

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
BOSTON DIVISION**

CHRISTIAN CONCEPCION, for himself and  
others similarly situated,

v.

TRAINCROFT, INC.

Case No. \_\_\_\_\_

**CLASS AND COLLECTIVE ACTION COMPLAINT**

**SUMMARY**

1. Christian Concepcion works as an aircraft mechanic in Roswell, New Mexico.
2. He is a W-2 employee of Traincraft, Inc.
3. Traincraft pays Concepcion \$26 an hour.
4. But Traincraft does not pay Concepcion time and a half when he works more than 40 hours in a week.
5. Instead, Traincraft pays Concepcion the same hourly rate (\$26) for all hours worked, including those over 40 in a workweek.
6. This “straight time for overtime” pay plan violates the Fair Labor Standards Act (FLSA) and New Mexico Minimum Wage Act (NMMWA).
7. Concepcion brings this class and collective action to recover the unpaid overtime and other damages owed to himself and others similarly situated.

**JURISDICTION AND VENUE**

8. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

9. This Court also has original subject matter jurisdiction under 28 U.S.C. § 1332(d) because: (a) Concepcion and Traincroft are citizens of different states; (b) the matter in controversy exceeds \$5,000,000; and (c) the number of members of all proposed classes is at least 100.

10. This Court also has subject matter jurisdiction over the state law claims because they arise from a common nucleus of relevant facts along with the federal claim alleged.

11. This Court has general personal jurisdiction over Traincroft.

12. Traincroft is a Massachusetts corporation.

13. Traincroft is headquartered in Medford, Massachusetts.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Traincroft is resident of this judicial district and a significant portion of the facts giving rise to this lawsuit occurred in this District and Division.

#### **PARTIES**

15. Concepcion is an employee of Traincroft.

16. His written consent is attached.

17. Traincroft bills itself as “a complete, integrated logistics support company.” <https://www.traincroft.com/>

18. Traincroft’ gross revenues have exceeded \$1,000,000 in each of the past 3 years.

19. Traincroft’s employees routinely use, handle, sell, or work on vehicles, aircraft, hand tools, equipment, cleaning supplies, and telephones that were produced for, and/or actually traveled in, interstate commerce.

20. Traincroft is a “covered enterprise” under the FLSA.

21. Traincraft employed Concepcion.

22. Traincraft can be served through its registered agent, Michael Tringale, Zero Governors Ave, Suite 38, Medford, Massachusetts 02155.

### FACTS

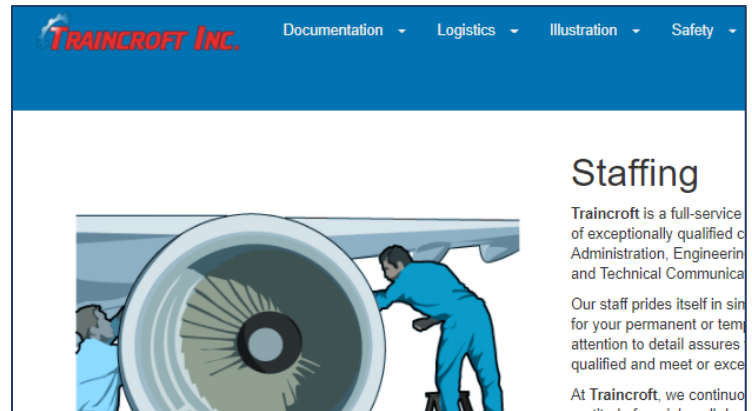
23. Traincraft operates a “full-service staffing firm[.]”

<https://www.traincraft.com/logistics/staffing.shtml>

24. It “staffs” workers out to a broad range of industries, including the aerospace, engineering, medical, and design & drafting industries.

<https://www.traincraft.com/logistics/personnel.shtml>

25. For example, Traincraft’s staffing services include providing workers, like Concepcion, who are aircraft mechanics.



26. But regardless of the industry or position, Traincraft’s staffed workers generally work at Traincraft’s clients’ locations.

27. While at a client location, Traincraft employees are subject to the client’s supervision and control (including, e.g., control over hours worked and the manner in which the work is performed).

28. Traincraft tells its employees that the customer “determines your work location and hours.”

29. Traincraft’s clients also typically provide the tools and material necessary to perform the work.

30. The workers covered by this lawsuit are Traincraft’s W-2 employees.

31. Traincroft pays these workers by the hour.

32. But Traincroft does not pay them overtime.

33. Instead, Traincroft pays these workers at the same hourly rate for all the hours they work, including hours in excess of 40 in a week.

