

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

WINIFRED MIDKIFF and ARDAITH BROWN,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

THE ANTHEM COMPANIES, INC., ANTHEM  
HEALTH PLANS OF VIRGINIA, INC. d/b/a  
ANTHEM BLUE CROSS AND BLUE SHIELD,  
and AMERIGROUP CORPORATION,

Defendants.

Case No. 3:22-cv-00417-HEH

**SECOND AMENDED CLASS AND  
COLLECTIVE ACTION  
COMPLAINT**

**PRELIMINARY STATEMENT**

1. This is a collective action brought by individual and representative Plaintiffs Winifred Midkiff and Ardaith Brown (“Plaintiffs”), on behalf of themselves and all others similarly situated (the “putative FLSA Collective”), to recover overtime pay from The Anthem Companies, Inc., and two other subsidiaries of Anthem, Inc., Anthem Health Plans of Virginia, Inc. d/b/a Anthem Blue Cross and Blue Shield and Amerigroup Corporation (collectively, “Defendants”).

2. Plaintiffs bring this action on behalf of themselves and all similarly situated individuals for violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”). Plaintiffs’ claim is asserted as a state-wide collective action under the FLSA, 29 U.S.C. § 216(b).

3. Plaintiff Brown also brings claims under the Virginia Overtime Wage Act, § 40.1-29.2 (“VOWA”) for failure to pay overtime on hours exceeding 40 hours per week, on behalf of a

putative class of similarly situated persons who are or have been employed by Defendants in Virginia (the “Rule 23 Class”).

4. The putative “FLSA Collective” and putative “Rule 23 Class” is made up of all persons who are or have been employed by Defendants in Virginia as Medical Management Nurses or Utilization Review Nurses who are/were paid a salary, is/was treated as exempt from overtime laws, and whose primary job is/was to perform medical necessity reviews during the applicable statutory period.

5. Plaintiffs and those similarly situated routinely work more than forty (40) hours in a workweek but are not paid an overtime premium for their overtime hours.

6. As a result of Defendants’ willful and illegal pay practices, Plaintiffs and those similarly situated were deprived of overtime compensation for their hours worked in violation of federal and Virginia state law.

#### **JURISDICTION AND VENUE**

7. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 to hear this Complaint and to adjudicate these claims because this action is brought under the FLSA.

8. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Plaintiff Brown’s supplemental state law claims, which are brought pursuant to the laws of the state of Virginia, because those claims arise out of the same transaction or occurrence as the federal claims alleged herein.

9. Venue is proper in the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district.

**PARTIES**

10. Defendant The Anthem Companies, Inc. is a foreign limited liability company with its principal place of business located at 220 Virginia Ave., Indianapolis, Indiana, 46204, United States.

11. The Anthem Companies, Inc. is a wholly owned subsidiary of ATH Holding Company, LLC, which is a wholly owned subsidiary of Anthem, Inc., a publicly held corporation.

12. Defendant Anthem Health Plans of Virginia, Inc. is a Virginia corporation with its principal place of business located at 2015 Staples Mill Rd., Richmond, VA, 23230-3108, United States. The Anthem Health Plans of Virginia, Inc. does business under the fictitious name of Anthem Blue Cross and Blue Shield.

13. Anthem Health Plans of Virginia, Inc. is a subsidiary of Anthem, Inc., a publicly held corporation.

14. Anthem Health Plans of Virginia, Inc., is a managed healthcare and insurance company.

15. Anthem Health Plans of Virginia, Inc. is one of several Anthem, Inc. subsidiaries operating under the trade name of Anthem Blue Cross and Blue Shield. Anthem Blue Cross and Blue Shield and affiliated blue plans are offered in 14 states and provide 32 million individuals access to more than 1.7 million doctors and hospitals nationwide through Anthem brands and the greater Blue Cross Blue Shield network.

16. Defendant Amerigroup Corporation is a Delaware corporation with its principal place of business located at 4425 Corporation Ln., Virginia Beach, VA, 23462-3103, United States.

