

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JEANNE RHOADES,)	
)	
Plaintiff,)	
)	
vs.)	
)	
BJC HEALTH SYSTEM, MISSOURI)	Case No. 4:17-CV-02486
BAPTIST MEDICAL CENTER, BARNES-)	
JEWISH HOSPITAL, ST. LOUIS)	
CHILDREN'S HOSPITAL, CHRISTIAN)	
NORTHEAST-NORTHWEST HOSPITAL,)	
and CH ALLIED SERVICES, INC.,)	
)	
Defendants.		

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, and 29 U.S.C. § 1332, Defendants BJC Health System, Missouri Baptist Medical Center, Barnes-Jewish Hospital, St. Louis Children's Hospital, Christian Hospital Northeast-Northwest, and CH Allied Services, Inc., hereby give notice of the removal of the above-styled action to this Court from the Circuit Court of St. Louis County, State of Missouri. In support of its Notice of Removal, Defendants state as follows:

1. The action styled *Jeanne Rhoades v. BJC Health System, et al.*, Case No. 17SL-CC03055, was filed in the Circuit Court of St. Louis County, State of Missouri, on or about August 22, 2017. Plaintiff Jeanne Rhoades is an employee of Defendant Missouri Baptist Medical Center, an affiliate hospital of Defendant BJC Health System. Plaintiff's Petition alleges BJC Health System and several of its hospitals breached alleged contracts with Rhoades and other employees by failing to pay them certain extra compensation and by failing to make required contributions to employee-benefit retirement accounts. Rhoades purports to bring her claims on behalf of a class of 50 – 100 individuals.

2. All Defendants were served with a copy of the summons and Petition on or about August 29, 2017. All Defendants join and consent to this removal.

3. This Notice of Removal is timely because it is filed within the thirty-day period prescribed by 28 U.S.C. § 1446(b).

4. This action is removed based upon the Court's original jurisdiction over this action under 28 U.S.C. § 1331 on the basis of claims arising under the laws of the United States.

5. The Petition contains four counts, and each count alleges Defendants breached a contract under Missouri state law. The Petition is removable under the Employee Retirement Income Security Act of 1974 ("ERISA") because Plaintiff is suing to recover allegedly unpaid contributions to ERISA-covered retirement benefit accounts, and for injunctive relief that would mandate certain contributions to the accounts in the future.

6. BJC's retirement plans are employee-benefit plans within the meaning of ERISA § 3(3), 29 U.S.C. 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

7. Under section 502(a)(1)(B) of ERISA, "a civil action may be brought by a participant or beneficiary to recover benefits due to him under the terms of his plans, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1332(a)(1)(B).

8. Complete preemption under ERISA occurs when a plaintiff's state law claims are "displaced by § 502, the statute's civil enforcement provision." *Hern v. St. Anthony's Med. Ctr.*, 4:16-cv-1296 JAR, 2016 WL 6031911, at *2 (E.D. Mo. Oct. 14, 2016) (citing *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 64 (1987)).

9. “[I]f an individual, at some point in time, could have brought his claim under ERISA § 502(a)(1)(B), and where there is no other independent legal duty that is implicated by a defendant’s actions, then the individual’s cause of action is completely pre-empted by ERISA § 502(a)(1)(B).” *Aetna Health Inc. v. Davila*, 542 U.S. 200, 210 (2004).

10. “[T]he ERISA civil enforcement mechanism is one of those provisions with such ‘extraordinary pre-emptive power’ that it ‘converts an ordinary state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.’” *Id.* at 209 (quoting *Metropolitan Life*, 481 U.S. at 56 – 66); *see also Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138 (1990) (ERISA preemption is “conspicuous for its breadth” and “deliberately expansive”).

11. ERISA § 502 is “the *exclusive means* for a plan participant to recover benefits from an ERISA-governed plan.” *Hern*, 2016 WL 6041911, at *2 (emphasis added). “Thus, any claim filed by a plan participant for the same relief provided under ERISA § 502, even a claim purportedly raising only a state-law cause of action, arises under federal law and is removable to federal court.” *Id.*

12. Plaintiff’s claims are completely preempted by ERISA because they seek the same relief provided by section 502(a)(1)(B) of ERISA. Plaintiff alleges Defendants failed to make certain contributions to her retirement plan. (Petition ¶¶ 11, 13, 15, 17). Plaintiff also asks the Court to award contributions to her employee-benefit retirement account that should have occurred in the past. (Petition ¶ 33, 38, 43, 48, and the “WHEREFORE” paragraphs under each count). The Petition also seeks injunctive relief regarding future contributions to the employee-benefit retirement accounts. (Petition ¶ 33, 38, 43, 48).

13. There is no independent legal duty to pay retirement contributions. Absent the ERISA plans, Plaintiff has no right to the retirement benefits she seeks.

14. Because Plaintiff seeks to recover benefits due under her employee-benefit plan, to enforce rights under the plan, and to clarify rights to future benefits under the plan, her claim falls within the scope of section 502(a)(1)(B).

15. Accordingly, Plaintiff's claims are completely preempted by ERISA and the Court has original jurisdiction over the state court action under 28 U.S.C. § 1331.

16. Under 28 U.S.C. § 1441(a), claims or causes of action presented in state court proceedings where the district courts of the United States have original jurisdiction founded on a claim or right arising under the Constitution, treaties, or laws of the United States shall be removable without regard to the citizenship of the parties.

17. Pursuant to 28 U.S.C. § 1367, the Court may exercise supplemental jurisdiction over the portions of any state law claims not preempted by ERISA, because Plaintiff's claims are so related that they form part of the same case or controversy under Article III of the United States Constitution.

18. Pursuant to 28 U.S.C. § 1446(d), Defendant has given written notice of its filing of this Notice to counsel for Plaintiff. Defendant will also promptly file a copy of this Notice with the Circuit Court of St. Louis County, State of Missouri.

