

Commonwealth of Massachusetts

Middlesex County

Superior Court
Case No.: 2181CV00680

Andrew Jefferson, on behalf of himself
and all other employees similarly situated,

Plaintiff,

v.

UTS of Mass., Inc., William P. Crabtree, and
Steven T. Crabtree

Defendants.

8/17/2021

RECEIVEDFirst Amended Class Action Complaint and Jury Demand

Plaintiff Andrew Jefferson brings this class action complaint concerning Defendants' failure to comply with Massachusetts law relative to the reimbursement of transportation expenses. In support of this complaint, Mr. Jefferson states as follows:

Parties

1. Plaintiff Andrew Jefferson ("Mr. Jefferson") is a Massachusetts resident residing in Essex County.
2. Defendant UTS of Mass., Inc. ("UTS") is a Massachusetts corporation with a principal office located at 5 Richardson Lane, Stoneham, Massachusetts 02180.
3. Defendant William P. Crabtree is a Massachusetts resident who was UTS's president, secretary, and one of its two directors during the limitations period.
4. Defendant Steven T. Crabtree is a Massachusetts resident who was UTS's treasurer, vice president, and one of its two directors during the limitations period.

Background Facts

5. UTS, known as “The Construction Testing People,” is a full-service testing agency specializing in testing, inspection and evaluation of construction materials and practices.

6. At any given time, UTS employs between 50-125 employees who are subjected to its policy of reimbursing non-toll transportation expenses at the rate of 35 cents per mile.

7. Mr. Jefferson, like everyone in the proposed class, was required to use his own car to perform his work duties for UTS. As a result, he and everyone in the proposed class incurred toll and non-toll transportation expenses, including fuel, insurance, preventative maintenance, repairs, depreciation, and all other costs or expenses associated with the operation of an automobile.

8. In 2018, the standard IRS reimbursement rate for transportation expenses was 54.5 cents per mile.

9. In 2019, the standard IRS reimbursement rate for transportation expenses was 58 cents per mile.

10. In 2020, the standard IRS reimbursement rate for transportation expenses was 57.5 cents per mile.

11. The 2021 standard IRS reimbursement rate is 56 cents per mile.

12. According to the IRS “[t]he standard mileage rate for business use is based on an annual study of the fixed and variable costs of operating an automobile.”¹

13. Massachusetts regulations require employers, like UTS, to reimburse employees, like Mr. Jefferson and the proposed class members, for all transportation expenses.²

¹ <https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2021>.

² 454 CMR 27.04(4).

14. Employers who violate the requirement to reimburse employees for all transportation expenses are subject to the penalties provided in M.G.L. ch. 151, including mandatory triple damages, attorneys' fees, interest, and costs.³

15. UTS violated these regulations by failing to adequately reimburse Mr. Jefferson and the members of the proposed class for all transportation expenses.

16. UTS has a long-standing policy of reimbursing its employees for their non-toll transportation expenses on a per-mile basis, at the rate of 35 cents per mile.

17. On information and belief, that rate was not based on any reasonably current studies or data regarding all transportation costs, including fuel, insurance, preventative maintenance, repairs, depreciation, and any other costs or expenses associated with the operation of an automobile.

18. UTS's transportation expense reimbursement policy did not depend on any individual circumstances, other than the number of miles driven and tolls paid. It did not, for example, depend on the type of car an employee drove, the fuel efficiency of the employee's car, the type of gas (or other fuel) the employee used, the type or amount of insurance the employee had, the amount of preventative maintenance the employee performed, or the cost of any repairs, among other individual variables.

19. UTS did not require its employees to maintain or submit any receipts or other records of their transportation expenses other than those related to tolls. Indeed, there was no reason to do so, because employees were being paid on a per-mile basis. As a result, employees were not put on notice that they needed to maintain or submit any receipts or other records of their non-toll transportation expenses.

³ 454 CMR 27.08; M.G.L. ch. 151 §1B.

20. UTS employed Mr. Jefferson from September 10, 2018 to February 12, 2021 as an E.I.T. (staff engineer).

21. During that time, Mr. Jefferson drove approximately 76,445 miles as part of his employment with UTS.

22. UTS reimbursed Mr. Jefferson at the rate of 35 cents per mile for non-toll expenses associated with driving those miles. In reliance upon UTS's policy not to require Mr. Jefferson to maintain or submit records of his non-toll transportation expenses, Mr. Jefferson did not undertake efforts to keep such records.

23. UTS's employees were under-reimbursed for their transportation expenses, in an amount equal to the difference between 35 cents per mile and the IRS reimbursement rate for each year at issue, for each mile driven by each employee. That under-reimbursement had the effect of an unlawful deduction from the employees' wages, because employees effectively were required to pay UTS's business expenses.

24. Individual defendant William P. Crabtree is liable for UTS's violations because he was its president during the limitations period and because he had substantial input and control over its day-to-day operations, including as they relate to the wage-and-hour practices at issue in this case.

