

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BRANDON KEENEY and WILLIAM PAYNE, on behalf
of themselves and a collective of similarly situated
individuals,

Plaintiffs,

– against –

THE CITY OF NEW YORK,

Defendant.

No.: 1:25-cv-06933(PAE)(OTW)

**THIRD AMENDED
COLLECTIVE ACTION
COMPLAINT**

Jury Trial Demanded

Plaintiffs Brandon Keeney and William Payne (“Plaintiffs”), by and through their undersigned counsel, Filippatos PLLC, on behalf of themselves and a collective of similarly situated individuals (the “FLSA Collective,” as defined in paragraph 2, *supra*), as and for their Third Amended Complaint in this action against Defendant the City of New York (the “City” or “New York City”), hereby allege as follows:

NATURE OF THE CLAIMS

1. Plaintiffs are former employees of Defendant who were employed as “Probationary Firefighters” at the Fire Department of the City of New York (“FDNY”) during the statute of limitations periods. Plaintiffs bring this action for a declaratory judgment, back pay, and other relief pursuant to 29 U.S.C. §§ 207 and 216(b) of the Fair Labor Standards Act (“FLSA”) to remedy Defendant’s willful and unlawful violations of federal law complained of herein.

2. Plaintiffs bring this action against Defendant as a collective action in accordance with 29 U.S.C. § 216(b) of the FLSA on behalf of themselves and similarly situated persons who trained at the FDNY’s Training Academy (the “FDNY Academy”) whom the FDNY knew were being required to work significant “off-the-clock-work” before and after their daily training sessions in the FDNY Academy, and who, after graduating from the FDNY Academy, performed

significant “off-the-clock work” before their shifts, i.e., pre-shift work, during their probationary periods, and were thus denied overtime wages for all hours worked over 212 hours in a 28-day work period, or a proportional number for shorter work periods, during the statutory period (the “FLSA Collective Period”), and those who file consent forms to opt in to or join this action as party plaintiffs (the “FLSA Collective”).

3. The Plaintiffs and FLSA Collective are similarly situated because they all performed the same basic duties and assignments as FDNY Academy Probationary Firefighters (“Probationary Firefighters”) and/or any other similar positions and were all subject to the City of New York’s common policy and practice of causing them to work significant “off-the-clock” work resulting in overtime wage violations pursuant to the FLSA.

JURISDICTION AND VENUE

4. Jurisdiction of this Court is proper under 28 U.S.C. § 1331 as Plaintiffs allege claims pursuant to the FLSA.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendant is located within the District and a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

6. Plaintiff William Payne is a former FDNY firefighter who resides in New York, New York. At all relevant times, Mr. Payne qualified as an “employee” under the FLSA, 29 U.S.C. § 203(e)(1).

7. Plaintiff Brandon Keeney is a former FDNY firefighter who resides in Nassau County, New York. At all relevant times, Mr. Keeney qualified as an “employee” under the FLSA, 29 U.S.C. § 203(e)(1).

8. At all relevant times hereto, the City of New York was and is, among other things, a public agency within the meaning of Section 3(x) of the FLSA, 29 U.S.C. § 203(x) and is therefore amenable to suit under the FLSA. The City of New York's principal office is located at Broadway and Park Row, New York, NY 10007.

9. At all relevant times, Defendant controlled the terms and conditions of Plaintiffs' and the FLSA Collective's employment and qualified as an "employer" and "employed" Mr. Payne, Mr. Keeney, and the FLSA Collective under the FLSA.

FACTUAL ALLEGATIONS

10. Plaintiff Payne was employed by Defendant from March 28, 2022, until September 26, 2023. From March 28, 2022, until August 9, 2022, Plaintiff Payne was an FDNY Probationary Firefighter at Randall's Island Fire Academy. Following his graduation on August 9, 2022, Plaintiff Payne joined Ladder Company 24 as a Probationary Firefighter. Mr. Payne was terminated from the FDNY on September 26, 2023.

