



ONTARIO
SUPERIOR COURT OF JUSTICE

Electronically issued : 02-Aug-2019
Délivré par voie électronique : 02-Aug-2019
Toronto

MAUREEN BARRETT

Plaintiff

– and –

RBC LIFE INSURANCE COMPANY

Defendant

Proceedings commenced under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for the costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Issued by _____
Local Registrar

Address of court office:
393 University Avenue, 10th Floor
Toronto, ON M5G 1E6

TO: RBC LIFE INSURANCE COMPANY
5322 Dundas Street West, Floor 6
Mississauga, Ontario
M9B 1B3

RELIEF CLAIMED

1. The Plaintiff claims the following on her behalf, and on behalf of members of the Class:
 - a) The sum of \$80,000,000 as general damages covering the damages to the class;
 - b) an order certifying this action as a class proceeding and appointing Maureen Barrett as Representative Plaintiff of the Class;
 - c) a declaration that the members of the Class are owed public holiday and vacation pay above and beyond the compensation they were paid;
 - d) a declaration that the defendant violated the terms of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (“*ESA*”) by requiring and/or permitting the Class Members to work in excess of 44 hours per week and failing to compensate the Class Members with overtime pay as required by the *ESA*;
 - e) a declaration that the defendant violated the terms of the *ESA* by failing to ensure that the Class Members' hours of work were accurately recorded;
 - f) a declaration that the defendant failed to act in good faith and breached a duty of care by failing to take reasonable steps (such as having appropriate record-keeping systems in place) to ensure that class members were compensated at appropriate rates of pay for all hours worked;
 - g) that damages be paid to each class member equal to the public holiday and vacation pay and overtime pay that they ought to have received during their employment with the Defendant;
 - h) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - i) post-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - j) any goods and services tax or harmonized sales tax which may be payable on any amounts pursuant to Bill C-62, the *Excise Tax Act*, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada or Ontario;
 - k) the costs of this action on a substantial indemnity basis; and
 - l) such further and other relief as counsel may advise and this Honourable Court permits.

The Parties

2. The Plaintiff, Maureen Barrett ("**Maureen**"), is an individual residing in the City of Brampton, in the Province of Ontario and was, at all material times, employed by the Defendant. Maureen is 48 years old (born January 17, 1971).
3. The Defendant RBC Life Insurance Company ("**RBC Life**") is a federally incorporated but provincially regulated insurance company. It was formerly known as Life Insurance Company of Royal Bank of Canada until October 4, 1999.

Background

4. Maureen pleads that she began her employment with RBC General Insurance Company as a General Insurance Advisor (Level PL11) in or around April 2008.
5. As a General Insurance Advisor, Maureen was a commissioned salesperson. Her compensation was comprised of a base salary of \$37,500.00, plus incentive pay determined by a complex formula. The incentive pay was not a fixed percentage of the value of insurance sold, but instead rose steeply to reward those with the highest performance.
6. RBC's Compensation Plan stated that the objective was to "link personal performance and results directly with compensation by rewarding top performers whose efforts support the strategic objectives of RBC Insurance."
7. In or around September 2015, Maureen pleads that she was transferred to the Life Insurance department at RBC.
8. In or around September 2016, Maureen was transferred to a retail location as a Life and Living Benefits Advisor (Level PL09) ("**Life Advisor**"). In this role, Maureen's compensation was comprised of a base salary of \$40,000.00 plus a minimum total variable compensation of \$6,000.00 per year.
9. In or around September 2017, Maureen pleads that she resigned from her position with RBC Life.

10. Maureen, and other commissioned salespeople working for the Defendant, received vacation and public holiday pay solely on their base salary and not on their total compensation.
11. Maureen's bi-monthly pay stubs during her time with RBC Life did not provide any information regarding her vacation pay.