17. Amerigroup Corporation is a managed healthcare company.

18. Anthem, Inc. acquired Amerigroup Corporation in approximately 2013.

19. Amerigroup Corporation is a subsidiary of Anthem, Inc., a publicly held corporation.

20. Plaintiffs and other similarly situated individuals performed or perform utilization reviews for Virginia residents who are members of Anthem Health Plans of Virginia, Inc. and/or Amerigroup.

21. Plaintiffs and other similarly situated individuals also performed or perform utilization reviews for subscribers in other states under the Anthem Blue Cross and Blue Shield and/or Amerigroup names.

22. Anthem, Inc. is a multi-line health insurance company that provides managed care programs and related services.

23. Upon information and belief, Anthem, Inc. rebranded itself as Elevance Health on June 28, 2022.

24. Anthem, Inc. has at least 171 subsidiaries, including 60 regulated insurance companies, that employ thousands of individuals in various jobs to provide a broad suite of insurance products and services.

25. Anthem, Inc. organizes those various companies into three divisions: the Government Business Division (GBD), the Federal Employees Program (FEP), and the Commercial and Specialty Business Division (CSBD). Within those divisions, companies' operations are divided geographically into the East, Central, or West region.

26. According to its website, Anthem provides healthcare benefits to more than 118 million members nationwide.

27. Anthem, Inc. and its subsidiaries operate in interstate commerce by, among other things, offering and selling a wide array of products and services, including but not limited to, preferred provider organizations, consumer-driven health plans, traditional indemnity, health maintenance organizations, point-of-service, ACA public exchange and off-exchange products, administrative services, Bluecard, Medicare plans, individual plans, Medicaid plans and other state-sponsored programs, pharmacy products, life insurance, disability products, radiology benefit management, personal health care guidance, dental, vision services and products, and Medicare administrative operations to customers and consumers in multiple states across the country, including Virginia.

28. The Anthem Companies, Inc., Anthem Health Plans of Virginia, Inc., and Amerigroup Corporation jointly employed Plaintiffs and other similarly situated individuals and are “employers” of Plaintiffs and other similarly situated individuals within the meaning of the FLSA.

29. Anthem, Inc. subsidiaries enter into a master administrative services agreement to use the same back-office operations for various functions. Those include payroll, human resources, and legal services.

30. The Anthem Companies, Inc. provides support to other subsidiaries of Anthem, Inc., including Anthem Health Plans of Virginia, Inc. and Amerigroup Corporation, in areas including finance, tax, payroll, and human resources.

31. The Anthem Companies, Inc. operates office locations in multiple states around the country, including in Virginia.

32. The Anthem Companies, Inc. determines the rate and method of payment of Plaintiffs and others similarly situated.

33. Plaintiffs' paystubs list The Anthem Companies, Inc. and its principal place of business address as their employer.

34. Upon information and belief, other similarly situated individuals' paystubs list The Anthem Companies, Inc. and its principal place of business address as their employer.

35. Anthem Health Plans of Virginia, Inc. and Amerigroup Corporation, through their parent company Anthem, Inc., provide hiring and termination paperwork to Plaintiffs and other similarly situated individuals.

36. Anthem Health Plans of Virginia, Inc. and Amerigroup Corporation, through their parent company Anthem, Inc., send written human resources communications to Plaintiffs and other similarly situated individuals.

37. Through their parent company, Anthem Inc., Defendants maintain data and personnel records on their employees, including the employees' names, employee ID, dates of employment, job title, job classification, work location, department, and supervisor.

38. Plaintiffs and others similarly situated used both Anthem-wide and subsidiary-specific software tools and systems in the course of their employment maintained by Defendants.

39. Plaintiffs and others similarly situated had access to a single intranet site maintained by Anthem.

40. Plaintiffs and others similarly situated had Anthem and/or Amerigroup email addresses.

41. Defendants controlled Plaintiffs' and the other similarly situated individuals' work by determining how to structure the medical necessity reviews Plaintiffs and the similarly situated employees conducted.