11. Plaintiff Keeney was employed by Defendant at the FDNY from September 12, 2022, until October 2024. From September 12, 2022, until January 2023, Plaintiff Keeney was a Probationary Firefighter in the FDNY Academy at Randall's Island Fire Academy. Following his graduation from the FDNY Academy, Plaintiff Keeney joined Engine Company 299 as a Probationary Firefighter from January 2023 until May 2023 and then the Bureau of Health Services for FDNY as a Light Duty, Probationary Firefighter from May 2023 to October 2024. In October 2024, Plaintiff Keeney resigned from the FDNY.

12. Plaintiffs and the FLSA Collective were compensated at an hourly rate of approximately \$22-\$27 during the time they worked at the FDNY Academy and through their probationary period following graduation, and overtime premium rate of approximately \$34-

\$40.50 per hour.

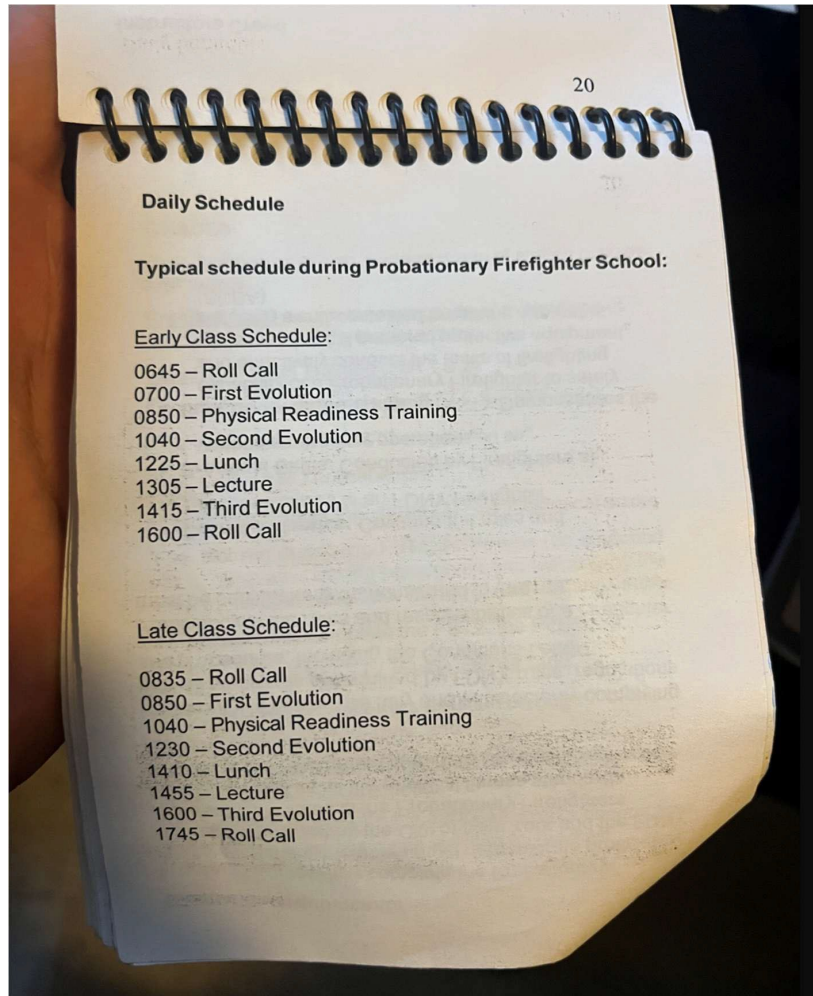
I. Plaintiffs' Work Schedule at the FDNY Academy

14. While at the FDNY Academy, Plaintiffs and members of the FLSA Collective generally worked five (5) days in a week/seven-day period, from Monday until Friday. They occasionally worked on the weekends to, *inter alia*, attend additional training sessions and make-up for classes that were missed or canceled because they fell on a holiday.

