



## **Protect Working Families: Save the Overtime Rule Stories of Wage Theft**

Below are stories of workers who have been unfairly denied overtime pay by corporations falsely claiming they are “executives” or other senior managers. These are examples of the kinds of people who would get a raise if the overtime rule is defended and kept in place. Though most of the individuals below have already had their eligibility for overtime decided, there are many more such people in every state who are not yet getting the overtime pay they deserve.

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### **Christian Perreault Hamel, Massachusetts Restaurant Worker in Luxury Hotel Spends Most of His Time Waiting Tables, Cleaning; Denied Overtime as a “Restaurant Manager.”**

Christian Perreault Hamel worked as a “Restaurant Manager” for the Wheatleigh Corporation, the Wheatleigh being a 19-room luxury hotel and restaurant in Lenox, Massachusetts. He acted as sommelier and waiter, including being scheduled as a waiter by his immediate supervisor; he cleaned the restaurant and its wine cellar; set tables; bartended; performed room service; and answered phone lines. He received a weekly salary of \$951.53 (or \$49,479.56 a year), regardless of how many hours he worked. Mr. Hamel’s employers argued in court that he was an exempt “executive” employee, and not entitled to overtime.<sup>1</sup>

### **Mary Harris, Massachusetts Maid Spends Most of Her Hours Cleaning; Referred to as an “Executive Housekeeping Manager” and Denied Overtime.**

Mary Harris worked as an “Executive Housekeeping Manager” for the same hotel in Massachusetts. Her extensive nonexempt job duties included cleaning and turning over guest rooms; cleaning public bathrooms and public spaces; cleaning and pressing hotel linens; laundering guests’ items; covering front desk phones; and assisting with bell, valet, and concierge work. She was hired in March 2016 at an annual salary of \$45,000; by the time of her quitting in October 2018 she was making \$51,350 a year. Her employers argued she was an exempt “executive” employee and not entitled to overtime.<sup>2</sup>

## **Dayna Long, Wisconsin**

### **Technical Writer in Spends 45-50 Hour Workweeks Implementing Top-Down Directives from Management; Denied Overtime.**

Danya Long was employed as a technical writer by Epic Systems. Her starting salary was between \$40,000 and \$44,000 a year; she may have received a \$2,000 raise at some point during her tenure with Epic Systems. Epic Systems made it clear to technical writers like Ms. Long that they were expected to work 45 to 50 hours a week, but did not pay overtime. Ms. Long describes her primary job duty as producing or revising standardized documents that described how Epic Systems's software worked, based on top-down templates, instructions, and information coming from Epic Systems's software developers, implementers, and trainers.<sup>3</sup>

## **Wayne Simpson, Delaware**

### **Cable-Box Installer Denied Overtime Because Considered "Manager."**

Wayne Simpson worked as a "Project Manager" for Prince Telecom, LLC, a national telecommunications customer-service fulfillment company. Prince provides services to companies such as Comcast, Cablevision, and Time Warner. Mr. Simpson worked for Prince in the New Castle County area, at an annual salary of \$56,000. Mr. Simpson testified that as a "Project Manager" he worked every Monday through Saturday from 6:00AM until midnight, and half-days on Sundays. Despite the title, Mr. Simpson spent 90% of his time in the field performing work that he had performed as a technician before his promotion, such as installing cable boxes and doing maintenance visits. The court ruled that he was exempt from overtime as both an "executive" and "administrative" worker.<sup>4</sup>

## **Anthony Smith, Virginia**

### **Autozone Worker, Working 55 Hours Per Week for an Annual Salary of \$45,000, Denied Overtime.**

Anthony Smith worked as a store manager for Autozone at five different locations in the Richmond, Virginia area from 2005, when his annual salary was \$40,000, to 2015, when his salary was \$45,000. Mr. Smith claims he frequently worked 50 hours per week, consistently worked more than 55 hours per week, and worked at times for periods of more than 70 hours per week, receiving no overtime. Autozone claimed that he was subject to the executive exemption to the FLSA's overtime requirement. Mr. Smith claims that he spent only 15% of his time performing personnel management, and the remainder on "retail-related issues" like cleaning the store, checking out customers, and other such tasks. The court held in Autozone's favor that Smith was an exempt executive employee as a matter of law.<sup>5</sup>

**Zemma Rossi, Maryland**  
**Employer Claims Maryland Clerical Worker**  
**in Substance Abuse Clinic is Too High-Level To Get Overtime.**

Zemma Rossi worked as an “Office Administrator” for the Circle Treatment Center, a substance abuse treatment clinic in Gaithersburg, Maryland, at a salary of \$42,000 a year. In December of 2014, Ms. Rossi sued the Center, alleging overtime violations of the Fair Labor Standards Act. Ms. Rossi alleged that she performed mostly secretarial tasks, and therefore would not have been exempt from overtime requirements. The Center claimed Ms. Rossi was an overtime-exempt employee; she ultimately had to settle the claim, for less than a third of her maximum potential recovery.<sup>6</sup>

**Wayne Allen, Maryland**  
**IT Customer Support Worker Receives No Overtime Despite 60-Hour Workweeks.**

Wayne Allen worked from 2012 to 2014 as a “Messaging Engineer” for Enabling Technologies, an IT services company with its principal place of business in Glen Arm, Maryland. His base annual salary was \$52,500, and it was increased in October of 2013 to \$55,125; he was terminated in November 2014. Mr. Allen’s primary job duties consisted of customer support and updating client IT systems. He describes his primary job duties as “low-level customer support, similar to the work of a help desk employee...[It was] help and how to.”<sup>7</sup>