19. Venue of this civil action is proper in this Court pursuant to 28. U.S.C. § 1441(a).

20. Pursuant to 28 U.S.C. 1446(a), copies of all process, pleadings, and orders served on Defendant is attached to this Notice as Exhibit A.

WHEREFORE, Defendants BJC Health System, Missouri Baptist Medical Center, Barnes-Jewish Hospital, St. Louis Children's Hospital, Christian Hospital Northeast-Northwest, and CH Allied Services, Inc., by and through their undersigned counsel, desiring to remove this civil action of the United States District Court for the Eastern District of Missouri, Eastern Division, pray that the filing of this Petition and for Notice of Removal, the giving of written notice thereof to Plaintiff, and the filing of a copy of this Petition for the Notice of Removal with the clerk of the Circuit Court of St. Louis County, State of Missouri, shall effect the removal of said civil action to this Honorable Court.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

/s/ Andrew L. Metcalf

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2017, a copy of the foregoing was filed with the Clerk of Court by using the CM/ECF system, which will send notice of electronic filing to the following:

Carl J. Lumley
130 South Bemiston Avenue, Suite 200
St. Louis, Missouri 63105

ATTORNEY FOR PLAINTIFF

/s/ Andrew L. Metcalf
An Attorney for Defendants

31223743.2

Case: 4:17-cv-02486 Doc. #: 54-1 Filed: 09/27/17 Page: 7 of 96 Page ID #: 1131



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Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/ Execution
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This information is provided as a service and is not considered an official court record.

[Click here to eFile on Case](#)Sort Date Entries: ☒ Descending ☐ AscendingDisplay Options: All Entries [Click here to Respond to Selected Documents](#)**09/13/2017 ☐ Agent Served**

Document ID - 17-SMCC-6939; Served To - CH ALLIED SERVICES, INC.; Server - ; Served Date - 29-AUG-17; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

☐ Agent Served

Document ID - 17-SMCC-6937; Served To - ST. LOUIS CHILDRENS HOSPITAL; Server - ; Served Date - 29-AUG-17; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

☐ Agent Served

Document ID - 17-SMCC-6936; Served To - BARNES-JEWISH HOSPITAL; Server - ; Served Date - 29-AUG-17; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

☐ Agent Served

Document ID - 17-SMCC-6935; Served To - MISSOURI BAPTIST MEDICAL CENTER; Server - ; Served Date - 29-AUG-17; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

☐ Agent Served

Document ID - 17-SMCC-6934; Served To - BJC HEALTH SYSTEM; Server - ; Served Date - 29-AUG-17; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

08/25/2017 ☐ Hearing/Trial Cancelled**Scheduled For:** 10/16/2017; 9:00 AM ; STANLEY JAMES WALLACH; St Louis County**08/24/2017 ☐ Summons Issued-Circuit**

Document ID: 17-SMCC-6939, for CH ALLIED SERVICES, INC..Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ Summons Issued-Circuit

Document ID: 17-SMCC-6938, for CHRISTIAN HOSPITAL NORTHEAST-NORTHWEST.Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ Summons Issued-Circuit

Document ID: 17-SMCC-6937, for ST. LOUIS CHILDRENS HOSPITAL.Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ Summons Issued-Circuit

Document ID: 17-SMCC-6936, for BARNES-JEWISH HOSPITAL.Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ Summons Issued-Circuit

Document ID: 17-SMCC-6935, for MISSOURI BAPTIST MEDICAL CENTER.Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ Summons Issued-Circuit

Document ID: 17-SMCC-6934, for BJC HEALTH SYSTEM.Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ Hearing Scheduled**EXHIBIT A**

~~Case: 4:17-cv-02486 Doc. #: 54-1 Filed: 09/27/17 Page: 8 of 97 Page ID #: 1142~~

Associated Entries: 08/25/2017 - Hearing/Trial Cancelled

Scheduled For: 10/16/2017; 9:00 AM; STANLEY JAMES WALLACH; St Louis County

08/22/2017 ☐ **Filing Info Sheet eFiling**

Filed By: CARL J LUMLEY

☐ **Pet Filed in Circuit Ct**

Class Action Petition for Breach of Contract.

Filed By: CARL J LUMLEY

On Behalf Of: JEANNE RHOADES

☐ **Judge Assigned**

DIV 12

EXHIBIT A

17SL-CC03055

Electronically Filed - St Louis County - August 22, 2017 - 12:04 PM

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

JEANNE RHOADES,

On behalf of herself and all others
similarly situated,

Plaintiffs,

v.

Cause No.
Division

BJC HEALTH SYSTEM dba BJC Healthcare

And

MISSOURI BAPTIST MEDICAL CENTER

And

BARNES-JEWISH HOSPITAL

And

ST. LOUIS CHILDREN'S HOSPITAL

And

CHRISTIAN HOSPITAL NORTHEAST-
NORTHWEST
Db a Christian Hospital

And

CH ALLIED SERVICES, INC.
Db a Boone Hospital Center

Defendants.

SERVE ALL DEFENDANTS:

c/o CSC -Lawyers Incorporating Service Co
221 Bolivar Street
Jefferson City, MO 65101

CLASS ACTION PETITION FOR BREACH OF CONTRACT

Comes Now Plaintiff Jeanne Rhoades (herein "Rhoades"), on behalf of herself and all others similarly situated (collectively herein "Plaintiffs"), and for their Class Action Petition for Breach of Contract state as follows:

1. Jeanne Rhoades is a resident and citizen of St. Louis County, Missouri.
2. BJC Health System (herein "BJC Healthcare") is a nonprofit corporation organized and existing pursuant to Missouri law doing business under the name BJC Healthcare, with its registered office in Cole County, Missouri and a place of business in the City of St. Louis, Missouri.
3. Missouri Baptist Medical Center (herein "MoBap") is a nonprofit corporation organized and existing pursuant to Missouri law, with its registered office in Cole County and place of business in St. Louis County, Missouri.
4. Barnes-Jewish Hospital (herein "Barnes") is a nonprofit corporation organized and existing pursuant to Missouri law, with its registered office in Cole County and place of business in the City of St. Louis, Missouri.
5. St. Louis Children's Hospital (herein "Children's") is a nonprofit corporation organized and existing pursuant to Missouri law, with its registered office in Cole County and place of business in the City of St. Louis, Missouri.
6. Christian Hospital Northeast-Northwest (herein "Christian") is a nonprofit corporation organized and existing pursuant to Missouri law doing business as Christian Hospital, with its registered office in Cole County and place of business in St. Louis County, Missouri.

