



Fraternal Order of Police
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August 5, 2021

To all members who opted in to the FLSA Overtime Lawsuit:

Yesterday, I advised that the Federal Judge has approved the settlement agreement for this lawsuit. The next step requires the Board of Estimates to also approve the settlement, which will occur in the next couple of weeks. Also yesterday, one of our members went to the Federal Courthouse and obtained the list of litigants (by Employee ID#) and their individual award amounts. This list was then unofficially released to some of our members.

I cannot speak to the actual settlement amounts yet due to the ongoing approval process, but I can broadly say that all of those on the list **did** sign the Opt-In form after reading it. In that form, anyone who opted in agreed to be bound by the settlement reached by representative Plaintiffs. I have attached a copy of that form so that each of you can refresh your memories as to what you actually agreed to in order to become a part of the lawsuit.

Below is an explanation of how the lawsuit proceeded and how and why the settlement was reached.

A. The Original Claims

When the lawsuit was originally filed, the Complaint identified four different ways in which the City/BPD (Defendants) were allegedly incorrectly calculating or paying overtime in violation of the FLSA. These were (1) Defendants improperly included either 11-minute (patrol) or 15-minute (non-patrol) periods of unpaid time which are included in Officers' shifts pursuant to the MOU when calculating Officers' overtime rate, even though those minutes are not actually worked; (2) failure to include .40 and .45 shift differentials in the overtime rate; (3) failure to include cash payments in lieu of benefits in the overtime rate; and (4) improper rounding down by small fractions of an hour the overtime hours worked by officers. In order to determine the potential effect of these issues and the amount of damages, if any, that each officer could potentially recover,

we needed to apply the FLSA's rules to the hours work and amounts paid to each officer.

B. Important Differences Between the MOU and the FLSA

Because the claims were based upon violations of the FLSA, only hours that should have been owed as overtime *under the FLSA*, and not all hours actually paid as overtime under the MOU (which is much more generous than the FLSA in awarding overtime pay) would have been subject to the new, more favorable rate. The MOU and the FLSA are different from one another in two important ways that significantly affected damages calculations:

- (1) The MOU requires that all hours of paid leave be considered working time and be counted in determining whether Officers have worked enough hours to be entitled to overtime. Under the FLSA, however, only hours actually worked count toward determining whether an Officer worked enough hours to trigger overtime. Thus, a mistake in the overtime rate used by Defendants would only result in a recoverable underpayment if the Officer worked FLSA-recognized overtime in a given work period. Thus, for example, if a non-patrol Officer worked 10 hours on 3 different days in a 7-day work period and 8.36 hours on the fourth day of a work period and then took a vacation day (8.36 hours) on a fifth day of that work period, the MOU would require that the Officer be paid overtime for all time above 8 hours and 36 minutes on the three days that the Officer worked 10 hours. Under the FLSA, however, because the Officer only actually worked 38.36 hours, *no overtime* would be owed for that work week.
- (2) Under the MOU, a Patrol Officer is entitled to overtime for working more than 10.36 (10 hours was the shift length at the time) in a single day and more than 4 days in a calendar week. A non-patrol officer is entitled to overtime for working more than 8.33 hours in a single day and more than 5 days in a work week. The calculation of whether an officer is entitled to be paid overtime under the FLSA, however, is based upon the FLSA's regulations applicable to police officers which permit the BPD to use either a 7-day/43-hour work period or a 28-day/171-hour work period. The MOUs here apply the 7/43 work period to non-patrol Officers and the 28/171 work period to patrol Officers. Thus, for example, if a patrol Officer worked 9 hours a day for 6 days in the first seven days of a given 28-day work period (54 hours), she would be entitled to 14 hours of overtime under the MOU. Under the FLSA, however, if she worked a total of 117 hours or less during the next 21 days, she would not be entitled to any overtime under the FLSA for that 28-day period.

Ultimately, because the officers were paid more for overtime under the MOU than they were entitled to under the FLSA, even after adjusting the overtime rate to correct the failure to account for shift differentials, cash in lieu of benefits and the non-working 11/15 minutes, after the FLSA rules, including the 7/43 and 28/171 rules were applied to time and pay, officers had generally been paid more than they were entitled to under the FLSA and therefore had not suffered any damages.

