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Honorable Catherine Shaffer

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 and )  
STATE OF WASHINGTON, )  
  
Defendants. )

NO. 06-2-21115-4 SEA

ORDER CERTIFYING CLASS

This matter came before the Court on plaintiffs' motion for class certification. Having considered the materials submitted, the arguments of counsel, and the record in the case, the Court hereby finds and orders as follows:

1. Plaintiffs assert that the defendants breached their duty to provide health insurance to employees who work on nonstandard work schedules when their hours average half-time or more for six or more months and, after they become eligible for health insurance, when they work eight or more hours in a month. Plaintiffs seek declaratory relief concerning the minimum hours a state employee must work to receive health insurance, an injunction requiring defendants to provide plaintiffs and the class health insurance under these rules, and monetary relief to compensate for the denial of health insurance.

2. The first prerequisite for a class action is that "the class is so numerous that joinder of all members is impracticable." CR 23(a)(1). Here, joinder is impracticable because

1 the class includes at least 800 persons. Joinder is also impracticable because many class  
2 members' claims are relatively small and it would be cost-prohibitive to pursue individual  
3 lawsuits.

4 3. The second prerequisite for a class action is that "there are questions of law or  
5 fact common to the class." CR 23(a)(2). This prerequisite is satisfied when there is at least  
6 one question common to the class. Here, there are at least two overriding questions of law  
7 common to the class, with a number of sub-issues. The first common question is the mini-  
8 mum number of hours state employees must work to receive health insurance. Another com-  
9 mon question is the validity and/or effect of HCA's June 2006 amendments to the eligibility  
10 rules. Common sub-issues include how the eligibility rules for health insurance are affected  
11 by the Supreme Court's decision in *Mader v. HCA*, 149 Wn.2d 458 (2003) and RCW  
12 41.05.065(2)(g), which states "[t]o maintain the comprehensive nature of employee health  
13 benefits, employee eligibility criteria related to the number of hours worked . . . shall be sub-  
14 stantially equivalent to the . . . eligibility criteria in effect on January 1, 1993." If plaintiffs'  
15 claim is successful, the appropriate declaratory and/or injunctive relief is also an issue of law  
16 common to the class. There are common questions here as required by CR 23(a)(2).

17 4. The third prerequisite for a class action is that "the claims or defenses of the  
18 representative parties are typical of the claims or defenses of the class." CR 23(a)(3). This  
19 does not require that the representative plaintiffs share "identical" facts with the class mem-  
20 bers. Here, plaintiffs allege the State failed to provide health insurance to employees on non-  
21 standard work schedules after the employees averaged half-time or more for longer than six  
22 months and/or when they worked eight hours in a month after they became eligible. Plaintiff  
23 Mary Camp works on a fluctuating work schedule as a part-time community college instructor  
24 and the State requires her to sign a new contract each quarter, plaintiff Doug Moore works at  
25 the Washington Horse Racing Commission on a seasonal basis, and plaintiff Gaylord Case  
worked at the Department of Transportation with "on-call" status. The representative plain-

1 tiffs thus represent state employees on nonstandard work schedules, and their claims for  
2 health insurance are "typical" of the class claims as required by CR 23(a)(3).

3 5. The fourth prerequisite for a class action is that "the representative parties will  
4 fairly and adequately protect the interests of the class." The class here is represented by ex-  
5 perience class counsel. Plaintiffs also have no conflict of interest with the class, and the  
6 lawsuit is not collusive. The requirements of CR 23(a)(4) are therefore met.

7 6. Accordingly, the class claim here satisfies the requirements for a class action in  
8 CR 23(a). For purposes of class certification, a class action must also satisfy one or more  
9 provisions in CR 23(b).

10 7. A class action is appropriate under CR 23(b)(1)(A) if individual actions by  
11 class members "would create a risk" of "inconsistent or varying adjudications with respect to  
12 individual members of the class which would establish incompatible standards of conduct for  
13 the party opposing the class." Here, individual actions by class members would create a risk  
14 of inconsistent obligations for the defendants. For example, if in this action the defendants  
15 are required to provide health insurance to employees whose work hours average half-time or  
16 more for six months or longer, and at the same time other cases were brought that result in a  
17 different requirement, the defendants would be placed in a position where they have conflict-  
18 ing obligations. To avoid this, certification under CR 23(b)(1)(A) is appropriate.