7. CH Allied Services Inc. is a nonprofit corporation organized and existing pursuant to Missouri law doing business as Boone Hospital Center (herein Boone), with registered office in Cole County and place of business in Boone County, Missouri.

8. BJC Healthcare is the parent company of the other defendants and serves as agent for and of the other defendants, among other things administering on a collective basis personnel matters including but not limited to payroll, compensation and benefits, and establishing and implementing personnel policies and manuals.

9. Rhoades is employed by Defendant MoBap as an "exempt employee", meaning she is not subject to mandatory overtime pay requirements under federal and state labor standards, and she has been so employed by MoBap in excess of ten years. Rhoades works as a perfusionist on the MoBap cardiac surgery team of employees.

10. For at least the last 10 years, through the date of filing of this Petition, defendants' personnel policies applicable to their employees have provided that exempt employees such as Rhoades are to be paid "on-call pay", which the policies define as "compensation paid to eligible employees who are not working but who are waiting to be engaged to work." For at least the last 10 years, through the date of filing of this Petition, defendants' applicable on-call pay rate has been \$2.50 per hour of time "on-call". A copy of defendants' current "On-Call Pay Policy" is attached hereto as **Exhibit A** and incorporated herein by this reference.

11. During the past ten years, Rhoades and other class members have regularly been scheduled on-call by defendants and been eligible for on-call pay pursuant to defendants' "On-Call Pay Policy", but have not received such pay or the corresponding contributions or credits to their retirement plan benefits, except for sporadic payments since May 1, 2017.

12. For at least the last 10 years, through the date of filing of this Petition, defendants' personnel policies have provided that exempt employees such as Rhoades who are on-call are to receive "call-back pay" as premium pay when called back to work during an on-call shift. The applicable rate of call-back pay for exempt employees under defendants' policies is to be equivalent to a 50% premium above the employee's normal base salary pay rate, with a minimum of two hours call-back pay plus travel pay for 30 minutes at the same base salary pay rate. A copy of defendants' current "Call-Back Pay Policy" is attached hereto as **Exhibit B** and incorporated herein by this reference. Boone employees are not entitled to travel pay under the policy.

13. During the past ten years, Rhoades and other class members have regularly been called back to work while on-call and have therefore been eligible for call-back pay pursuant to defendants' "Call-back Pay Policy", but have not received such pay or the corresponding contributions or credits to their retirement plan benefits, except for occasional misapplication of lower "voucher pay" (contrary to the policies described herein) or lower straight pay, and sporadic call-back payments since May 1, 2017.

14. For at least the last 10 years, through the date of filing of this Petition, defendants' personnel policies have provided that exempt employees such as Rhoades are to receive additional "voucher pay" for performing duties outside their job to cover a shift in a direct patient care role, at a pay rate equivalent to their base rate of pay, with a four-hour minimum. A copy of defendants' current "Voucher Pay Policy" is attached hereto as **Exhibit C** and incorporated herein by this reference.

15. During the past ten years, Rhoades and other class members have worked so as to be eligible for voucher pay pursuant to defendants' "Voucher Pay Policy" but have not received such pay or the corresponding contributions or credits to their retirement plan benefits.

16. For at least the last 10 years, through the date of filing of this Petition, defendants' personnel policies have provided that exempt employees such as Rhoades are to accrue "paid time off" (also referred to as "earned time off") for all paid hours, and for scheduled hours cancelled due to low census or lack of work, up to 2,080 hours per year. The policies allow for use of such "paid time off" for a variety of reasons and require pay in lieu of accrued "paid time off" upon termination of employment for eligible employees (and for any terminated employees who are or have been reinstated, accruals upon rehire). A copy of defendants' current "Paid Time Off Policy" is attached hereto as **Exhibit D** and incorporated herein by this reference.

17. During the past ten years, Rhoades and other class members have accrued "paid time off" pursuant to defendants' "Paid Time Off Policy" but defendants have improperly taken accrued "paid time off" away from Rhoades and other class members when they worked and/or were on-call on the holidays recognized by defendants, thereby depriving Rhoades and other class members of paid time off and the corresponding contributions or credits to their retirement plan benefits, contrary to defendants' policies as described herein.

18. Defendants' Wage and Hour Policy confirms the entitlement of exempt employees such as Rhoades and other class members to On-Call Pay, Call-Back Pay, Voucher Pay, and Paid Time Off. This part of defendants' policies also provides that defendants will strictly enforce their wage and hour policies, and prohibits retaliation against any employee who reports any deviations from the policies. A copy of defendants' current "Wage and Hour Policy" is attached hereto as **Exhibit E** and incorporated herein by this reference.

19. Defendants' Corporate Compliance Policy requires management to assist employees in receiving the full benefit of all of defendants' policies and prohibits retaliation. A copy of defendants' current "Corporate Compliance Policy" is attached hereto as **Exhibit F** and incorporated herein by this reference.

20. In violation of defendants' policies, which have been made under Missouri law, defendants' management has: (1) consistently and erroneously informed exempt employees, including Rhoades, that they are not entitled to on-call pay, call-back pay, and voucher pay; (2) refused to provide such pay to Rhoades and other class members; (3) taken away accrued paid time off from Rhoades and other class members; and (4) threatened retaliation when class members, including Rhoades, called attention to the violations of defendants' policies.

