

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT – DIVISION 7
CIVIL ACTION NO. 09-CI-4971

SEP 16 2009

PATRICIA GARDNER PLAINTIFF

vs. **COMPLAINT
JURY TRIAL DEMANDED**

GASTROENTEROLOGY CARE CENTER PSC DEFENDANT

* * * * *

Plaintiff Patricia Gardner for her complaint against Gastroenterology Care Center PSC states as follows:

I

Nature of the Action

1. This is an action where an employee seeks payment of earned wages, as defined by KRS Chapter 337, which the defendant-employer has failed and refused to pay.

II

Jurisdiction & Venue

2. The Fayette Circuit Court has jurisdiction over this case on two grounds: (1) pursuant to KRS 23A.010 because the amount in controversy exceeds the court's jurisdictional minimum; and, (2) pursuant to KRS 337.385(1), which vests jurisdiction in circuit court in cases seeking recovery of unpaid wages under KRS Chapter 337. Venue is proper in Fayette Circuit Court because the plaintiff's claim arose and ripened in Fayette County,

Kentucky and because the defendant, Gastroenterology Care Center PSC, maintains its principal place of business in Fayette County, Kentucky.

III

Parties

3. Patricia Gardner is a citizen of the United States of America and a resident of the Commonwealth of Kentucky.

4. Gastroenterology Care Center PSC (GCC) is a professional services corporation organized under the laws of the Commonwealth of Kentucky. GCC maintains its principal office in Fayette County, Kentucky. GCC's agent for service of process is David R. Irvin, 110 North Main Street, Nicholasville, KY 40356.

IV

Facts Giving Rise To The Lawsuit

5. Gardner, at all times pertinent hereto, was an "employee" of GCC within the meaning of KRS Chapter 337 and, more specifically, KRS 337.010(1)(e).

6. GCC, at all times pertinent hereto, was the "employer" of Gardner within the meaning of KRS Chapter 337 and, more specifically, KRS 337.010(1)(d).

7. During the course and as a term and condition of her employment by GCC, GCC promised to pay "wages" to Gardner as "wages" are defined by KRS Chapter 337 and more specifically by KRS 337.010(1)(c).

8. Included among the “wages” that GCC promised to pay Gardner as compensation for the work that Gardner performed for the benefit of GCC was vested vacation pay or paid time off (PTO).

9. “Vested vacation pay” is specifically included within the definition of “wages” set forth for KRS Chapter 337 and at KRS 337.010(1)(c).

10. During the course of Gardner’s employment by GCC, her vested vacation pay or paid time off (PTO) accrued and vested at a set rate of hours per pay period.

11. During the course of Gardner’s employment by GCC, the amount of her accrued and vested vacation pay or paid time off (PTO) was reflected on her paycheck summary.

12. Gardner’s last paycheck from GCC was issued July 9, 2009.

13. On the last day that she worked for GCC, Gardner’s regular hourly wage rate was \$14.00 per hour.

14. As reflected on her last paycheck summary issued by GCC, a true copy of which is attached to this complaint and marked Ex. A, Gardner had earned and accrued vested vacation pay or paid time off (PTO) in the sum of 333.05 hours.

15. The accrued and remaining balance of Gardner’s vested vacation pay or paid time off (PTO) constitute “wages” within the meaning of KRS Chapter 337.

16. GCC has failed and refused to pay Gardner the “wages” she has earned as reflected in the accrued and remaining balance of her vested vacation pay or paid time off (PTO).

17. Gardner has demanded in writing from GCC that it pay the wages it owes her.

18. GCC’s failure to timely pay Gardner her earned “wages” is not in good faith and is without any reasonable basis to believe that the failure does not constitute a violation of KRS 337.020 to 337.285.

V

Cause of Action

**Count 1 – For Unpaid Wages and Liquidated Damages Pursuant to KRS
337.385(1)**

19. Gardner incorporates herein paragraphs 1 through 18 of this complaint as if fully set forth.

20. The vested vacation pay or paid time off (PTO) that GCC promised to pay Gardner as compensation to her for work that she performed for its benefit constitute earned “wages” within the meaning of KRS Chapter 337. KRS 337.010(1)(c).

21. The vested vacation pay or paid time off (PTO) of 333.05 hours, as reflected on Gardner’s last paycheck summary issued her by GCC, constitute earned “wages” within the meaning of KRS Chapter 337. KRS 337.010(1)(c).

22. GCC has failed and refused to pay Gardner any sum of money for any of the 333.05 hours of vested vacation pay or paid time off (PTO) that it reflects on Gardner's last paycheck summary.

23. GCC has failed to timely and fully pay Gardner her earned wages within the meaning of KRS Chapter 337.

24. GCC's failure to timely and fully pay Gardner her earned wages is not in good faith and is without any reasonable basis to believe that the failure does not constitute a violation of KRS 337.020 to 337.285.

25. As a result of the foregoing, Gardner is entitled to relief against GCC as set forth by KRS 337.385, including payment of the wages due her, liquidated damages, attorney's fees, costs and litigation expenses.

VI

Demand for Relief

WHEREFORE, plaintiff Patricia Gardner demands judgment against defendant Gastroenterology Care Center PSC as follows:

(1) entry of a judgment in her favor and against defendant requiring defendant to pay her the wages due and owing her along with an additional equal amount as liquidated damages as shown by the evidence at trial;

(2) entry of a judgment awarding her prejudgment interest on her unpaid wages along with the costs, litigation expenses and her reasonable attorney's fees herein incurred pursuant to KRS 337.385 and CR 54; and,

(3) the grant of all other further relief to which she is shown entitled.

Demand for Trial By Jury

Plaintiff demands trial by jury on all claims herein so triable.

Respectfully submitted,



Robert L. Abell
271 W. Short Street, Suite 200
PO Box 983
Lexington, KY 40588-0983
859.254.7076
859.231.0691 fax
Counsel for Plaintiff