

# **NOTICE OF LAWSUIT WITH OPPORTUNITY TO JOIN**

**If you worked for St. Joseph’s Hospital as an hourly employee in the last three years, had direct patient care responsibilities, and worked during a meal break without being compensated, a lawsuit may affect your rights.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

**TO ASK TO BE INCLUDED, YOU MUST ACT ON OR BEFORE  
SEPTEMBER 15, 2009.**

- Employees have sued St. Joseph’s Hospital (referred to in this notice as “St. Joseph’s”) claiming St. Joseph’s failed to pay employees with direct patient care responsibilities for work performed during meal periods.
- The Court has allowed the lawsuit to be conditionally certified as a collective action on behalf of present and former hourly employees of St. Joseph’s Hospital with direct patient care responsibilities who have been subject to automatic meal break deductions through the use of the Kronos system and who have or may have worked through or during unpaid meal breaks without compensation during the past three years.
- The Court has not decided whether St. Joseph’s did anything wrong. There is no money available now, and no guarantee there will be. However, your legal rights are affected, and you have a choice to make now:

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

<b>ASK TO BE INCLUDED</b>	<p><b>Join in this lawsuit. Await the outcome. Give up right to sue separately.</b></p> <p>By joining, you keep the possibility of getting money or benefits that may come from a trial or a settlement. But, by doing so you give up any rights to sue St. Joseph’s separately about the same legal claims in this lawsuit.</p>
<b>DO NOTHING</b>	<p><b>Do nothing. Keep right to sue separately.</b></p> <p>If you do nothing and money or benefits are later awarded in this case, you won’t share in those. By not joining, you keep any rights to sue St. Joseph’s separately about the same legal claims in this lawsuit. You should note, however, claims under the Fair Labor Standards Act must be brought within two (2) years of the alleged violation unless the violation of the law was “willful,” in which case it must be brought within three (3) years.</p>

## **BASIC INFORMATION**

### **1. Why did I get this notice?**

On November 13, 2008, a group of former and/or current employees of St. Joseph's Hospital filed a lawsuit in the United States District Court for the Northern District of New York (08-cv-1220 (DNH/DEP)), claiming among other things that they were not compensated for work performed during meal breaks. St. Joseph's records show that you currently work, or previously worked, for St. Joseph's in a position with direct patient care responsibilities.

This notice informs you of the existence of a collective action lawsuit in which you may become a member. It also explains what you need to do to participate, or not participate and how your rights may be affected.

On January 26, 2009, the Honorable David E. Peebles, United States Magistrate Judge for the Northern District of New York, authorized the sending of this Notice to inform you of your rights to join this lawsuit.

### **2. What is a collective action and who is involved?**

In a collective action lawsuit, two or more people who have similar claims against an employer are permitted to assert those claims in a single lawsuit. The people who decide to participate in the lawsuit are called the plaintiffs. The employer they sued (in this case St. Joseph's) is called the defendant. One Court resolves the issues for everyone in the collective action—except for those people who choose not to join.

In this case, the Court has determined preliminarily that certain hourly employees with direct patient care responsibilities who were subject to automatic meal period deduction and who allege to have worked through or during unpaid meal breaks without compensation during the past three years may have sufficiently similar claims that it makes sense to send this notice of rights to such employees.

### **3. What does the lawsuit complain about?**

In the lawsuit, the plaintiffs claim that St. Joseph's had a practice which deducted 30 minutes from employees' workdays for meal periods even when employees performed compensable work during meal periods.

The plaintiffs allege that St. Joseph's did not pay employees as required by law, and claim that they are owed unpaid overtime as a result, as well as additional damages that may be allowed by the law and attorneys' fees.

#### **4. How does St. Joseph's answer?**

St. Joseph's has denied Plaintiffs' allegations that it has engaged or now engages in these practices. St. Joseph's maintains that it provided procedures which allowed employees to report when they worked during a meal break and that employees who made such reports were paid for working during their meal periods. St. Joseph's has asserted that it exercised good faith in its application of the Fair Labor Standards Act to its employees.

#### **5. Has the Court decided who is right?**

The Court has not decided whether St. Joseph's or the plaintiffs are correct. By preliminarily permitting the collective action and issuing this Notice, the Court is not suggesting that the plaintiffs will win or lose this case. The plaintiffs must prove their claims. Therefore there is no money or benefits available now and no guarantee there will be.

Once people have had the chance to opt in, the Court will decide whether people who have opted in may participate in the case. Only people "similarly situated" to the plaintiffs may participate. To determine whether you are indeed a proper member of the case, St. Joseph's will likely ask the Court to engage in a review of the circumstances of your employment with St. Joseph's, taking into account factors such as employment setting, recording and payment for time worked, any defenses asserted against you by St. Joseph's, and other substantive and procedural issues.

### **YOUR RIGHTS AND OPTIONS**

#### **6. How do I join?**

To participate in this lawsuit, you need to fill out the two enclosed forms and mail them in the enclosed self-addressed stamped envelope to the attorneys for the plaintiffs. It is entirely your own decision whether or not to join this lawsuit.