CLASS ACTION ALLEGATIONS

21. This action is brought by Rhoades pursuant to Missouri Supreme Court Rule 52.08 on her own behalf and on behalf of all other similarly situated exempt employees of defendants, to wit: all such employees who are or have been part of defendants' cardiac surgery teams at any time during the ten-year period preceding the filing of this Petition. Rhoades and the other members of the class have been deprived by defendants of amounts due to them under defendants' policies for on-call pay, call-back pay, voucher pay, and paid time off during the period of ten years preceding the filing of this Petition and are continuing to be so deprived and will suffer continuing and irreparable harm from defendants' ongoing violations of their policies absent relief hereunder.

22. On information and belief, the proposed class includes more than 50 but less than 100 of defendants' current and former exempt employees, more than two-thirds of are citizens of Missouri. The class is so numerous that joinder of all members is impracticable.

23. The claims asserted by Rhoades on behalf of herself and members of the class asserted in this Petition present questions of law or fact common to the class, including, among other things, the scope and applicability of defendants' policies referenced herein and the entitlement to benefits thereunder by members of the class.

24. The claims asserted by Rhoades on her own behalf are typical of the claims of the class members in that defendants' policies on their face apply uniformly to Rhoades and other class members.

25. Rhoades will fairly and adequately protect the interests of class members, which are similar to her own interests. Plaintiff has no interests antagonistic to the interests of other class members, nor any unique claims that might undermine efficient resolution of the claims of the class. Rhoades understands the nature of the claims presented herein, has no disqualifying interests, and will vigorously represent the interests of the class. Rhoades has retained competent counsel to prosecute this matter.

26. The prosecution of separate actions by individual members of the class would create a risk of: a) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible requirements for defendants; and b) adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of other members not parties to such adjudications or would substantially impair or impede their ability to protect their interests.

27. Defendants have acted or failed and refused to act on grounds generally applicable to the class, thereby making appropriate injunctive relief and/or corresponding declaratory and other relief with respect to the class as a whole. Defendants maintain that the clear provisions of their policies do not apply to class members, in that they have failed and refused to pay class members on-call pay, call-back pay and voucher pay, and taken away accrued paid time off.

28. Questions of law or fact common to class members regarding the applicability, scope and breaches of defendants' policies predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Due to the ongoing and persistent nature of defendants' policy violations, Plaintiffs have no adequate remedy at law without receipt of the relief sought herein.

29. Fear of retaliation and the costs of individual litigation further make a class action superior to requiring each such member to pursue their own claims separately. The amount owed by defendants to the class as described herein exceeds \$25,000 but is less than \$5,000,000 exclusive of interest and costs.

COUNT I - ON-CALL PAY

30. Plaintiffs incorporate by this reference the averments of paragraphs 1-29 of this Petition as if restated herein.

31. Plaintiffs are entitled to on-call pay for all on-call shifts worked during the ten year period preceding the filing of this Petition, with the damages for each class member to be established by an appropriate claim process or other manner of proof.

32. Defendants have failed and refused, and continue to fail and refuse, to pay Plaintiffs for such on-call shifts, thereby causing Plaintiffs damages.

33. The Court should resolve this controversy by declaring Plaintiffs' rights to on-call pay under defendants' policies, awarding Plaintiffs' the amounts owed to them pursuant to such policies, including the corresponding contributions to Plaintiffs' retirement plan accounts, and preliminarily and permanently enjoining defendants from violating such policies.

34. The Court should also award Plaintiffs' their attorney fees incurred hereunder based on the amounts recovered hereunder due to the mutual and common benefit to be realized hereunder by Plaintiffs, and pre-judgment and post-judgment interest in accordance with Missouri law.

WHEREFORE, Plaintiffs seek certification of the class and this class action for unpaid on-call pay, judgment against defendants for all sums due and owing for on-call pay pursuant to defendant's aforesaid policies and related retirement plan benefits, and declaratory, injunctive and other relief as described above including the award of attorney's fees, an award of their costs herein incurred, pre-judgment and post-judgment interest in accordance with Missouri law, and such other relief as the Court deems meet and proper.

COUNT II- CALL-BACK PAY

35. Plaintiffs incorporate by this reference the averments of paragraphs 1-29 of this Petition as if restated herein.

36. Plaintiffs are entitled to call-back pay for all work when called-back during on-call shifts worked during the ten year period preceding the filing of this Petition, including for minimum time periods and associated travel pay as specified in defendants' policies, with the

damages for each class member to be established by an appropriate claim process or other manner of proof.

37. Defendants have failed and refused, and continue to fail and refuse, to pay Plaintiffs for call-back, thereby causing Plaintiffs damages.

38. The Court should resolve this controversy by declaring Plaintiffs' rights to call-back pay under defendants' policies, awarding Plaintiffs' the amounts owed to them pursuant to such policies including the corresponding contributions to Plaintiffs' retirement plan accounts, and preliminarily and permanently enjoining defendants from violating such policies.

39. The Court should also award Plaintiffs' their attorney fees incurred hereunder based on the amounts recovered hereunder due to the mutual and common benefit to be realized hereunder by Plaintiffs, and pre-judgment and post-judgment interest in accordance with Missouri law.

WHEREFORE, Plaintiffs seek certification of the class and this class action for unpaid call-back pay, judgment against defendants for all sums due and owing for call-back pay pursuant to defendant's aforesaid policies and related retirement plan benefits, and declaratory, injunctive and other relief as described above including the award of attorney's fees, an award of their costs herein incurred, pre-judgment and post-judgment interest in accordance with Missouri law, and such other relief as the Court deems meet and proper.