25. Individual defendant Steven T. Crabtree is liable for UTS's violations because he was its treasurer during the limitations period and because he had substantial input and control over its day-to-day operations, including as they relate to the wage-and-hour practices at issue in this case.

26. Mr. Jefferson filed a wage complaint with the Massachusetts Attorney General's Office and received permission to bring a private right of action on behalf of himself and all others similarly situated.

Class Action Allegations

27. Mr. Jefferson brings this action pursuant to Mass. R. Civ. P. 23 and M.G.L. ch. 149 §§ 148 and 150 on behalf of himself and all other present and former UTS employees who were reimbursed for transportation expenses at a rate less than the standard IRS rate and who were employed by UTS during the limitations period through the conclusion of this action (the “Class”).

28. The members of the proposed Class are so numerous that joinder of all of them is impracticable.

29. The claim of Mr. Jefferson concerning transportation expenses is essentially the same as the other members of the proposed Class because Defendants’ pattern or practice of reimbursing employees for transportation expenses at a rate less than the standard IRS rate applies to all members of the proposed Class.

30. Common questions of law and fact concerning the claims of the members of the proposed Class predominate over any questions affecting individual Class members, including whether UTS’s reimbursement policy complied with Massachusetts law.

31. Mr. Jefferson and the members of the proposed Class suffered similar losses, injuries, and/or damages on account of Defendants’ pattern or practice of failing to adequately reimburse them for all transportation expenses.

32. The relief sought by Mr. Jefferson is typical of the relief which could be sought by each member of the proposed Class in separate actions.

33. Mr. Jefferson will fully and adequately protect the interests of the members of the proposed Class and has retained counsel who is qualified and experienced in the prosecution of wage-and-hour class actions. Neither Plaintiff nor his counsel have interests that are contrary to, or conflicting with, the interests of the members of the Class.

34. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because, *inter alia*, it is economically infeasible for members of the proposed Class to prosecute individual actions on their own, and due to the fear of reprisal by their employer if they did so. Prosecution of this case as a class action will also eliminate the possibility of duplicative lawsuits being filed in other courts.

35. This case will be manageable as a class action. Plaintiff and his counsel know of no unusual difficulties in this case, and UTS has advanced, networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

36. Because UTS acted and refused to act on grounds that apply generally to Plaintiff and the members of the proposed Class, declaratory relief is appropriate in this case with respect to the Class as a whole.

Count 1 – Violation of M.G.L. ch. 149 §§ 148 and 150 – Unreimbursed Transportation Expenses
(Mr. Jefferson and the Members of the Proposed Class v. All Defendants)

37. Mr. Jefferson incorporates his previous allegations by reference.

38. Mr. Jefferson and the members of the proposed Class were employees engaged in an occupation according to Massachusetts law.

39. Defendants were the employers of Mr. Jefferson and the members of the proposed Class according to Massachusetts law.

40. Massachusetts law requires employers, like Defendants, to reimburse employees, like Mr. Jefferson and the members of the proposed Class, for all transportation expenses.

41. Defendants failed to adequately reimburse Mr. Jefferson and the members of the proposed Class for all transportation expenses.

42. Defendants' failure to do so violated Massachusetts law.

Count 2 – Violation of M.G.L. ch. 149 §§ 148 and 150 – Unpaid Wages
(Mr. Jefferson and the Members of the Proposed Class v. All Defendants)

43. Mr. Jefferson incorporates his previous allegations by reference.

44. Mr. Jefferson and the members of the proposed Class were employees engaged in an occupation according to Massachusetts law.

45. Defendants were the employers of Mr. Jefferson and the members of the proposed Class according to Massachusetts law.

46. Massachusetts law requires employers, like Defendants, to compensate employees, like Mr. Jefferson and the members of the proposed Class, all wages to which they are owed.

47. Defendants violated this requirement by unlawfully reducing wages owed to Mr. Jefferson and the members of the proposed Class due to its failure to adequately reimburse them for transportation expenses.

Request for Relief

Plaintiff respectfully requests this Court for the following relief:

A. Certification of the Class pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;

B. Designation of Plaintiff as a Class Representative and counsel of record as Class Counsel;

C. Issuance of a declaratory judgment that the practices identified in this complaint are unlawful under Massachusetts law;

D. An injunction requiring Defendants to pay all statutorily required wages and liquidated damages to Plaintiff and the members of the Class pursuant to Massachusetts law;

E. Defendants are liable to Plaintiff and the members of the Class for the violations identified in this complaint;

F. Defendants are liable to Plaintiff and the members of the Class for compensatory damages in an amount to be proven at trial, plus triple damages for unpaid wages, interest, costs, and attorney's fees; and

G. Such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Benjamin Knox Steffans
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Attorneys for Plaintiff and the Putative Class
Members

August 17, 2021

CERTIFICATE OF SERVICE

I certify that on this date I served a copy of the foregoing document, by electronic mail, on counsel for the Defendants.

Dated: August 17, 2021

/s/ Stephen Churchill
Stephen Churchill