15. While at the Fire Academy, Plaintiffs and members of the FLSA Collective were generally paid only for 40 hours of work a week, or 80 hours over a two-week pay period, or 160 hours over a 28-day period.

16. The FDNY Academy would split Probationary Firefighters into two groups who would rotate every two weeks. One cohort followed an Early Class Schedule while the other followed a Late Class Schedule. The Early Class Schedule would start, at least on paper, with roll call at 6:45 AM, whereas those on the Late Class Schedule were required to attend roll call at 8:35 AM.

17. Below is a picture of the FDNY Academy's "daily schedule." What the schedule fails to show, however, are the substantial "off-the-clock" hours Plaintiffs were required to spend at the FDNY Academy, which resulted in substantial unpaid overtime.



18. Indeed, for the duration of time spent by Plaintiffs and members of the FLSA Collective at the FDNY Academy, Defendant required or caused them to report for duty approximately two hours before roll call.

19. During weeks in which Plaintiffs and members of the FLSA Collective were on the Early Class Schedule, they would have to be present at the FDNY Academy between 4:45 AM and 5:00 AM in order to put on their uniforms, assemble as a group, march together from the parking lot to the auditorium, and be in their seats by 5:30 AM, which was when Probationary Firefighters on the Early Class Schedule were required to be in their seats for the 6:45 AM roll call.

20. Similarly, Probationary Firefighters on the Late Class Schedule had to be present

at the FDNY Academy between 6:45 AM and 7:00 AM in order to be in uniform, march to the auditorium, and in their seats by 7:30 AM, which was when Probationary Firefighters on the Late Class Schedule needed to be in their seats for the 8:35 AM roll call.

21. If any Probationary Firefighter arrived late, i.e., failed to arrive at the auditorium by 5:30 AM if on the Early Class Schedule or by 7:30 AM if on the Late Class Schedule, they were disciplined by their superiors and ordered to perform push-ups, sit-ups, lunges, air squats, or other exercises in front of everyone.

22. Plaintiffs and the members of the FLSA Collective generally spent the time they were in their seats waiting for roll call immersed in study as part of their training at the FDNY Academy.

23. Then, once Plaintiffs and members of the FLSA Collective ended their scheduled workday at the FDNY Academy, which would be at 4:00 PM for those on the Early Class Schedule or 5:45 PM for those on the Late Class Schedule, they were still required to remain at the FDNY Academy an additional approximately two (2) hours to complete cleaning tasks (i.e., clearing garbage, cleaning various areas of the FDNY Academy, including areas not used by the Probationary Firefighters, etc.), compiling administrative paperwork, or completing military style exercise drills meant as “punishments.” Upon completing these tasks, Probationary Firefighters grouped together again and presented themselves to their superiors for dismissal.

24. As a result, Probationary Firefighters who were on the Early Class Schedule were generally dismissed at 6.00 PM while those on the Late Class Schedule were generally dismissed at 7:45 PM.

25. As such, when Plaintiffs and FLSA Collective members were on the Early Class Schedule, they arrived at work at around 4:45 AM and were not dismissed until around 6:00 PM,

during which time they worked approximately four (4) hours each day “off-the-clock” without any pay.

26. Likewise, when Plaintiffs and FLSA Collective members were on the Late Class Schedule, they arrived at work around 6:45 AM and were not dismissed until around 7:45 PM, which also included four hours of unpaid off-the-clock work.

27. As a result, Plaintiffs and FLSA Collective members were not paid for approximately 20 hours a week of off-the-clock work while at the FDNY Academy (over the typical five-day workweek over a seven-day period), which extrapolated to 40 hours over a two-week pay period, and 80 hours over a 28-day (or four week) period.