19 8. A class action is appropriate under CR 23(b)(2) if the "party opposing the class  
20 has acted or refused to act on grounds generally inapplicable to the class, thereby making ap-  
21 propriate final injunctive relief or corresponding declaratory relief with respect to the class as  
22 a whole." Here, plaintiffs allege that defendants failed to perform a legal duty on grounds ap-  
23 plicable to the class, *i.e.*, defendants failed to provide employees health insurance when their  
24 work hours qualified them for that insurance. And plaintiffs seek declaratory relief concern-  
25 ing the defendants' duties to the class. Injunctive relief may also be appropriate to ensure that  
defendants comply with those duties in the future. Class certification is also appropriate un-

1 der CR 23(b)(2).

2 9. Accordingly, class certification is appropriate under CR 23(b)(1)(A) and (b)(2)  
3 for the purpose of equitable and declaratory relief. The Court has some questions, however,  
4 as to the application of the double damages statute, RCW 49.52.070, to this action, and how  
5 this statute and other issues relating to damages may affect class certification. Rather than  
6 address these issues at this time, the Court will bifurcate this case and certify the class under  
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12 new one will be established.

13 10. The class is defined as:

14 all state employees who worked half-time or more on average for six months,  
15 and who were denied health insurance (a) commencing in the seventh month  
16 of employment, and/or (b) at any time in the nine or more months or in the  
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18 a nine-month (or more) seasonal basis, and/or (c) in any month after the em-  
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20 more hours of work in the same position. The class is limited in time to em-  
21 ployees within the applicable statute of limitations and, for employees who re-  
22 leased claims as part of the class action settlement in *Mader v. HCA*, King Co.  
23 No. (King County No. 98-2-30850-8), the employees' claims are limited to  
24 the time after the effective date in that settlement agreement.  
25


20 DATED this 8 day of June, 2007.



JUDGE CATHERINE SHAFFER

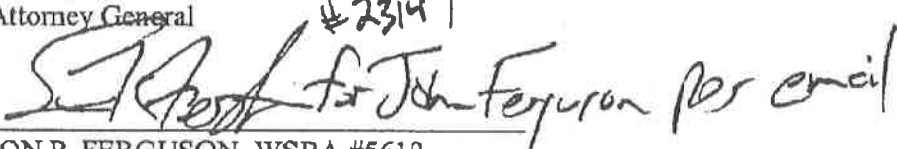
1 Presented by:

2 BENDICH, STOBAUGH & STRONG, P.C.

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5 STEPHEN K. FESTOR, WSBA #23147  
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9 Attorney General

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for Jon Ferguson per email

11 JON P. FERGUSON, WSBA #5619  
12 Assistant Attorney General  
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JUDGE CATHERINE SHAFFER

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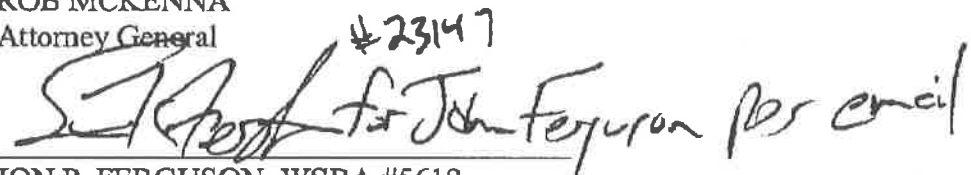
4 ~~STEPHEN K. STRONG, WSBA #6299~~

5 ~~STEPHEN K. FOSTER, WSBA #23147~~

Attorneys for Plaintiffs and the Class

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8 ROB MCKENNA  
Attorney General

9  for Jon Ferguson per email

10 JON P. FERGUSON, WSBA #5619

11 Assistant Attorney General

Attorneys for Defendants

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