34. Concepcion is an hourly employee of Traincroft.

35. Traincroft hired Concepcion in September 2020.

36. Concepcion works as an aircraft mechanic.

37. Traincroft pays Concepcion \$26 an hour.

38. Traincroft does not pay him overtime.

39. Instead, Traincroft pays Concepcion according to its straight time for overtime policy.

40. For example, Concepcion worked 60.5 hours in the week ending on December 6, 2020.

41. But Traincroft did not pay him time and a half for hours for the hours over 40 worked in that week.

42. Instead, Traincroft paid Concepcion at the same hourly rate (\$26) for all 60.5 hours worked.

43. Concepcion worked 45 hours in the week ending on November 1, 2020.

44. But Traincroft did not pay him overtime for that week.

45. Instead, Traincroft paid Concepcion \$26 an hour for all 45 hours worked.

46. Because of Traincroft's straight time for overtime plan, Concepcion never receives any overtime premium.

47. Making matters worse, Traincroft tries to mask its overtime violations by doctoring its payroll records to give the appearance of paying overtime.

48. Traincroft uses a well-known ploy for evading the FLSA's overtime requirements, it mislabels most of its hourly wages as an hourly "per diem."

49. When he was hired, Traincroft labeled Concepcion's "Taxable Wage Per Hour" as "\$9.00 for the first 40 hours" (remember, Concepcion is an aircraft mechanic).

50. But Traincroft also paid him a "Per Diem Rate Per Hour" of "\$17.00 for the first 40 hours **only**" (emphasis in original).

51. This "Per Diem" is tied to the number of hours Concepcion worked.

52. For example, Concepcion worked 38.5 hours in the week ending December 13, 2020.

53. Traincroft's "Per Diem" for that week equaled \$654.50 (that is \$17/hr times 38.5 hours).

54. Between his "Taxable Wage Per Hour" and his "Per Diem Rate Per Hour," Concepcion's actual "regular rate" was \$26 an hour. 29 U.S.C. § 207(e).

55. Traincroft pays Concepcion on "Overtime Rate Per Hour" of "\$26.00"—not the \$39/hour required by the FLSA and NMMWA.

56. Further confirming that this "Taxable Wage" and hourly "Per Diem" is a device to avoid the FLSA and NMMWA, Traincroft alters the ratio of "Taxable Wage" and "Per Diem" to maintain the \$26/hr regular rate of pay.

57. When New Mexico increased its minimum wage, Traincroft raised Concepcion's "Taxable Wage" to \$10.50, but dropped his "Per Diem" to \$15.50 an hour.

58. Concepcion reported his hours to Traincroft.

59. Traincroft's records reflect the hours Concepcion worked each week.

60. Despite knowing Concepcion was regularly working overtime, Traincroft did not pay him overtime.

61. Traincroft simply paid the applicable straight time rate without any overtime premium whatsoever.

62. Rather than receiving time and half as required by the FLSA and New Mexico law, Concepcion only received “straight time” pay for his overtime hours.

63. This “straight time for overtime” payment scheme violates the FLSA and New Mexico law.

64. Traincroft applied this same straight time for overtime payment scheme to all the class members Concepcion seeks to represent.

65. Just as Traincroft maintained records of the hours Concepcion worked, it maintained records of the hours worked of the other employees like him.

66. Traincroft knew the FLSA required it to pay overtime to workers like Concepcion.

67. Traincroft nonetheless failed to pay overtime to hourly employees like Concepcion.

68. Traincroft’s failure to pay overtime to these hourly workers was, and is, a willful violation of the FLSA and the New Mexico Minimum Wage Act (NMMWA).

#### **CLASS & COLLECTIVE ACTION ALLEGATIONS**

69. Traincroft’s illegal “straight time for overtime” policy extends beyond Concepcion.

70. Traincroft’s “straight time for overtime” scheme is the “policy that is alleged to violate the FLSA” in the FLSA collective action. *Bursell v. Tommy’s Seafood Steakhouse*, No. CIV.A. H-06-0386, 2006 WL 3227334, at \*3 (S.D. Tex. Nov. 3, 2006); *Wellman v. Grand Isle Shipyard, Inc.*, No. CIV.A. 14-831, 2014 WL 5810529, at \*5 (E.D. La. Nov. 7, 2014).

71. Traincroft paid dozens of hourly workers according to the same, common, unlawful scheme.

72. Many of these workers (which total more than 100) worked in New Mexico.

73. Upon information and belief, Traincroft paid more than 50 workers employed in New Mexico according to its straight time for overtime policy.

74. Common questions of fact and law predominate in this action, including: (a) the legality of Traincroft's straight time for overtime pay policy; (b) Traincroft's "good faith" (or lack thereof) in adopting its straight time for overtime pay policy; (c) Traincroft's knowledge of the FLSA's overtime requirements; (d) Traincroft's knowledge of the NMMWA's requirements.

75. Concepcion's claims are typical of the other hourly workers impacted by the Traincroft' "straight time for overtime" scheme because they arise from the application of the identical pay policy.

76. All Traincroft's hourly workers who were paid "straight time for overtime" are similar to Concepcion because they are owed overtime for precisely the same reasons he is.

77. Any differences in job duties do not detract from the fact that all these hourly workers were and are entitled to overtime pay.

78. Concepcion has retained counsel competent and experienced in handling class and collective action litigation.

79. A collective and class action is a superior method for resolving the common questions that predominate in this case.

80. Absent a collective and class action, many workers may never recover as they will be denied the benefits of spreading costs and aggregating claims.

81. The Traincraft workers impacted by the “straight time for overtime” scheme should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b).

