denied, because she was an LPN and the class consists primarily of HHAs who were compensated differently (with HHAs paid by the hour and entitled to overtime, and LPNs paid per visit and exempt from overtime). However, the statutory reference to an action “for ‘others similarly situated’ simply refers to the substantive right to bring a class proceeding. It does not define the class certification standards themselves. Those standards are provided by rule 23.” *Gammella v. P.F. Chang’s China Bistro, Inc.*, 482 Mass. 1, 9–10 (2019) (citation and quotations omitted). Moreover, as further discussed below, the court finds that the plaintiff is similarly situated to the rest of the class in that her claims involve issues of fact and law that are typical of issues common to all members of the Health Staff.

Brophy, 6 Mass. App. Ct. at 735. In most class actions, the requirements for numerosity are “easily met” *Gammella*, 482 Mass. at 13 (citation omitted).

In the present case, the class consists of approximately seventy current or former members of Brigham’s Health Staff. Courts routinely find classes exceeding forty members sufficient to establish numerosity. See, e.g., *In re Relafen Antitrust Litig.*, 218 F.R.D. 337, 342 (D. Mass. 2003). The class in this case is more numerous. Moreover, class certification would serve the interests of efficiency and judicial economy in that it would render unnecessary potentially many claims by other members of the Health Staff. The court is therefore persuaded that joinder would be impracticable. As such, the numerosity requirement is satisfied.

II. Commonality

The commonality requirement is satisfied when there are “questions of law or fact common to the class” Mass. R. Civ. P. 23(a). Commonality exists if class members have a common interest arising “out of a common relationship to a definite wrong.” *Spear v. H.V. Greene Co.*, 246 Mass. 259, 266 (1923). The interest of each class member need not be identical to that of the named plaintiff. See *id.*

The crux of this case is the plaintiff’s contention that Brigham’s uniform practice of not compensating Health Staff for their travel time between patients, not including that time in calculating overtime, and not reimbursing them for their related travel expenses violated wage and hour laws. See, e.g., 454 Code Mass. Regs. § 27.04(4)(d) (“An employee required or directed to travel from one place to another after the beginning of or before the close of the work day shall be compensated for all travel time and shall be reimbursed for all transportation expenses.”). The existence and lawfulness of that practice are issues common to all class members.

The court is not persuaded by the defendants' argument that commonality is lacking because LPNs and HHAs were compensated differently. Although they contend that certain class members were paid by the hour and entitled to overtime, and others were paid by the visit and exempt from overtime, there remains the common question of whether employees were compensated for traveling between visits. To the extent that the defendants contend that compensation for travel was built into employees' rates, that is a factual issue not suited for resolution at the certification phase of the case. Furthermore, the evidence is unclear as to whether the plaintiff and other LPNs were exempt from overtime. As previously noted, the defendants have described the plaintiff's classification in different ways, and they have not identified a specific legal basis for classifying her as exempt.

Accordingly, the plaintiff has satisfied the commonality requirement.

III. Typicality

The typicality requirement is satisfied "when there is 'a sufficient relationship . . . between the injury to the named plaintiff and the conduct affecting the class,' and the claims of the named plaintiff and those of the class 'are based on the same legal theory.'" *Weld*, 434 Mass. at 87, quoting 1 H. Newberg, *Class Actions* § 3.13, at 3–76 (3d ed.1992). Typicality is normally present when a plaintiff alleges "that the defendant acted consistently toward the [representative and the] members of a putative class." *Weld*, 434 Mass. at 87, quoting *Fletcher v. Cape Cod Gas Co.*, 394 Mass. 595, 606 (1985).

Here, "[t]he conduct about which [the plaintiff] complains is identical to the conduct affecting the class," that is, Brigham failing to compensate them for their travel time between patients and reimburse them for their related travel expenses. *Weld*, 434 Mass. at 89.

Furthermore, "the legal theories under which [the plaintiff] is pursuing relief are the same as

those that might be pursued by the class,” namely, violations of the wage and hour laws set forth in G. L. c. 149, G. L. c. 151, and related regulations. *Id.* The plaintiff’s claims are therefore typical of the class.