COUNT III -VOUCHER PAY

40. Plaintiffs incorporate by this reference the averments of paragraphs 1-29 of this Petition as if restated herein.

41. Plaintiffs are entitled to voucher pay for all eligible work, as provided in defendants' voucher pay policy, performed during the ten year period preceding the filing of this Petition, including for minimum time periods as specified in defendants' policy, with the damages for each class member to be established by an appropriate claim process or other manner of proof.

42. Defendants have failed and refused, and continue to fail and refuse, to pay Plaintiffs for such voucher pay, thereby causing Plaintiffs damages.

43. The Court should resolve this controversy by declaring Plaintiffs' rights to voucher pay under defendants' policies, awarding Plaintiffs' the amounts owed to them pursuant to such policies including the corresponding contributions to Plaintiffs' retirement plan accounts, and preliminarily and permanently enjoining defendants from violating such policies.

44. The Court should also award Plaintiffs' their attorney fees incurred hereunder based on the amounts recovered hereunder due to the mutual and common benefit to be realized hereunder by Plaintiffs, and pre-judgment and post-judgment interest in accordance with Missouri law.

WHEREFORE, Plaintiffs seek certification of the class and this class action for unpaid voucher pay, judgment against defendants for all sums due and owing for voucher pay pursuant to defendant's aforesaid policies and related retirement plan benefits, and declaratory, injunctive and other relief as described above including the award of attorney's fees, an award of their costs herein incurred, pre-judgment and post-judgment interest in accordance with Missouri law, and such other relief as the Court deems meet and proper.

COUNT IV - PAID TIME OFF

45. Plaintiffs incorporate by this reference the averments of paragraphs 1-29 of this Petition as if restated herein.

46. Plaintiffs are entitled to restoration of all accrued paid time off taken away from them by defendants in violation of defendants' policies during the ten year period preceding the filing of this Petition, or for those Plaintiffs who have left employment with defendants the equivalent final pay due them under such policies, with the damages for each class member to be established by an appropriate claim process or other manner of proof.

47. Defendants have taken accrued paid time off away from Plaintiffs in violation of defendants' policies, and intend to continue to do so, thereby causing Plaintiffs damages.

48. The Court should resolve this controversy by declaring Plaintiffs' rights to paid time off under defendants' policies, awarding Plaintiffs' the accrued paid time off or related final pay owed to them pursuant to such policies including the corresponding contributions to Plaintiffs' retirement plan accounts, and preliminarily and permanently enjoining defendants from violating such policies.

49. The Court should also award Plaintiffs' their attorney fees incurred hereunder based on the amounts recovered hereunder due to the mutual and common benefit to be realized hereunder by Plaintiffs, and pre-judgment and post-judgment interest in accordance with Missouri law.

WHEREFORE, Plaintiffs seek certification of the class and this class action for recovery of accrued paid time off or amounts owed therefor, judgment against defendants for all sums due and owing for accrued paid time off pursuant to defendant's aforesaid policies and related retirement plan benefits, and declaratory, injunctive and other relief as described above including

the award of attorney's fees, an award of their costs herein incurred, pre-judgment and post-judgment interest in accordance with Missouri law, and such other relief as the Court deems meet and proper.

CURTIS, HEINZ, GARRETT & O'KEEFE, P.C

By: 

Carl J. Lumley, #32869
130 S. Bemiston Avenue, Suite 200
St. Louis, MO 63105
(314) 725-8788 (Telephone)
(314) 725-8789 (Fax)
Attorneys for Plaintiff



Policy Title: On-Call Pay	Original Effective Date: August 1, 1996
Policy Number: 5.07.1	Last Review Date: July 2013
Excluding: None	Last Revision: July 2013
Approved By: Human Resources Executive Council	Next Review Date: July 2016

Policy Purpose

"On-call pay" is compensation paid to eligible employees who are not working but who are waiting to be engaged to work. Employees have an obligation to report to work in a timely fashion.

Eligibility

1. Any non-management employees are eligible to receive on-call pay.
2. Management employees are only eligible for on-call pay when covering staff level positions.
3. The employee accepting the call pay assignment must be qualified to perform the duties of the job for which he/she is on call.

Summary

1. Criteria
 - a) On-call shifts must be prescheduled.
2. Payment
 - a) On-call pay is paid as a flat dollar rate per hour, not as a percentage of the base rate.
 - b) Evening, night, weekend, and holiday shift differentials do not apply.
 - c) Contact Human Resources for the current on-call pay rates.
3. Approval Process
 - a) Manager schedules and codes shifts as "on-call" in MyTime within their department for employees in advance of each pay period.

On-Call Pay



1

EXHIBIT A



Policy Title: Call-Back Pay	Original Effective Date: April 3, 1994
Policy Number: 5.07.2	Last Review Date: June 25, 2017
Excluding: None	Last Revision: June 25, 2017
Approved By: Human Resources Executive Council	Next Review Date: June 2020

Policy Purpose

To set forth the criteria for earning additional premium pay when returning to work and working actual hours during a scheduled "on-call" shift. "Callback prem" pay is the additional premium pay for the minimum guaranteed callback hours or for the actual hours worked while "on-call". Call-back pay will be paid in accordance with the terms of this policy.

Eligibility

Any employee who is scheduled to be on-call is eligible for call-back pay.

Criteria

1. Call-back pay is paid when an employee is scheduled to be on-call and any of the following occur:
 - a. The employee is required to return to the work site during the on-call shift after previously completing an earlier regular shift.
 - b. The employee must report to work during an on-call shift on a day for which the employee was not scheduled to work a regular shift.
 - c. The employee must remain at the worksite and work into a shift that is designated as "on-call" to the employee.
2. Call-back pay begins at the time the "on-call" employee clocks in at the worksite or "on call shift" begins when the employee is released by the manager from his/her regularly scheduled shift.

Payment

1. When an employee returns to the work place on call-back, the employee is paid both on-call pay and call-back pay for all hours actually worked. If the employee returns to work on a call-back shift but works less than two hours the employee is

Call-Back Pay



EXHIBIT A

also eligible to receive a minimum guarantee of two hours of call-back pay as stated below.