**Maxine Diakos, New Jersey**  
**Restaurant Worker Spends Over 90% of Her Hours Bussing,**  
**Cleaning, Waiting Tables: Classified as a “Manager” with No Overtime.**

Maxine Diakos was employed as the “manager” of the Pilgrim Diner in Cedar Grove, New Jersey between December 2011 and September 2013. She filed a Fair Labor Standards Act lawsuit against the diners’ owners, in which she asserted that she worked more than 90 hours per week and spent approximately 93% of those hours bussing, cleaning, and waiting tables. She made an annual salary of \$52,000 with no overtime. The court in her case ruled that because she happened to set schedules for, and hire, other waitresses, she was a “manager” exempt from overtime requirements and dismissed her claim.<sup>8</sup>

**Tommy Zahtila, New York**  
**Marshalls Employee Spends 50-70 Hour Workweeks Unloading Trucks,**  
**Processing Merchandise, Staffing Cash Registers: Denied Overtime.**

Tommy Zahtila worked as an “Operations Assistant Store Manager” at a Marshalls in Freeport, New York from April 2010 until he was terminated in May 2012, at an annual salary of \$56,000. In a deposition, Zahtila stated that he worked 50 to 60 hours per week, and 60 to 70 during the Christmas season. Zahtila estimates that he spent 5-10% of his time performing managerial tasks, and the remainder performing such nonexempt tasks as unloading trucks, breaking open boxes, processing merchandise, staffing the cash registers, and stocking toilet paper. His employer argued that he was an overtime-exempt employee.<sup>9</sup>

## **Albert Itterly, Pennsylvania**

### **Family Dollar Store Worker Works 63.5 Hours per Week, Spends Most Time Unloading Freight or at Cash Register: “Manager” with no Overtime.**

Albert Itterly worked as a “Store Manager” at the Family Dollar Store in Allentown, Pennsylvania between July and November of 2007. He was paid a weekly salary of \$930.00 (which would be \$48,360 per year), and claimed in his Fair Labor Standards Act lawsuit against his employer to have worked an average of 63.5 hours per week with no overtime. Itterly spent “virtually all of his time” unloading freight, stocking shelves, and working a cash register. The district court for the Eastern District of Pennsylvania held that Mr. Itterly was an “executive” employee exempt from overtime requirements, and the Third Circuit Court of Appeals affirmed.<sup>10</sup>

## **Stanton Meats, Utah and Wyoming**

### **Grocery Worker in Mountain West Spends 90% of Time on Job Duties Like Stocking Shelves, Running Cash Register But Denied Overtime.**

Stanton Meats held positions as an “Assistant Store Manager” (“ASM”) at Ridley’s Family Markets locations in Midway, Utah and Pinedale, Wyoming from 2015 to 2019. His salary ranged from \$46,800 a year to \$56,550 a year. Mr. Meats contends that his primary duties were working on the floor, stocking shelves, running the cash register, cleaning the store, packaging meat, organizing the back room, and unloading freight, and that such tasks occupied approximately ninety percent of his time. His employer argued that he was an overtime-exempt employee.<sup>11</sup>

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*The National Institute for Workers’ Rights is a nonprofit advocacy organization focused on ensuring that workplaces are equitable and that all workers, particularly those most likely to experience injustice, have access to the protections they deserve. Our work is informed by our partnerships with the best workers’ rights advocates in the country and our alliances with other social justice and workers’ rights organizations.*

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#### Endnotes

- 1 *Hamel v. Wheatleigh Corp.*, No. 3:18-CV-30113-KAR, 2021 WL 3516449 (D. Mass. Aug. 10, 2021).
- 2 *Harris v. Wheatleigh Corp.*, No. 3:18-CV-30114-KAR, 2021 WL 3848147 (D. Mass. Aug. 27, 2021).
- 3 *Long v. Epic Sys. Corp.*, No. 15-CV-81-BBC, 2016 WL 4625497 (W.D. Wis. Sept. 6, 2016).
- 4 *Simpson v. Prince Telecom, LLC*, No. CV 14-1211-SLR-SRF, 2017 WL 1206403 (D. Del. Apr. 21, 2017).
- 5 *Smith v. Autozone, Inc.*, No. 7:15-CV-00183, 2016 WL 4718184 (W.D. Va. May 13, 2016).
- 6 *Rossi v. Circle Treatment Ctr., P.C.*, No. 14-3803-GJH, 2015 WL 1815501 (D. Md. Apr. 17, 2015).
- 7 *Allen v. Enabling Techs. Corp.*, No. CV WMN-14-4033, 2016 WL 4240074 (D. Md. Aug. 11, 2016).
- 8 *Diakos v. Rudnick*, No. A-2468-15T2, 2017 WL 6398928 (N.J. Super. Ct. App. Div. Dec. 15, 2017).
- 9 *Roberts v. TJX Companies, Inc.*, No. 13-CV-13142-ADB, 2017 WL 1217116 (D. Mass. Mar. 31, 2017).
- 10 *Itterly v. Fam. Dollar Stores, Inc.*, 606 F. App’x 643, 644 (3d Cir. 2015).
- 11 *Meats v. Ridley’s Fam. Markets, Inc.*, No. 22-CV-01070-PAB-KAS, 2024 WL 1141525, at \*2 (D. Colo. Mar. 15, 2024).