IV. Adequacy

The adequacy requirement provides that the class representative must “fairly and adequately protect the interests of the class.” Mass. R. Civ. P. 23(a). To satisfy this requirement, one must show that “the interests of the representative party will not conflict with the interests of any of the class members” and that the representative’s counsel “is qualified, experienced and able to vigorously conduct the proposed litigation.” *Adikhanov v. Action Emergency Mgt. Servs., Inc.*, 2021 WL 3292613 at *3 (Mass. Super. 2021) (Green, J.) (citation omitted).

Here, the plaintiff’s interest in seeking redress for the defendants’ compensation practices aligns with those of the other class members. The defendants contend that conflicts between her and the other class members will inevitably arise because she was compensated differently than the HHAs and never worked more than forty hours in a workweek. The court does not share this concern, particularly because it is presently unclear whether their differences in compensation are material to the plaintiff’s claims and whether the plaintiff in fact worked more than forty hours in a workweek.

The defendants do not contend that plaintiff’s counsel will be an inadequate class representative. Plaintiff’s counsel have shown that they are capable, experienced practitioners in this area and in class actions generally, and nothing suggests that their representation will be inadequate. The court is satisfied that they will competently represent the class. Therefore, the adequacy requirement is satisfied.

V. Predominance

The predominance requirement requires the court to compare “the common and individual questions involved in order to reach a determination of such predominance of common questions in a class action context.” *Salvas*, 452 Mass. at 363 (citation omitted). Certification may be warranted if “even one common question of law or fact . . . predominate[s] over individual questions” *Fletcher*, 394 Mass. at 603. Here, the pivotal question for all class members is whether Brigham’s compensation practices with respect to travel violated the wage and hour laws. Some questions individual to each class member might arise, for instance, whether they were properly exempt from overtime. Those individual questions will not, however, overwhelm the essential factual and legal questions regarding the legality of Brigham’s compensation practices that are common to all class members. Therefore, the court finds that common questions predominate.

VI. Superiority

The superiority requirement provides that a class action must be “superior to other available methods for the fair and efficient adjudication of the controversy.” Mass. R. Civ. P. 23(b). In determining superiority, the court considers “the efficiency of the class-action device, the possible expense to the plaintiffs, and the likelihood of judicial economy being served.” *Escorbor v. Helping Hands Co., Inc.*, 2017 WL 4872657 at *6 (Mass. Super. 2017) (Wilkins, J.).

As previously noted, proceeding as a class action would be more efficient than adjudicating Health Staff’s claims on an individual basis. Because “common issues predominate,” a class action would promote both “judicial economy and consistency of result” *Weld*, 434 Mass. at 93 (citation omitted). Moreover, a class action would be consistent with the legislative policy favoring class treatment in the wage and hour context. See *Machado v.*

System4 LLC, 465 Mass. 508, 515 & n.12 (2013); *Escorbor*, 2017 WL 4872657 at *6. The court thus finds that a class action is the superior way to adjudicate this case.


Because each requirement of Rule 23 is satisfied, class certification is warranted. Should subsequent developments in this case show that class treatment is inappropriate, certification may be revisited. See *Gammella*, 482 Mass. at 21.

ORDER

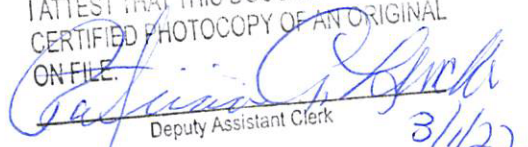
For the foregoing reasons, the plaintiff's motion for class certification is **ALLOWED**.

The certified class consists of all individuals employed by defendant Brigham Home Care Services, Inc. as a licensed practical nurse, registered nurse, and/or home health aide between September 26, 2016 and the present. Plaintiff [REDACTED] Hazzard shall be the class representative, and Raven Moeslinger, Esq. and Nicholas F. Ortiz, Esq. shall be class counsel.

SO ORDERED.


Maynard M. Kirpalani
Justice of the Superior Court

Dated: February 24, 2022

I ATTEST THAT THIS DOCUMENT IS A
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ON FILE.

Deputy Assistant Clerk 3/1/22