In reviewing the time and pay data, however, our expert uncovered various other potential FLSA violations that resulted in underpayments including another shift differential of .30/hour that was never included in the overtime rate, hazard pay that was not included in the overtime rate, training and conference time not counted as working time, and, most importantly, many hours of overtime that were paid at the regular rate. We amended the complaint in the lawsuit to make these claims as well, and it is primarily as a result of these new claims that there were significant damages.

C. Potential Recovery and Settlement

Ultimately, the best-case damages scenario that emerged once the data was fully reviewed, and the statute of limitations was applied correctly to all opt-in claims was \$1,932,889 in actual damages which would be doubled to \$3,865,778 if the Court decided to award liquidated damages.

The City and BPD still had several legal and factual bases for challenging and reducing this number further, which, if they were successful, could have significantly reduced each Officers' recovery. Depending on how the Court resolved those issues, the recovery could potentially have been reduced to \$1,244,677/\$2,489,354, or \$1,023,108/\$2,046,216, or to as low as \$606,285/\$1,212,570.

In May of this year, I, along with Herb Weiner, William MacDonald, Jon Glazerman and our outside counsel from Luchansky Law engaged in a settlement conference with a U.S. Magistrate Judge and agreed to settle the matter for \$2,800,000. The settlement was a positive result in light of The City/BPD's potential legal arguments that could have been resolved in their favor resulting in a significant reduction in the Officers' recovery, and the fact that continuing to litigate the case would likely require extensive motions practice, a trial and the inevitable appeals that would have followed which likely would have delayed any recovery for at least 2-3 more years.

The breakdown of the damages by individual was performed by our expert based upon the time and pay data maintained and produced by the City during discovery based only upon hours that are counted as work under the FLSA in each pay period. The pay periods for each individual officer were 7 days for non-patrol, 28 days for patrol or a combination of both if an officer worked in both capacities, and only those within the statute of limitations (3 years back from the day each officer's opt-in form was filed with the Court) were considered.

If you have any questions about this letter or any other aspect of the settlement, please email info@fop3.org and we will either answer your questions directly or send them to the law firm representing our case.

Thank you,

Mike Mancuso

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division**

KENNETH B. BUTLER, *et al.*,

*

*On behalf of themselves and on behalf of all
other similarly situated individuals,*

*

Civil Action No. 1:16-cv-03309-ELH

*

Plaintiffs,

*

v.

*

BALTIMORE POLICE DEPARTMENT,
et al.,

*

Defendants.

*

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* * * * *

**CONSENT TO BE A PARTY PLAINTIFF IN SUIT AGAINST THE
BALTIMORE POLICE DEPARTMENT UNDER THE FAIR LABOR STANDARDS ACT**

1. I, _____, agree to pursue my claims, as described in the Notice, arising out of my employment with Baltimore Police Department and the Mayor and City Council of Baltimore (“Defendants”) in connection with the above referenced lawsuit.

2. I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* I hereby consent, agree and opt-in to become a Plaintiff herein and be bound to any judgment by the Court or any settlement of this action.

3. I, hereby, designate Judd G. Millman, Esq. (Bar No. 18212), Bruce M. Luchansky, Esq. (Bar No. 08439), and Luchansky Law, and Herb Weiner, Esq., Michael E. Davey, Esq. (Bar No. 29188) and Schlachman, Belsky & Weiner, P.A., to represent me for all purposes in this action.

4. I also designate collective action representative(s) who agree to serve on a settlement committee as my representative to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation, entering into settlement agreements, entering into an agreement concerning the payment of Plaintiffs' attorneys' fees and costs by the Defendants, and all other matters pertaining to this lawsuit.

PLEASE PRINT LEGIBLY; ANY INABILITY TO READ THE INFORMATION YOU PROVIDE BELOW COULD JEOPARDIZE YOUR PARTICIPATION IN THIS MATTER.

Date

Signature

Print Name

Home Address

City, State, Zip

Phone Number

Email

Sequence Number (if known)

Employee ID (if known)

*****IMPORTANT NOTE*****

Statute of limitations concerns mandate that you return this form as soon as possible in order to preserve your rights. Each day you wait to return this form may be the last day a claim can be filed on your behalf or may result in reducing the potential recovery you may be entitled to receive.