2. For non-exempt hourly employees, a call-back pay premium of fifty percent (50%) of base hourly rate in effect at the time will be paid for all hours worked on call-back.
3. Exempt employees receive an equivalent lump sum amount above their normal base salary.
4. Evening, night, weekend, and holiday shift differentials apply for all hours worked during that shift regardless of when the shift started or ended.
5. On-call phone support and work performed without returning to the worksite
 - a. If an employee is on-call and provides phone support from home, travel time and two (2) hour call-back minimum are not paid.
 - b. Employees will continue to receive on-call pay and receive straight pay and shift differential (if applicable) only for time spent on the phone.

Minimum Guarantee Pay for Call-Back:

1. A non-exempt hourly employee called back to work will be guaranteed an amount of pay equal to two (2) hours paid at 50% premium of the employee's base pay rate. Exempt employees receive an equivalent lump sum amount above their normal base salary. Each call-back occurrence will be treated separately when calculating minimum pay.
2. If an employee is required to extend their work hours beyond his/her normal scheduled shift and into the scheduled "on-call" shift, the two hour guaranteed minimum call-back pay does not apply.
3. If an employee clocks in during a scheduled 'on call' shift less than 2 hours before the start of a non-call shift, the 2 hour guaranteed minimum call-back does not apply.
4. If an employee returns to the job site during an on-call shift within 1 hour from the end of a non-call shift, the 2 hour guaranteed minimum call-back does not apply.
5. If the employee works two or more actual hours of call-back then the employee is not eligible for the guaranteed pay.

Travel Pay

1. For all BJC organizations, excluding Boone Hospital Center, compensation for travel is determined by calculating the amount of pay equal to thirty minutes worked at regular base rate.
2. Time or pay for travel is not included in the two hour minimum guarantee nor in hours worked toward overtime calculation.
3. Travel time may be overridden by the manager if no travel time is required by the employee.

4. Boone Hospital Center does not pay travel pay.

Approval Process

1. Each occurrence of call-back is paid based on criteria/rules listed in this Policy.
 - No further approval process is required.



Policy Title: Voucher Pay	Original Effective Date: December 18, 2011
Policy Number: 5.15.2	Last Review Date: December 18, 2011
Excluding: None	Last Revision: December 18, 2011
Approved By: Human Resources Executive Council	Next Review Date: December 2014

Policy Purpose

To provide additional pay to exempt employees who perform duties outside their job to cover a shift in a direct patient care role (e.g., case coordinator who works as a staff nurse to provide direct patient care).

Eligibility

1. Voucher pay may be paid to employees in exempt positions that are not eligible for the management incentive program.

Summary

1. Criteria
 - a) Must be coverage for an exempt or non-exempt direct patient care role.
 - b) Eligible employee's hours worked in a non-exempt job must be less than 50% of total time worked in the pay period.
2. Payment
 - a) Minimum of 4 hours of pay.
 - b) Paid at employee's current base rate.
 - c) No shift differential is included in voucher pay.
3. Approval Process
 - a) Pre-approval by functional leader and top HR leader within the organization is required.

Voucher Pay



BJC HealthCare

Policy Title: Paid Time Off (PTO) Policy	Original Effective Date: January 26, 2000
Policy Number: 4.01	Last Review Date: May 3, 2015
Excluding: Directors and above, BJC Medical Group Physicians and Mid-Level Providers and Illinois Facilities from Payout Upon Termination Section	Last Revision: May 23, 2017
Approved By: Human Resources Executive Council	Next Review Date: May 2018

Policy Purpose

To provide employees with paid time off for rest, recreation or personal or family illness and injury.

Eligibility

All regular full-time and part-time employees (who have 24 or more regularly scheduled hours per week) participate in this plan and are eligible to use their time up to the amount in their account. However, exceptions to this policy may occur based on business needs.

PTO Accrual

1. PTO accrual rates are based on length of service and position. Accrued PTO is available for employees to use the day after it is accrued. PTO hours available as of the end of the last pay period will be reported on each employee's paycheck stub for tracking purposes. Current balances, accruals, and hours used can also be viewed in MyTime.
2. PTO accrues on paid hours and scheduled hours canceled due to low census or lack of work, up to 2,080 hours per benefit year. It does not accrue on hours sold, short term disability, or severance pay.
3. The table below illustrates the accrual rates based on an 8-hour workday and 2,080 hours per benefit year for BJC employees. These amounts are prorated based on hours worked for part-time employees. The amount of PTO added each pay period is calculated on the number of hours for which the employee is paid plus low census time, up to the maximum hours per year.

PTO (Paid Time Off) Policy



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Table 4.1 – BJC HealthCare excluding Boone, MHB and MHE

Years of Service/Position	PTO Accrual Rate	
Staff with 4 years or less	Per Hour	0.0885
	Hours Per Year	184
	Days Per Year	23
Staff with >4 years through 9 years Manager/Supervisor with 9 years or less Director with 4 years or less	Per Hour	0.1077
	Hours Per Year	224
	Days Per Year	28
Staff with >9 years through 14 years	Per Hour	0.1154
	Hours Per Year	240
	Days Per Year	30
Staff with >14 years Manager/Supervisor with >9 years Director with >4 years Vice Presidents	Per Hour	0.1270
	Hours Per Year	284
	Days Per Year	33

4. The tables below illustrate the accrual rates based on an 8-hour workday and 2,080 hours per benefit year for Boone Hospital Center, Memorial Hospital Belleville (MHB) and Memorial Hospital East (MHE) employees. These amounts are prorated based on hours worked for part-time employees. The amount of PTO added each pay period is calculated on the number of hours for which the employee is paid plus low census time, up to the maximum hours per year.