28. Plaintiffs and members of the FLSA Collective are required, pursuant to Section 7(k) of the FLSA, to be paid at an overtime premium of one and one-half times their regular hourly rate for all hours worked over 212-hours over a 28-day period.

29. However, while at the FDNY Academy, Plaintiffs and members of the FLSA Collective worked approximately 60 hours in a week/seven day period (40 hours “on the clock” plus 20 hours “off the clock”), or 120 hours over a two-week/14-day pay period, or 240 hours over a 28-day period.

30. As such, over a 28-day period at the FDNY Academy, Plaintiffs and FLSA Collective members worked approximately 28 overtime hours (240 total hours minus 212 overtime threshold hours), all of which were unpaid. Over a two-week/14-day period, this equates to approximately 14 unpaid overtime hours, and seven (7) unpaid overtime hours each week/seven day period.

31. In the approximately 19 weeks during which Mr. Payne worked as a Probationary Firefighter at the FDNY Academy, he worked approximately 133 total overtime hours (19 weeks

* seven (7) weekly/seven-day period overtime hours) but was only paid a **total** of 37 hours of overtime over that period, resulting in approximately **96 total hours of unpaid overtime wages**. In other words, while Mr. Payne may have been paid for some of his overtime hours, he was not paid for all his overtime hours.

32. The specific two-week/14-day pay periods during which Mr. Payne was compensated for 37 collective hours of overtime work at an overtime premium rate of \$34.05 an hour are as follows:

- | | |
|--|---|
| i. 04/10/2022 – 04/23/2022 – 8
overtime hours | v. 06/19/2022 – 07/02/2022 - 4
overtime hours |
| ii. 04/24/2022 – 05/07/2022 – 4
overtime hours | vi. 07/17/2022 – 07/30/2022 - 6
overtime hours |
| iii. 05/08/2022 – 05/21/2022 – 4
overtime hours | vii. 07/31/2022 – 08/13/2022 – 3
overtime hours. |
| iv. 05/22/2022 – 06/04/2022 – 8
overtime hours | |

33. Likewise, over the approximately 19 weeks during which Mr. Keeney was in the FDNY Academy, he also worked approximately 133 total overtime hours (19 weeks * seven (7) weekly/seven-day period overtime hours) but was only compensated for **8** total hours of overtime work during this period at a rate of \$34.05 an hour, which occurred during the pay period between 09/25/2022 – 10/08/2022, resulting in approximately **125 hours of unpaid overtime wages**.

34. This pattern persisted throughout Plaintiffs' and the FLSA Collective members' time as Probationary Firefighters at the FDNY Academy and deprived them each of substantial overtime wages.

35. Unfortunately, upon graduating from the FDNY Academy, Plaintiffs found similar protocols in place at their respective firehouses resulting in additional significant unpaid overtime wages.

II. Plaintiffs' Probationary Period After Graduating from the FDNY Academy

36. Following their graduation from the FDNY Academy, Mr. Payne and Mr. Keeney joined Ladder Company 24 and Engine Company 299, respectively, and were paid approximately \$22.70 an hour.

37. Probationary Firefighters who graduate from the FDNY Academy and join a firehouse remain on a probationary period of approximately one year.

38. At Ladder Company 24 and other firehouses at which members of the FLSA Collective worked, during their probationary period, Plaintiffs and members of the FLSA Collective were expected to be at their firehouse and engaged in work approximately two hours prior to when their shift was scheduled to begin, which was referred to as “pre-shift work.”

39. Each week/seven-day period at Ladder Company 24, Mr. Payne was generally assigned to work two nine (9)-hour daytime shifts from 9:00AM to 6:00PM (called a “9x”) and two 15-hour nighttime shifts from 6:00PM to 9:00 AM (called a “6x”), for a total of 48 hours per week/seven-day period, during which he was paid for all hours worked.

40. The same or similar work schedule of four shifts a week totaling approximately 48 hours in a week/seven-day period was generally followed at the other firehouses at which Plaintiffs and members of the FLSA Collective worked during their probationary periods.

