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NYC Home Care Workers File Class Action Against Home Care Agency

Suit Charges Flagrant Violation of Minimum Wage & Overtime Laws, in Industry that Employs 1 in 7 Low-Wage NY Workers

NEW YORK, APRIL 13, 2010—Today a New York City home care worker for McMillan’s Home Care Agency filed a class-action lawsuit against the company charging that she and her co-workers were consistently underpaid, and never paid overtime, despite frequently working upwards of 60 hours per week. The Complaint, which additionally charges that McMillan’s unlawfully required workers to cover the costs of cleaning their uniforms and purchasing certain supplies and repeatedly falsified or misreported pay records, seeks unpaid wages and assurance that the company will comply with New York State’s wage and hour laws in the future.

Harlem resident Josefina A. Toledo Montero filed today’s lawsuit in the Supreme Court of New York County, on behalf of herself and all current and former home health care workers employed by McMillan’s, a for-profit company, over the past six years. Working in one of the nation’s fastest-growing occupations, Ms. Montero and her co-workers provide crucial care for elderly, infirm and homebound patients in and around New York City. Home care workers make up one of every seven low wage workers in New York City.

Judith Spanier, an attorney for the plaintiff, noted today that "Given the growing importance of the home care industry in this country as more and more people need this valued service, it is troubling that employers flout the law by routinely underpaying these workers and cheating them of wages that are legally due to them."

Home care workers are often poorly paid, many earning only the minimum wage or a few cents more for jobs that require long hours, dedication and hard work. A recent study, *Working Without Laws*, published by the National Employment Law Project, found rampant wage theft in New York City’s home care industry. Nearly 83% of home care workers surveyed experienced overtime violations, and 84% worked “off the clock,” without receiving pay for part of their working time. Low pay for home care workers at McMillan’s and other agencies drives many from the industry and makes it hard for seniors and people with disabilities to find stable, reliable care.

As today's filing explains, Ms. Montero routinely worked more than 40 hours per week, but was not paid any overtime premium by McMillan's as required by New York State law. Instead, she was paid for all work hours at her regular straight-time rate. Ms. Montero and her colleagues were also required to attend training sessions at the McMillan offices approximately three times a year for roughly four hours each time, without pay. The filing also charges that McMillan's did not launder workers' required uniforms or compensate for the cleaning, and that while it required workers to use latex gloves, employees were forced to pay out of pocket for them – constituting impermissible deductions from the wages of the home care workers.

“One out of every seven low wage workers in New York City is a home care worker. If we permit wage abuse to go unchecked in this industry, other unscrupulous bosses will get the message that it's fine to cheat workers to increase profits. We cannot afford to turn a blind eye to violations of basic workplace protections,” said **NELP attorney Sarah Leberstein**.

“Home care is a noble profession that exists to provide needed services to the elderly and disabled. Cheating home care workers out of wages they have earned may pad the pockets of unscrupulous employers but it hurts everyone else in the system—the workers robbed of their pay; the families that depend on those wages for basic support; and the elderly and disabled, whose care is at most risk of compromise when the people who care for them are treated unjustly and cheated of wages they have earned,” notes Leberstein.

Lindsey Schoenfelder, counsel for the Plaintiff and a staff attorney at MFY Legal Services, added that "This suit is about basic justice for women who do the difficult and essential work of caring for our sick and elderly. When home care agencies break the law by cheating workers out of legal wages, both the workers and the people that they care for suffer.”

A copy of the complaint is available upon request.

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