You must return the forms to the plaintiffs' attorneys by September 15, 2009.

If you fail to do so, you will not be allowed to participate in any recovery for the federal overtime claims in this lawsuit.

If you decide to join this suit, you will be bound by the settlement or judgment, whether it is favorable or not.

#### **7. What if I do nothing?**

If you do nothing, you will not participate in the collective action. You will not be bound by any decision on the federal overtime suit. Therefore, you will not be entitled to any recovery should there be any for those claims.

You can also start your own lawsuit against St. Joseph's. You'll have to hire and pay your own lawyer for that lawsuit, and you'll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against St. Joseph's, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

Claims under the Fair Labor Standards Act must be brought within two (2) years of the alleged violation unless the violation of the law was "willful," in which case it must be brought within three (3) years. If you do not bring any claims that you may have within these time periods by either opting-in to this lawsuit or filing your own separate lawsuit you will lose the right to do so. If you decide not to participate, the pendency of this lawsuit will not prevent the statute of limitations as to any claims you might have from running against you.

### **8. If I join, will there be any impact on my employment?**

Federal law prohibits St. Joseph's from discouraging or in any other way discriminating against you because you have exercised your rights under the FLSA. Such conduct would be illegal and you are entitled to damages should a court determine St. Joseph's took any action against you for joining this lawsuit.

### **9. Do I have to do anything to help out with the lawsuit once I join?**

The lawyers will handle most of the presentation of the case. From time-to-time, your lawyers will ask you for information and you would need to give that information to them. While this suit is proceeding, you may also be required to respond to written questions, sit for depositions and/or testify in court. Regardless, if you are asked to give information, plaintiffs' counsel will work with you so that the process is as convenient for you as possible.

## **THE LAWYERS REPRESENTING YOU**

### **10. Do I have a lawyer in this case?**

The law firm of Thomas & Solomon LLP is the counsel representing the plaintiffs who have already joined this action.

Unless you choose another lawyer (see below), these attorneys would represent you in the action. You can contact the plaintiffs' attorneys at:

Patrick J. Solomon, Esq.  
J. Nelson Thomas, Esq.  
THOMAS & SOLOMON LLP  
693 East Avenue  
Rochester, NY 14607  
Toll Free  
1-877-272-4066  
questions@theemploymentattorneys.com

## **11. Should I get my own lawyer?**

You do not need to hire your own lawyer because Thomas & Solomon LLP is working on your behalf. You may hire a different lawyer if you wish to do so. You would be responsible for making the arrangements to hire that lawyer, including any fee arrangements. If you decide to have another attorney represent you, that attorney will need to draft a consent form for you which you should then mail to Thomas & Solomon LLP.

## **12. How will the lawyers be paid?**

If the attorneys get money or benefits for the employees, they may ask the Court for fees and expenses. You won't have to pay these fees and expenses. If the Court grants the lawyers' request, the fees and expenses would be either deducted from any money judgment obtained or paid separately by St. Joseph's Hospital Health Center.

If the Plaintiffs obtain money or benefits as a result of the trial or a settlement, you will be notified about how to participate. We do not know how long this will take.

UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF NEW YORK

ROBERT COLOZZI, et al., )  
)  
*Plaintiffs,* )  
)  
v. )  
)  
ST. JOSEPH'S HOSPITAL HEALTH )  
CARE CENTER, et al., )  
)  
*Defendants.* )

CONSENT TO BECOME A  
PARTY PLAINTIFF

Civil Action No.  
6:08-CV-1220 (DNH/DEP)

I worked for St. Joseph's Hospital Health Center as a \_\_\_\_\_  
(Position)  
from \_\_\_\_\_ to \_\_\_\_\_.  
(Date) (Date)

By my signature below, I represent to the court that I am a present or former hourly employee of St. Joseph's Hospital Health Center with direct patient care responsibilities.

I understand that this lawsuit is brought under the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201-209, and I hereby consent, agree and opt-in to the above-captioned lawsuit as a party plaintiff in this lawsuit that has been filed seeking payment of unpaid wages, and related relief against St. Joseph's Hospital Health Center.

I authorize the representative plaintiffs or plaintiffs' counsel to file this consent with the Clerk of the Court.

Unless I opt to retain separate counsel of my own choice and at my own expense, I hereby further authorize the named plaintiffs to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, any agreement with Plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit, including any settlement, and I further agree to be bound by any judgment entered by the Court or any settlement of this action.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Signature Date  
\_\_\_\_\_  
Print Full Legal Name

PLEASE RETURN THIS FORM IN TIME FOR FILING WITH  
THE COURT BY **SEPTEMBER 15, 2009** TO:

Patrick J. Solomon, Esq.  
J. Nelson Thomas, Esq.  
Thomas & Solomon LLP  
693 East Avenue  
Rochester, New York 14607  
1-877-272-4066



## APPENDIX C

Name  
Street Address  
City, State, Zip

### **Notice to those who worked for St. Joseph's Hospital**

Jane Q. Class Member  
123 Anywhere Street  
Anytown, ST 12345-1234

(Above: Front of outside Notice mailing)