



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

Electronically issued : 29-Sep-2021
Délivré par voie électronique : 29-Sep-2021
Toronto

B E T W E E N .

[REDACTED]

Plaintiff

– and –

Workforce Inc. and SOS (Sudbury) Inc.

Defendants

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.

Date: September 29, 2021

Issued by: _____
Local Registrar

Address of Court Office:
330 University Avenue
Toronto, ON M5G 1R7

To:

Workforce Inc. & SOS (Sudbury) Inc.
151 Pine Street
Sudbury, ON
P3C 1X2

CLAIM

Relief Claimed

1. The Proposed Representative Plaintiff claims the following on his own behalf, and on behalf of members of the Class:

- a) The sum of \$10,000,000 as general damages covering the damages to the class;
- b) an order certifying this action as a class proceeding and appointing [REDACTED] as Representative Plaintiff of the Class;
- c) a declaration that the members of the Class are owed damages for unpaid wages from the Defendants as a result of unpaid training;
- d) that damages be paid to each class member equal to the amount of wages owed to them by the Defendants as a result of unpaid training ;
- e) an order, pursuant to s. 24 of the *Class Proceedings Act*, 1992, SO 1992, c 6 (“**Class Proceedings Act**”) directing an aggregate assessment of damages;
- f) Punitive damages in the amount of \$4,000,000.00;
- g) an order directing the Defendants to preserve and disclose to the Plaintiff all records (in any form) relating to the unpaid training of the class members;
- 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 129 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.

Background

2. The Defendant Workforce Inc. (“Workforce”) is a staffing agency that places workers with employers in the skilled trades. Workforce finds and places candidates throughout Canada and the United States.
3. The Defendant SOS (Sudbury) Inc. (“SOS”) is a staffing agency that provides rescue equipment and workers to mining operations in the Sudbury area.
4. Both Workforce and SOS are related entities, have the same registered office address and have overlapping corporate Directors and Officers.
5. The Representative Plaintiff, [REDACTED] is an individual residing in Sudbury, Ontario. He was employed by the Defendants from 2012 to October 2019.

The Class

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

All employees of WORKFORCE INC. and SOS (SUDBURY) INC. within Canada, from 2012 to the date of certification of this action who are owed unpaid wages as a result of unpaid training by the Defendants.

██████████ employment with the Defendants

7. ██████████ worked with the Defendants from June 2012 to October 2019. Upon hiring, ██████████ was provided with a list of training he would need to complete and was told when he would have to complete a certain training module or attend a specific class.
8. ██████████ worked in various positions during his employment with the Defendant, including as a laborer, confined space rescue technician and confined space attendant at work sites in Sudbury, Ontario.
9. ██████████ as informed by a representative of the Defendants that one of the training providers NORCAT, would be told he was coming in for training as a Workforce employee. Workforce scheduled dates and times with NORCAT for ██████████ to complete his training. ██████████ did not decide when to complete his trainings or get to select from which provider he would receive training.
10. ██████████ attended a significant number of trainings during his employment with the Defendants for which he was not paid. The subject matter of this training ranged from First Aid training to specialized confined space training for underground work in mines. Not only

was he not paid for his time attending these training sessions, but he often had to pay out of his own pocket to participate in the trainings.

11. ██████████ and the Class Members received different rates of pay depending on whether they were working a shift with SOS or Workforce, and the position they were working for any given shift.
12. Class Members would be paid higher rates for overtime, and if they were working underground during their shift.
13. ██████████ final training with the Defendants was in June 2019, and his final shift was in October 2019.
14. While working with the Defendants, ██████████ inquired about the fact that the training was unpaid but was incorrectly informed by the Defendants that because they were staffing agencies, they did not have to pay their workers for training. ██████████ relied on this representation made by the Defendants, and assumed that as his employer, the Defendants would be acting in his best interest.
15. ██████████ did not learn that he had a cause of action against the Defendants for unpaid training until speaking with counsel in February 2021.

Class Members were employees at the time of training

16. The Defendants hire individuals and then direct them to attend various training programs. This does not occur in the pre-employment stages of the relationship, but after the individuals have

been engaged with the Defendants in an employer-employee relationship. Individuals are directed to attend NORCAT training and are identified as being affiliated with Workforce and SOS.

17. The Defendants control when, where and with which training providers these trainings are completed by their employees.

Training was required to work for the Defendants

18. Employees would not have been able to work a shift with the Defendants if they did not have the appropriate certifications or a complete training record. Employees are not allowed onto work sites or to complete a specific job if they do not have the corresponding training completed.

19. In training, employees learned the safety protocols and procedures necessary to safely complete their work for the Defendants. Employees could not have worked safely in a dangerous setting like a mine site without first completing significant amounts of training.

20. The Defendants choose to hire unskilled workers and direct them to complete specific training, for which the employees are not compensated.

Systemic failure to pay for training in accordance with the *Employment Standards Act*

21. The Class Members were employees of the Defendants at the time they completed their training and are therefore entitled to damages for unpaid wages in accordance with the *Employment Standards Act*, or similar legislation.

Aggregate Damages

22. [REDACTED] also pleads that the trial judge ought to make an award of aggregate damages in this case since the records kept by the Defendants of the unpaid training completed by their employees should allow for the damages of each Class Member to be calculated without the need for resort to individual assessments or mini-trials.

Punitive Damages

23. The conduct of the Defendants is such as to justify an award of punitive, exemplary and aggravated damages. [REDACTED] pleads that the Defendants' conduct has breached the duty of good faith and is a separate actionable wrong.
24. The Defendants have knowingly breached the standards as set out by the ESA on a continuing basis.
25. Employers ought to be properly discouraged from forcing their employees to complete unpaid training and merely paying back the unpaid wages would not satisfy the requirement for denunciation of the breach of the ESA.
26. The Defendants breached their obligations to [REDACTED] and the Class Members because of a desire to maximize profits. The Defendants have shown a callous disregard and complete lack of care for the Class Members and their rights, and ought to be punished and deterred from future misconduct. The Defendants' conduct was sufficiently harsh, vindictive, reprehensible and malicious, so as to justify an award of punitive, exemplary and aggravated damages. The Defendants are, or ought to have been aware of the probable consequences of their conduct and the damage such conduct would cause to [REDACTED] and the Class Members.

27. The principle of deterrence is needed in order to discourage other companies from forcing their employees to complete unpaid training as the Defendants have in this case.
28. [REDACTED] pleads that an award of punitive damages equal to the amount awarded for breach of the ESA is appropriate, for a ‘doubling’ of damages in order to create a deterrent effect in the future.

Location

29. [REDACTED] proposes this action be tried at the City of Toronto, in the Province of Ontario.

Date of Issue:

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Lawyers for the Plaintiff, [REDACTED]



v. WORKFORCE INC. and SOS (SUDBURY) Inc.

CV:

Plaintiff

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

**Proceeding under the *Class*
*Proceedings Act, 1992***

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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