82. Therefore, the FLSA collective is properly defined as:

**All hourly Traincraft employees who were paid “straight time” for overtime at any point in the past 3 years.**

83. Concepcion further seeks certification of a class under Fed. R. Civ. P. 23 to remedy Traincraft’s violations of the NMMWA.

84. Traincraft’s illegal “straight time for overtime” pay practice is part of a continuing course of conduct, entitling Concepcion and all those similarly situated to him to recover for all such violations of the NMMWA, regardless of the date they occurred. NMSA § 50-4-32.

85. The class of similarly situated employees sought to be certified as a class action under the NMMWA is defined as:

**All hourly Traincraft employees in New Mexico who were paid “straight time” for overtime.**

**CAUSES OF ACTION**

**Count I**  
**Violation of the FLSA**

86. By failing to pay Concepcion and those similarly situated to him overtime, Traincraft violated the FLSA. 29 U.S.C. § 207(a).

87. Traincraft owes Concepcion and those similarly situated to him the difference between the rate actually paid and the proper overtime rate.



88. Because Traincroft knew, or showed reckless disregard for whether, its pay practices violated the FLSA, Traincroft owes these wages for at least the past three years.

89. Traincroft is liable to Concepcion and those similarly situated to him for an amount equal to all unpaid overtime as liquidated damages.

90. Concepcion and those similarly situated to him are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

**Count II**  
**Violation of the NMMWA**

91. Similarly, by failing to pay Concepcion and those similarly situated to him overtime, Traincroft violated the NMMWA. *See* NMMWA § 50-4-22.

92. Traincroft is subject to the requirements of the NMMWA.

93. Traincroft employed Concepcion and each member of the New Mexico Class as an "employee" within the meaning of the NMMWA.

94. The NMMWA requires employers to pay employees at one and one-half (1.5) times the regular rate of pay for hours worked in excess of forty (40) hours in any one week.

95. Concepcion and each member of the New Mexico Class are entitled to overtime pay under the NMMWA.

96. Concepcion and each member of the New Mexico Class seek unpaid overtime in amount equal to 1.5 times the regular rate of pay for work performed in excess of 40 hours in a workweek, liquidated damages, treble damages, prejudgment interest, all available penalty wages, and such other legal and equitable relief as the Court deems just and proper from Defendants.

97. Concepcion and each member of the New Mexico Class also seek recovery of attorneys' fees, costs, and expenses of this action, to be paid by Defendants, as provided by the NMMWA.

**PRAYER FOR RELIEF**

98. Concepcion prays for relief as follows:
- a) An order allowing this action to proceed as a collective action under the FLSA and directing notice to all hourly employees who received straight time for overtime;
  - b) An order certifying the New Mexico Class as a class action under Rule 23;
  - c) Judgment awarding Concepcion and those similarly situated to him all unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA;
  - d) Judgment awarding Concepcion and the New Mexico Class overtime for all worked performed in excess of 40 hours in a workweek, liquidated damages, treble damages, prejudgment interest, all available penalty wages available under the NMMWA;
  - e) An award of pre- and post-judgment interest on all amounts awarded at the highest rate allowable by law; and
  - f) All such other and further relief to which Concepcion and those similarly situated to him may show themselves to be justly entitled.

Respectfully submitted,

**GORDON LAW GROUP, LLP**

**/s/ Phillip J. Gordon**

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DocuSign Envelope ID: 76C83306-4A6F-427C-8AA6-B238380FECE0

**CONSENT TO JOIN WAGE CLAIM**

Print Name: Christian Joel Rodriguez Concepcion

1. I hereby consent to participate in a collective action lawsuit against **Traincraft, Inc** (and their related entities) to pursue my claims of unpaid overtime during the time that I worked with the company.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act, and consent to be bound by the Court's decision.
3. I designate the law firm and attorneys at BRUCKNER BURCH PLLC as my attorneys to prosecute my wage claims.
4. I authorize the law firm and attorneys at BRUCKNER BURCH PLLC to use this consent to file my claim in a separate lawsuit, class/collective action, or arbitration against the company.

Signature:  DocuSigned by:  
FOC3AACF294E46C...

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Christian Concepcion v. Traincraft, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830\*, 835\*, 850, 880, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
  - II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820\*, 840\*, 895, 896, 899.
  - III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.
- \*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?  
 YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S OR PRO SE'S NAME Philip J. Gordon

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TELEPHONE NO. 617-536-1800

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Christian Concepcion, for himself and others similarly situated

(b) County of Residence of First Listed Plaintiff Roswell, NM (Chaves) (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Philip J. Gordon, Esq., Gordon Law Group, LLP, 585 Boylston Street, Boston, MA 02116, 617-536-1800

DEFENDANTS

Traincroft, Inc.

County of Residence of First Listed Defendant Middlesex County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor Standards, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. 207(a) and 216(b)
Brief description of cause: Non-payment of wages - collective action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

/s/ Philip J. Gordon

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Employee Alleges Traincroft Uses Per Diem 'Ploy' to Avoid Paying Overtime](#)

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