Table 5.1 – Boone Hospital Center

Years of Service/Position	PTO Accrual Rate	
Staff with 4 years or less	Per Hour	0.1038
	Hours Per Year	216
	Days Per Year	27
Staff with >4 years through 9 years Manager/Supervisor with 9 years or less Director with 4 years or less	Per Hour	0.1230
	Hours Per Year	256
	Days Per Year	32
Staff with >9 years through 14 years	Per Hour	0.1385
	Hours Per Year	288
	Days Per Year	36
Staff with >14 years Manager/Supervisor with >9 years Director with >4 years Vice Presidents	Per Hour	0.1538
	Hours Per Year	320
	Days Per Year	40

Table 5.2 – Memorial Hospital Belleville and Memorial Hospital East

Years of Service/Position	PTO Accrual Rate	
Staff with 4 years or less	Per Hour	0.077
	Annual Accrual Max	160
	Days Per Year	20

Staff with 4 to 14 years Salaried Professionals and management employees with 4 years or less	Per Hour Annual Accrual Max Days Per Year	0.096 200 25
Staff with 14 or more years Salaried Professionals and management employees with more than 4 years	Per Hour Annual Accrual Max Days Per Year	0.115 240 30

5. The table below shows the maximum number of hours employees may accrue and have available in their PTO bank for the years 2012 through 2018.

Table 6.1 – BJC HealthCare excluding MHB and MHE

Year	Maximum Hours	Reduction in Hours from Previous Year
2012	710	24 (3 days)
2013	678	32 (4 days)
2014	630	48 (6 days)
2015	560	70 (8.75 days)
2016	500	60 (7.5 days)
2017	450	50 (6.25 days)
2018	400	50 (6.25 days)

Table 6.2 – Memorial Hospital Belleville and Memorial Hospital East

Years of Service/Position	Maximum Hours
Staff with 4 years or less	240
Staff with 4 to 14 years Salaried Professionals and management employees with 4 years or less	300
Staff with 14 or more years Salaried Professionals and management employees with more than 4 years	360

Using PTO

1. PTO may be used for any purpose (vacation, family illness/injury, holiday, employee illness/injury, etc.). Time off should be scheduled as far in advance as possible in accordance with the department's guidelines. While management reserves the right not to approve scheduled time off, every attempt will be made to accommodate an employee's request, keeping in mind patient care and operational needs and fairness to other staff members.

2. PTO must be used for unscheduled absences. The employee should notify the supervisor as soon as possible and absenteeism policies will apply. If an unscheduled absence occurs the day before, on, or after one of the six legal holidays BJC recognizes, management may in its discretion withhold payment of PTO for the unscheduled absence and/or holiday. The following holidays are recognized: Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving Day, Christmas Day and New Year's Day.
3. PTO must be used to cover all scheduled and unscheduled absences from work. When a non-exempt employee is canceled due to low census for all or part of a shift, the employee has the choice to use available PTO or take time unpaid. Available PTO must be used to supplement any short-term disability (STD) payments. If an employee is absent, any available PTO must be exhausted before taking time off without pay. If an employee does not have any PTO time available, unpaid time off may be granted at the supervisor's discretion.
4. Non-exempt employees may use partial days of PTO in one-hour increments for the first hour of work missed and in 15-minute increments for every additional portion of an hour thereafter.
5. Exempt employees use PTO based on whole-day increments for scheduled (planned) or requested absences, and only use partial days if they have less than 8 hours of PTO time available for unplanned absences (see Wage and Hour Policy 5.1) or for an approved intermittent leave under the FMLA.
6. The minimum requirement of one hour may be waived for non-exempt employees in the case of PTO time taken to supplement low-census time off of less than one hour. This provision does not apply to exempt employees.
7. PTO must be used to cover the first five calendar days of the employee's own illness or non-work related injury. Thereafter, the short-term disability (STD) may be used.
8. PTO hours are paid at the employee's base rate of pay in effect when the hours are used. Pay for time off does not include shift differentials or bonuses and is subject to federal, state and local taxes. If the employee has two rates of pay, PTO will be paid at the primary rate.
9. If authorized bereavement leave or jury duty occurs during paid PTO, the time will be recorded and paid as bereavement leave or jury duty instead of PTO.

PTO Sales

1. An employee may request a PTO sale of eligible PTO hours by making an election during the annual election sale period of the calendar year prior to the year of the sale. For example, an employee who would like to sell PTO in 2018 must make an election during the annual sale period in November 2017. The

PTO sales period is typically the entire month of November but is subject to change from year to year.

2. When making the sale request in 2017 for 2018, employees must elect the amount of PTO to be sold and the timing of the payment of the proceeds of the PTO sale. The amount of PTO that may be sold must be a minimum of 15 hours but cannot exceed the lesser of: 100 hours OR the approximated amount of PTO hours anticipated to accrue in 2018. In addition, the requested amount for sale must be in the employee's bank at the time of the sale request although the actual sale is based on PTO accruing in the next calendar year. Examples:
 - Employee has 100 hours in their current PTO bank in November 2017. They will accrue 134 hours in 2018. They can elect up to 100 hours for sale in 2018.
 - Employee has 40 hours in their current PTO bank in November 2017. They will accrue 158 hours in 2018. They can only elect up to 40 hours for sale in 2018.
3. Employees must also elect the timing of the payment which may occur on the first scheduled paycheck in February, July or December of the sale year. The payment will be calculated using the employee's primary base rate of pay and taxes will be withheld in accordance with federal, state and local regulations. Sales elections must occur during the PTO sales period and are limited to one sale and must be made in full-hour increments. PTO sales requests can only be made during the PTO sales period by accessing the PTO Sales Tool in MyTime. Sales elections are irrevocable. Once the election period is closed, it may not be changed or rescinded for any reason. Hours requested to be sold will be processed shortly after the end of the calendar year in which the sale request is made and paid to the employee in the pay period elected on the PTO sales tool in MyTime.

