SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DOUGLAS L. MOORE, MARY CAMP, GAYLORD CASE, and a class of similarly situated individuals,

Plaintiff,

v.

HEALTH CARE AUTHORITY, STATE OF WASHINGTON,

Defendant.

NO. 06-2-21115-4 SEA

CLASS ACTION

COMPLAINT

Plaintiffs allege as follows on behalf of a class:

PARTIES

1. Plaintiff Douglas Moore works for the State of Washington as a horse racing steward in Auburn, Washington.

2. Plaintiff Mary Camp works for the State of Washington as a part-time community college instructor in Bellingham, Washington.

3. Plaintiff Gaylord Case works for the State of Washington as a transportation worker in Yakima, Washington.

4. Plaintiffs bring this action on behalf of a class, as described below.

5. Defendant Health Care Authority (HCA) is a State of Washington agency that is part of and acts for and on behalf of the State of Washington.

6. Defendant State of Washington employs plaintiffs and class members.

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FACTS

Plaintiffs are Misclassified State Employees Who are Wrongly Denied Employer-Paid Health Insurance.

7. Plaintiff Douglas Moore is a steward for the Washington State Horse Racing Commission, and he works in Auburn, Washington. Under WAC 182-12-115(4), "career seasonal" employees who work "half-time or more" on a "nine-month seasonal basis" are eligible for benefits in the "off-season."[1] Plaintiff Moore works on average more than half-time for the State on a nine-month seasonal basis, February to October. Plaintiff Moore generally works full-time in seven months (March to September), and a little less than half-time in two months (February and October). But the State misclassifies Moore as a "seasonal" employee ineligible for benefits in the off-season because Moore does not work half-time or more in each particular month of the nine-month season. In contrast, the State provides employer-paid health insurance year-round to employees who work less than plaintiff Moore, *i.e.*, employees who work no more than half-time in each month for nine months (in comparison Moore works full-time in seven of those months).

8. Plaintiff Mary Camp is a part-time community college instructor at Whatcom Community College who works on average half-time or more each nine-month instructional-year. But rather than receive employer-paid health insurance year-round, the State wrongly misclassified plaintiff Camp as ineligible for employer-paid health insurance because she did not work half-time in each particular quarter.

9. Plaintiff Gaylord Case is a transportation worker in Yakima County for the State of Washington. Plaintiff Case has worked on average more than half-time for the De-

[1] WAC 182-12-115(4) states: "'Career seasonal/instructional year employees.' Employees who work half-time or more on an instructional (school year) or equivalent nine-month seasonal basis. Coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of the month, coverage begins on the date of employment. These employees are eligible to receive the employer contribution for insurance during the off-season following each period of seasonal employment."

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partment of Transportation since December 2003. The State, however, denied Case employer-paid health insurance because it misclassified him as "on-call." The State recently started to provide Case employer-paid health insurance after it responded to a Public Disclosure Act request that asked the Department of Transportation to identify all "temporary," "seasonal," and "intermittent" employees not receiving employer-paid health insurance.

CLASS ACTION ALLEGATIONS

10. This action is brought on behalf of a class of persons who presently or formerly worked for the State of Washington and who do not, or did not, receive the employer-paid health insurance they were eligible for under the law. The class as defined includes, within the applicable statute of limitations, all:

(a) State employees who worked or will work half-time or more on average for six months, and who did not receive health insurance commencing the seventh month; and

(b) State employees who worked or will work half-time or more on average for at least nine months on an instructional year or equivalent nine-month basis, and who did not receive health insurance at any time in the nine months or in the off-season in which they did not work.

11. The identity of the class members and their eligibility for health benefits can be determined from the State's employment records on a mechanical basis by using a computer program that tracks the employees' employment history on a monthly basis and whether they received health insurance in that month.

12. The plaintiffs and the class as defined are and were eligible for State-paid health insurance, but the State never provided those health benefits because plaintiffs and class members were misclassified as "part-time," "temporary," "seasonal," or a similar label.