41. During the 9x shift, Plaintiffs and the FLSA Collective were expected to arrive at their firehouse at 7:00AM (two hours before the start of their shift) and relieve senior firefighters and perform pre-shift work, which included cooking breakfast for fellow firefighters, cleaning various areas inside and outside the firehouse, and cleaning and repainting tools.

42. Similarly, during the 6x shift, Plaintiffs and the FLSA Collective were expected to arrive at the firehouse by 4.00 PM (two hours before the start of their shift), relieve senior

firefighters, and perform pre-shift work such as prepare meals, clean dishes and the kitchen, perform firefighter exercise drills, and complete online coursework

43. However, since all Probationary Firefighters at Ladder Company 24 and at other firehouses at which members of the FLSA Collective worked were expected to arrive approximately two (2) hours before each shift, Plaintiffs and members of the FLSA Collective worked an additional eight (8) hours “off the clock,” or unpaid, each week/seven-day period performing pre-shift work (i.e., two (2) pre-shift work hours x four (4) shifts a week/seven-day period) during their probationary period.

44. To be sure, in some weeks/seven-day periods, Plaintiffs and members of the FLSA Collective agreed to work an additional shift on their days off, for which they would still have to perform two (2) hours of uncompensated pre-shift work.

45. As such, Plaintiffs and members of the FLSA Collective generally worked *no less than* approximately 56 hours in a week/seven-day period during their probationary period (48 hours on the clock plus eight (8) hours “off the clock” performing pre-shift work), which extrapolates to 224 hours over a 28-day period (56 hours in a week/seven-day period x four (4) weeks), or at least 12 hours beyond the 212-hour FLSA overtime exemption threshold for firefighters.

46. In other words, during their probationary period, Plaintiffs and members of the FLSA Collective worked approximately *at least* 12 hours of overtime during each 28-day period, or 6 hours of overtime over a two-week/14-day pay period.

47. While Defendant paid Plaintiffs and members of the FLSA Collective some overtime wages during their probationary period, it did ***not*** pay them for the hours specifically spent performing pre-shift work and thus failed to pay them for ***all*** overtime hours.

48. The City of New York knew that Plaintiffs and members of the FLSA Collective worked well over 212 hours in a 28-day work period, or a proportional number for shorter work periods, including performing pre-shift work during their probationary periods, but were not paid for all their hours work, resulting in a failure to pay them all their overtime wages.

49. Notably, Mr. Payne informed his superiors on numerous occasions that he was not being paid for all the hours he worked but never received a meaningful response to his concerns, nor was anything done to correct these actions.

50. In fact, an attorney for the firefighters' union acknowledged to Mr. Payne following Mr. Payne's termination that the issue of unpaid work was "a global issue" at the FDNY. In other words, the FDNY is and has been on notice that Probationary Firefighters are required to work without pay, including pre-shift overtime pay, on a regular basis and knowingly allows this practice to continue uncorrected.

51. Based on the foregoing, as part of its regular business practices, the City of New York has intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective. This policy, pattern, and/or practice includes, but is not limited to:

- a. Willfully failing to pay Plaintiffs and the FLSA Collective overtime wages, specifically pre-shift overtime work, for hours that they worked in excess of 212 hours in a 28-day work period, or a proportionate number for shorter work periods, during their probationary periods; and
- b. Willfully failing to pay Plaintiffs and the FLSA Collective overtime wages for hours that they worked in excess of 212 hours in a 28-day work period, or a proportionate number for shorter work periods, before and after their class schedule while working in the FDNY Academy.

52. At all relevant times, Plaintiffs and the other members of the FLSA Collective were

similarly situated, had substantially similar job requirements, were paid in the same manner and under the same common policies, plans and practices, and were subject to Defendant's failure to pay them overtime wages for all hours worked over 212 hours in a 28-day work period, or a proportional number for shorter work periods, while in the FDNY Academy and during their probationary period.

