

JUDGES & THE COURTS

FACT SHEET

Genesis Healthcare Corp. v. Symczyk: An Important Case for Low-Wage Women Workers and the Future of the Fair Labor Standards Act

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On December 3, 2012, the Supreme Court will hear arguments in Genesis Healthcare Corp. v. Symczyk,¹ to decide whether a defendant employer in a class action under the Fair Labor Standards Act (FLSA) may “moot” a case—i.e., place it outside the court’s jurisdiction and thereby end it—by offering the named plaintiff a settlement for her own claims while providing no relief for the other employees on whose behalf she filed suit.

Laura Symczyk, a registered nurse at a Genesis nursing home alleged on behalf of herself and all other employees, including nursing aides, housekeepers, secretaries, and others, that Genesis illegally deducted thirty minutes of meal breaks from their pay regardless of whether they worked during that time. Shortly after she filed the case, Genesis offered Symczyk \$7,500 to resolve her own wage claims. She rejected the offer, but the district court nevertheless found that the offer “mooted” the case and dismissed the entire class action.

Passed during the Great Depression, the FLSA is a landmark law intended to protect workers from oppressive wage and hour conditions. The Equal Pay Act, which outlaws pay discrimination based upon sex, was passed as an amendment to the FLSA in 1963. Both the FLSA and the Equal Pay Act allow for a type of class actions called “collective actions,” where one employee can sue on behalf of herself and other employees whose rights are being violated in the same way. In a collective action, the other employees must “opt in” to participate in the suit.

Nursing home workers are precisely the kind of vulnerable workers the FLSA was designed to protect.

- Most nursing home workers are women earning near poverty-level wages.

- The largest segment of nursing home workers are nursing aides, orderlies, and attendants,² an overwhelmingly female workforce. Ninety-two percent of certified nursing assistants are women.³ Some of the other common occupations in nursing homes are maids and cleaners, nonrestaurant food servers, and laundry workers: 89% of maids and cleaners are women; 68% of nonrestaurant food servers are women; and 61% of laundry workers are women.⁴
- Eight of the ten most common occupations in nursing care facilities pay median hourly wages between \$9.23 and \$11.42.⁵ In comparison, a full-time, year-round worker supporting a family of four would have to earn at least \$11.40 per hour to bring her family above the poverty threshold.⁶
- Wage and hour violations are the norm in the nursing home industry.⁷
 - o The Department of Labor reports that an astounding 45% of nursing homes were noncompliant with FLSA requirements in 2004, and 60% were noncompliant in 2000.⁸
 - o The Department of Labor’s 2000 survey of 136 nursing homes found that “over \$432,000 in minimum wage and overtime back wages were . . . due 1,576 employees.”⁹

- The industry is also characterized by high rates of worker injury and high employee turnover.¹⁰
- Employers avoiding their overtime obligations often require nursing home workers to put in longer shifts, but these long hours and the fatigue associated with them have been shown to harm the care that nursing home residents receive.¹¹
- Congress amended the FLSA in 1961 specifically to expand coverage to hospitals and nursing homes.

As in the nursing home industry, wage and hour violations are common in other industries employing low-wage workers, and most of those workers earning the lowest wages are women.

- Although women make up less than half of the overall American workforce, they account for about two-thirds of those making minimum wage or less.¹²
- The typical “low-skilled” woman in a predominantly female occupation earns 74 cents for every dollar earned by the typical “low-skilled” man in a predominantly male occupation.¹³
- The extensive and well-documented wage and hour violations in the nursing home industry are typical of many industries employing high concentrations of low-wage workers, including garment factories, restaurants, construction, agriculture and poultry processing.¹⁴
- A recent three-city study found 26% of low-wage workers surveyed were paid below minimum wage and 75% did not receive overtime pay they were due in the prior week.¹⁵

Collective actions are often the only means by which workers can enforce the FLSA or the Equal Pay Act.

- When a nursing home worker or another low-wage woman worker is the victim of wage theft or pay discrimination, she is often unable to find an attorney to take on her individual case, because the money at stake in the case, while a large amount to

the worker, is a relatively small amount in absolute terms. Workers bringing a collective action, on the other hand, are more readily able to find an attorney for their case.

- A worker who complains her employer is violating the law also risks employer retaliation. The risk of employer retaliation in the form of job loss poses a particular threat to low-wage workers, as they are more likely to live paycheck to paycheck. Workers who come together in a collective action, however, enjoy the safety of numbers and are less likely to be targeted for speaking up.
- Women are often unaware they face pay discrimination because they don’t have information about what their coworkers earn, particularly when employer policies forbid discussion of pay. Equal Pay Act collective actions can provide crucial notice and information to workers that allow them to recognize and challenge pay discrimination.
- By banding together through collective action, workers can achieve remedies for many harmed by an unlawful policy or practice by means of a single legal case.