Status Change

1. Employees changing from a benefits-eligible status to an ineligible status are no longer eligible to accrue or use PTO. PTO hours currently in an employee's bank will be frozen. If an employee returns to a benefits eligible status, any frozen PTO hours will be credited, up to the current maximum.
2. Employees changing from ineligible to benefits-eligible status begin accruing PTO hours in the pay period in which their status changes.

PTO Upon Termination

Remaining PTO balances, up to the current maximum, will be paid to employees with greater than five years of service who voluntarily leave the organization in good standing or exit the organization as a result of job elimination. Remaining PTO

balances will be paid by direct deposit on the pay distribution following the final pay period after termination date.

Benefit Upon Rehire

- a) Employees rehired within 1 year of separation from BJC HealthCare will be treated as if they have not left for purposes of determining the PTO accrual level. For example, a full-time employee earns 3 weeks per year of PTO at the time the employee leaves employment. If the employee is rehired within 1 year of separation, the employee will resume earning 3 weeks per year of PTO.
- b) Employees rehired after 1 year are treated as new employees for purposes of PTO.



Policy Title: Wage and Hour	Original Effective Date: May 4, 2012
Policy Number: 5.01	Last Review Date: July 1, 2015
Excluding: None	Last Revision: July 1, 2015
Approved By: Human Resources Executive Council	Next Review Date: July 2018

Policy Purpose

To establish policies and procedures regarding compensation for BJC employees and to ensure compliance with all state and federal wage and hour laws.

Employee Categories

1. Non-exempt Employees

- a) Non-exempt employees, often referred to as hourly employees, are subject to the minimum wage and overtime provisions of the Federal Labor Standards Act ("FLSA") and applicable state and local law. Non-exempt employees will receive at least minimum wage for all working time and are entitled to overtime compensation in accordance with applicable federal, state and local requirements.

2. Exempt Employees

- a) Exempt employees are those whose compensation and duties meet applicable federal, state and local requirements. Exempt employees may be paid on a salary or fee basis. Salaried exempt employees receive a base salary intended to compensate them for all working time and are not eligible to receive overtime pay. These employees are paid their base compensation on a salaried basis, regardless of the number of hours that they work. Exempt employees are expected to work as much each day as is necessary to complete their job responsibilities, and both the exempt employee and BJC understand that the hours required to perform those responsibilities will fluctuate from week to week. In limited approved circumstances based on business necessity, exempt employees may be eligible for additional compensation in accordance with written policy.

Wage and Hour



EXHIBIT A

Workweek, Pay Periods, Payday, Direct Deposit & Payment of Final Wages

1. **Workweek.** The BJC designated workweek is from Sunday at 7:00 a.m. through 6:59 a.m. the following Sunday.
2. **Workday.** The 24 hour period starting at 7:00 a.m. and ending at 6:59 a.m. the following day.
3. **Pay period.** BJC has a bi-weekly pay cycle. Pay periods begin on alternating Sundays at 7:00 a.m. and end 14 calendar days later.
4. **Payday.** Wages are paid to employees on the Friday following the close of each pay period. If a regularly scheduled payday falls on a BJC- designated or bank holiday, employees will be paid on the business day preceding the holiday.
5. **Direct Deposit.** Employees will be paid through direct deposit and provided access to an explanation of earnings and deductions, unless otherwise prohibited by applicable law. The online direct deposit pay explanation may be printed by the employee for the employee's personal records.
6. **Paycheck or Deposit Advices.** Each paycheck or deposit advice will include a statement of gross wages earned, net wages earned (including any overtime as applicable), the amount of deductions, withholdings, dates of the pay period, the employee's name, and the name and address of BJC. For non-exempt employees, each paycheck or deposit advice will also include the employee's rate of pay, the total number of working time through the end of the previous payroll period, and any other information required by federal, state, or local law. For exempt employees, each paycheck or deposit advice may include a pre-populated field for working time and an hourly rate that exist for administrative purposes only and does not reflect the actual working time or rate of pay.
7. **Payment of Final Wages upon Separation.** Employees will receive their final pay in accordance with federal, state and local law.
8. **Pay Advances.** There are no advances in pay. Employees who encounter financial hardships should seek counseling through the Employee Assistance Program (EAP).

Work Time

As a general matter, work time includes all activities that are required by the employer which are necessary to perform the job.

Wage and Hour

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EXHIBIT A

Recording Work Time

1. **Recording Work Time.** Non-exempt employees are responsible for accurately recording all working time. Because employees in non-exempt positions must be paid for all working time, it is essential that all time worked be accurately and timely recorded and reported for payroll processing. Non-exempt employees must record the exact time they begin working and the exact time they stop working.
2. **Procedure.** All non-exempt employees are required to accurately report all hours of work using MyTime or some other means prescribed at their location. Non-exempt employees must clock in immediately before beginning work and must clock out immediately after completing all work. Non-exempt employees who use time clocks should use the time clock at the location designated by their supervisor. If an employee's department does not use the MyTime time recording system, the non-exempt employee must accurately report all hours of work by signing in on a time sheet immediately before beginning work and signing out on the timesheet immediately after completing all work or by utilizing another timekeeping method authorized by their department.
3. Non-exempt employees must record their start time at the same time they actually start working and record their end time at the same time they actually stop working.
4. No employee is authorized to clock-in/clock-out or sign-in/sign-out on behalf of another employee. Any employee who engages in this practice will be subject to disciplinary action, up to and including termination.

Reviewing Time

1. **Non-Exempt Employees**
 - a) At the end of each pay period or after their last shift worked for that pay period, but no later than 10 a.m. on the Monday following the end of the pay period, all non-exempt employees are required to review their reported working time by the timekeeping system or on their timesheet and to certify that all of their working time for the week is accurately reported.
 - b) If an employee has any concern regarding the accuracy of their working time or cannot certify that all of their working time has accurately been recorded, the employee must raise the issue with his or her immediate manager or Human Resources. If the matter is not resolved to the