53. During the FLSA Collective Period, Defendant was fully aware of the hours and work performed by Plaintiffs and the FLSA Collective, and that a significant portion of that time was not compensated.

54. As a result of Defendant's conduct as alleged herein, Defendant violated 29 U.S.C. § 207 by not paying Plaintiffs and the FLSA Collective overtime wages for all hours worked over 212 hours in a 28-day work period, or a proportional number for shorter work periods.

55. As a result of Defendant's conduct, Plaintiffs and the FLSA Collective are owed the full amount of their unpaid overtime wages, plus an additional equal amount in liquidated damages, interest, plus the attorneys' fees and costs incurred by Plaintiffs and the FLSA Collective.

56. While the precise number of members of the putative FLSA Collective are unknown, there are well over 100 such members and their precise identities and addresses can be ascertained from Defendant's records.

FIRST CAUSE OF ACTION
Failure to Pay Overtime Wages in Violation of the FLSA

57. Plaintiffs, on behalf of themselves and the FLSA Collective, reallege and incorporate by reference all preceding paragraphs relevant to their overtime wage violation claims as if they were set forth again herein.

58. 29 U.S.C. § 207 requires the payment of overtime compensation to employees who

work in excess of the hourly standards set forth therein. In particular, 29 U.S.C. §207(k), through 29 C.F.R. § 778.106, establishes a partial exemption for fire-protection employees of public agencies and requires the payment of overtime compensation at the rate of one and one-half times each employee's regular rate of pay for all hours employees are suffered or permitted to work in excess of 212 hours in a 28-day work period, or a proportional number for shorter work periods.

59. Defendant failed to comply with the overtime pay requirements of the FLSA by failing to compensate Plaintiffs and the FLSA Collective for all work that they have been suffered or permitted to work in excess of 212 hours in a 28-day work period, or a proportional number for shorter work periods, including before their official start time and/or after the end of their regularly schedule shifts at the FDNY Academy, and for pre-shift work during their probationary periods.

60. As a result of Defendant's systemic, continuing, willful, and purposeful violations of the FLSA, there has become due and owing to the Plaintiffs and the FLSA Collective an amount that has not yet been precisely determined. The employment and work records for the Plaintiffs and the FLSA Collective are in the exclusive possession, custody, and control of the Defendant and its public agencies and the Plaintiffs are unable to state at this time the exact amount owing to them, but from these records, Plaintiffs will be able to ascertain the precise extent of these violations of the FLSA. Defendant is under a duty imposed by 29 U.S.C. §211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to the Plaintiffs and the FLSA Collective from which the amount of the Defendant's liability can be ascertained.

61. Pursuant to 29 U.S.C. §216(b), Plaintiffs and the FLSA Collective are entitled to recover liquidated damages in an amount equal to their back pay damages for Defendant's failure to pay overtime compensation as alleged herein as well as attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the FLSA Collective, respectfully request that the Court:

A. Declare that the practices complained of herein are unlawful under applicable federal law;

B. Order a complete and accurate accounting of all the compensation to which the Plaintiffs and the FLSA Collective are entitled;

C. Award damages sustained by Plaintiffs and the FLSA Collective as a result of Defendant's violations of the FLSA and/or its regulations against Defendant and in favor of Plaintiffs and the FLSA Collective, plus such pre-judgment and post-judgment interest as may be allowed by law;

D. Award Plaintiffs and the FLSA Collective their reasonable attorneys' fees and costs and disbursements in this action including, but not limited to, any accountants' or experts' fees; and;

E. Grant Plaintiffs and the FLSA Collective such other and further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and on behalf of the FLSA Collective, hereby demand a trial by jury on all issues of fact and damages.

Dated: July 28, 2026
White Plains, New York

Respectfully submitted,

FILIPPATOS PLLC

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