Defendants should not be permitted to thwart enforcement of the FLSA and the Equal Pay Act by mooting collective actions before other employees have an opportunity to join the case.

- If an employer can stop a collective action in its tracks just by offering to settle with the employee who initially brings a collective action, it would become extraordinarily difficult for low-wage workers to enforce the FLSA and the Equal Pay Act, even though these vulnerable workers are the very workers Congress intended to protect.
- The Supreme Court should reject this attempt by a defendant employer to game the system and should hold that an employer cannot moot a collective action by offering to settle with the original plaintiff before other employees have had a meaningful opportunity to join the case.

- 1 656 F.3d 189 (3d Cir. 2011), *cert. granted*, 2012 WL 609478 (June 25, 2012) (No. 11-1059).
- 2 Audrey Watson, BLS, *Occupational Composition of the Elder Care Industries* 53, 63 (2005), <http://www.bls.gov/oes/2005/may/elder.pdf>.
- 3 Centers for Disease Control and Prevention, *National Nursing Assistant Survey 2004-2005*, Table 24.
- 4 BLS, *Labor Force Statistics from the Current Population Survey: CPS, 2011 Annual Averages*, Table 11, <http://www.bls.gov/cps/tables.htm#annual> (last modified Jul. 6, 2012).
- 5 Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES), *May 2011 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 623100 - Nursing Care Facilities* (last modified Mar. 27, 2012), http://www.bls.gov/oes/current/naics4_623100.htm [hereinafter Nursing Care Facilities].
- 6 National Women's Law Center calculations from U.S. Census Bureau, Current Population Survey (CPS), 2012 Annual Social and Economic Supplement, Table 35, <http://www.census.gov/hhes/www/cpstables/032012/pov/toc.htm>.
- 7 See Annette Bernhardt et al., *Broken Laws, Unprotected Workers* 5 (2009); DOL, *Annual Report Fiscal Year 2004, Performance and Accountability Report, Strategic Goal 2: A Secure Workplace* [hereinafter DOL 2004 Annual Report].
- 8 See DOL 2004 Annual Report; see also DOL, Wage and Hour Division, *Nursing Home 2000 Compliance Survey Fact Sheet* [hereinafter DOL 2000 Survey].
- 9 DOL 200 Survey.
- 10 See Jennifer R. Salmon et al., Florida Dept. of Elder Affairs, *Nurse Aide Turnover: Literature Review of Research, Policy and Practice* 1 (Dec. 15, 1999); Jeanne Geiger-Brown et al., *Demanding Work Schedules and Mental Health in Nursing Assistants Working in Nursing Homes*, 18 *Work & Stress* 292, 293-94 (2004).
- 11 See, e.g., Amy Witkoski & Victoria Vaughan Dickson, *Hospital Staff Nurses' Work Hours, Meal Periods, and Rest Breaks*, 58 *Am. Ass'n Occupational Health Nurses J.* 489, 490 (2010) (fatigue from overwork correlated with diminished patient care).
- 12 Rebecca Thiess, *The Future of Work, Trends and Challenges for Low-Wage Workers*, *Economic Policy Institute* 4 (2012); NWLC calculations based on Bureau of Labor Statistics (BLS), *Characteristics of Minimum Wage Workers, 2011*, available at <http://www.bls.gov/cps/minwage2011tbls.htm> [hereinafter BLS Min. Wage Characteristics] (Table 1).
- 13 See Ariane Hegewisch et al., *Separate and Not Equal? Gender Segregation in the Labor Market and the Wage Gap* 11 (2010), available at <http://www.iwpr.org/publications/pubs/separate-and-not-equal-gender-segregation-in-the-labor-market-and-the-gender-wage-gap>.
- 14 Nantiya Ruan, *Facilitating Wage Theft: How Courts Use Procedural Rules to Undermine Substantive Rights of Low-wage Workers*, 63 *Vand. L. Rev.* 727, 737 (2010); Scott A. Moss & Nantiya Ruan, *The Second-Class Class Action: How Courts Thwart Wage Rights by Misapplying Class Action Rules*, 61 *Am. U. L. Rev.* 523, 560-561 (2012) (collecting studies).
- 15 Moss & Ruan, *supra*, at 561.