13. The State has a long-standing practice of misclassifying employees as ineligible for health insurance due to labels, as shown by the class action *Mader v. HCA,* 149 Wn.2d Wn.2d 458 (2003). In *Mader* the HCA argued that it could treat part-time college instructors *worse* than all other state employees for health benefit purposes because the HCA misclassi-

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fied the instructors as "temporary" employees. The Supreme Court rejected the HCA's argument, stating that *"employees of higher education are not excluded from any particular provision in WAC 182-12-115, provided they satisfy the criteria set forth in the provision." Mader v. HCA, supra,* 149 Wn.2d at 472 (emphasis added).

14. The State as employer has a duty to comply with the regulations and statutes governing employer-paid health insurance by correctly classifying employees as eligible or ineligible based on their actual work circumstances. The State has breached its duty on a class-wide basis by misclassifying state employees as ineligible for health insurance under labels such as "on call," "part-time," "temporary," and "seasonal."

15. The HCA has a duty to provide employer-paid health insurance based on the pertinent eligibility regulation and statute. The HCA breached this duty on a class-wide basis by treating employees differently for health insurance eligibility based on the contracts they sign and/or the labels they work under (*e.g.*, on-call, part-time, temporary), rather than their actual work circumstances.

16. There are common questions of law and fact applicable to the entire class. The common questions include, but are not limited to, whether the State and HCA breached their duties by misclassifying plaintiffs and class members as ineligible for employer-paid health benefits; whether the State and/or the HCA violated the laws, regulations, and policies governing health insurance for State employees; and the appropriate equitable and/or declaratory relief necessary to resolve the problem for all affected State employees.

17. This case should be certified as a class action under CR 23(b)(1) and (b)(2). Alternatively, it should be certified under CR 23(b)(3) because the common questions of law and fact concerning liability predominate over any individual questions over the amount of damages to each person.

CLAIMS

18. The State of Washington and HCA violated RCW 49.44.170 by misclassifying

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plaintiffs and class members as "temporary," "seasonal," "intermittent," "on-call," and other similar labels and thereby making them appear to be ineligible for employer-paid health insurance.

19. The State and HCA violated RCW Ch. 41.05 and WAC 182-12-115 by misclassifying plaintiffs and class members as ineligible for employer-paid health insurance.

20. The HCA breached its duty under the Settlement Agreement in *Mader v. HCA* to conduct a "good faith review" of part-time community and technical college instructors' eligibility for employer-paid health insurance when they work on "average" half-time or more in an instructional year, and this breach caused plaintiffs and other State employees to not receive benefits to which the employees are entitled.

21. The HCA violated the Supreme Court's mandate in *Mader v. HCA, supra,* RCW Ch. 41.05, RCW 49.44.170, Laws of 2006, Ch. 308, §2, and the state constitution by amending WAC 182-12-115 in May 2006 for the express purpose of "correcting" the Supreme Court. The HCA May 2006 regulation is expressly designed to treat State employees differently for health benefit eligibility without regard to their actual work circumstances and thereby deny plaintiffs and other State employees the benefits to which they are entitled. The HCA's amendment to WAC 182-12-115 is also arbitrary and capricious, and it is contrary to the governing statutes.

RELIEF

The plaintiffs and the class should be awarded the following relief due to the Defendants' unlawful practices:

A) Compensatory relief in an amount to be determined;

B) Declaratory relief concerning the rights and status of plaintiffs and the class;

D) An injunction preventing the State of Washington and the Health Care Authority from engaging in further violations of the law and a mandatory injunction requiring the

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State and Health Care Authority to provide plaintiffs and the class employer-paid health insurance under the applicable rules and regulations;

E) Attorney fees under RCW 49.48.030 and the common-fund doctrine; and

F) Such other relief the Court deems just and equitable.

DATED: June 29, 2006.

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ASSISTANT ATTORNEY GENERAL

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