Compensation Policy Excludes Vacation and Public Holiday Pay on Commissions

12. RBC Life compensates Life Advisors based on their "Life and Living Benefits Insurance Advisor Compensation Plan" policy which governs all Life Advisors.
13. The policies systemically apply to all commissioned salespeople in their respective areas.
14. The compensation policy applicable to Maureen did not provide for Vacation and Statutory Holiday Pay, contrary to the *Employment Standards Act, 2000* ("ESA"). Maureen seeks to be a representative Plaintiff for all persons denied such compensation while working for the Defendants.
15. The Life and Living Benefits Insurance Advisor Compensation Plan policy stated that all variable compensation components of the plan were established at a level that included Vacation and Statutory Holiday Pay.
16. Maureen only received her base pay rate when she took vacation or was off on statutory holidays, irrespective of her variable compensation earned prior to taking time off.

Application of Statutory Entitlements

17. Under the *Employment Standards Act, 2000* ("ESA") employees must be paid additional Public Holiday Pay above and beyond their regular pay as per s. 24-32. As per s. 24(1) of the ESA, for employees with variable compensation this pay is to be an average of what they made over the preceding 20 days.

18. Under the ESA employees must be paid additional Vacation Pay above and beyond their regular pay as per s. 35.2. This pay must not be less than 4 per cent of the wages earned by the employee for those with less than five years seniority and 6 per cent for those with greater than five years seniority.
19. As per s. 5(1) no employee may opt out of a benefit of the ESA unless the employee receives a greater benefit.
20. Maureen pleads that as per s. 15.1 of the ESA the Defendants were required to keep detailed records of her vacation time payments. She is not aware of any such records having been kept and did not receive any

Employees Denied Vacation and Public Holiday Pay

21. The Defendant's compensation plan does not provide for Public Holiday Pay or Vacation Pay computed as a percentage of the fixed and variable component of an Advisor's wage. The policy therefore violates the ESA and the employees are owed additional compensation throughout their employment.
22. As per s. 40(1) and (2) of the ESA, the Vacation Pay that ought to have been paid has a trust over it and also a lien upon the monies that ought to have been paid.

Employees Systemically Denied Overtime Pay

23. Maureen pleads that she often worked overtime in excess of 44 hours per week, and was not compensated by overtime pay.
24. Employees were required to follow a schedule of working 37.5 hours each week in RBC Life's storefront office. In addition, they were given sales targets that could only be achieved by spending additional time visiting clients in the field.
25. In addition to the 37.5 hours in the office, they were regularly required to attend training and other meetings.

26. RBC Life had a systemic policy of requiring employees to work additional hours to meet sales targets that could often only be achieved by working in excess of 44 hours per week.
27. RBC Life knew or ought to have known that employees were working overtime, as they were required to file reports about the number of client visits that they made.
28. RBC Life avoided or disregarded its overtime obligations at a systemic level: It had no written policies or directives; no printed information for employees; no standardized systems or centralized record-keeping.
29. RBC Life had a systemic policy of never paying overtime premium pay to its employees. There was never any information provided by RBC Life to its employees suggesting that they could ask for overtime pay.
30. There is no mention of the possibility of overtime pay in the Compensation Plan document provided by RBC Life to its employees.
31. Maureen pleads that the compensation policy of RBC placed a particular premium on top performance. In order to earn more than minimal incentive pay, she had to work in excess of 44 hours per week.
32. As per s. 22 (1) of the ESA, an employer shall pay an employee overtime pay of at least one and one-half times his or her regular rate for each hour of work in excess of 44 hours in each work week.
33. The regular rate is to be calculated by dividing the total earnings including base salary and incentive pay and dividing by the number of hours worked.

The Class

34. This action is brought on behalf of a class of persons, defined as:

All commissioned employees of RBC LIFE INSURANCE COMPANY within Ontario who were paid for vacation and public holiday pay on their base salary and not total compensation and/or those who worked overtime but were not compensated for same and who are not exempt from such payments, have

not signed a release barring them, or started a labour board complaint regarding same.

35. Maureen seeks to have the class time period run from the founding of RBC Life Insurance Company in 1999 until when the notice of class action is sent out to class members with the opt-out forms.

Location

36. Maureen proposes this action be tried at the City of Toronto, in the Province of Ontario.

Date of Issue:

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MAUREEN BARRETT
PLAINTIFF

and

RBC LIFE INSURANCE COMPANY
DEFENDANT

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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Class Proceedings Act, 1992

STATEMENT OF CLAIM

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