42. Plaintiffs and the other similarly situated individuals used medical policies, guidelines, and job aids published under the Anthem and/or Amerigroup names when conducting medical necessity reviews.

43. When Plaintiffs and other similarly situated individuals needed to escalate a medical authorization request for higher-level approval, they contacted a Medical Director, a doctor employed by Anthem.

44. Plaintiffs and those similarly situated were supervised by managers employed by Anthem and/or Amerigroup.

45. Some supervisors of Plaintiffs and those similarly situated had Anthem email addresses.

46. Other supervisors of Plaintiffs and those similarly situated had Amerigroup email addresses.

47. Performance review forms completed by supervisors of Plaintiffs and others similarly situated bore the Anthem name.

48. Upon information and belief, Anthem's gross annual sales made, or business done has been in excess of \$500,000.00 at all relevant times.

49. At all relevant times, Defendants are, and have been, "employers" engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203(d).

50. Plaintiff Winifred Midkiff is an adult resident of Amelia County, Virginia.

51. Defendants employed Plaintiff Midkiff as a Medical Management Nurse II from approximately June 2014 to July 2017. Plaintiff's claims were tolled when she opted-in to *Laura*

*Canaday, et al. v. The Anthem Companies, Inc.*, case number 1:19-cv-01084-STA-jay on August 19, 2019.

52. Plaintiff Midkiff reported to Defendants' Chesapeake, Virginia office for two to three weeks in June 2014. Plaintiff then worked from her home in Chesapeake, Virginia until June 2016, when she moved to Hampton, Virginia. Plaintiff continued to work from her home in Hampton, Virginia until the end of her employment in July 2017.

53. Plaintiff Ardaith Brown is an adult resident of Northampton County, Virginia. Plaintiff worked for Defendants in Chesapeake, Virginia.

54. Defendants employed Plaintiff Brown as a Medical Management Nurse I from approximately May 29, 2018 to November 19, 2022.

**FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

55. At all times relevant herein, Defendants operated a willful scheme to deprive Plaintiffs and others similarly situated of overtime compensation.

56. Plaintiffs and the similarly situated individuals work or worked as Medical Management Nurses, Utilization Management Nurses, Utilization Review Nurses, Nurse Reviewers, Nurse Reviewer Associates, or in similar job titles, and were primarily responsible for performing medical necessity reviews for Defendants.

57. In conducting medical necessity reviews, Plaintiffs and the other similarly situated individuals' primary job duty is non-exempt work consisting of reviewing medical authorization requests submitted by healthcare providers against pre-determined guidelines and criteria for insurance coverage and payment purposes.

58. Plaintiffs and the similarly situated individuals are or were paid a salary with no overtime pay.



59. Plaintiffs and the other similarly situated individuals are or were treated as exempt from overtime laws, including the FLSA.

60. Defendants suffered and permitted Plaintiffs and the other similarly situated individuals to work more than forty (40) hours per week without overtime pay.

61. For example, between May 8, 2017, and May 12, 2017, Plaintiff Midkiff estimates that she worked approximately 52-55 hours and did not receive overtime pay for her overtime hours.

62. Between September 19, 2021 and September 25, 2021, Plaintiff Brown estimates that she worked approximately 47.5 hours and did not receive overtime pay for her overtime hours.

63. Defendants have been aware, or should have been aware, that Plaintiffs and the other similarly situated individuals performed non-exempt work that required payment of overtime compensation. Defendants also required Plaintiffs and the similarly situated individuals to work long hours, including overtime hours, to complete all of their job responsibilities and meet Defendants' productivity standards.

64. Defendants knew that Plaintiffs and the other similarly situated individuals worked unpaid overtime hours because Plaintiffs and others complained about their long hours and the workload. Specifically, when Plaintiff Midkiff told her supervisor that she was working long hours, her supervisor responded that her hands were tied and that Plaintiff should be more efficient with her time. When Plaintiff Brown told her manager that she worked unpaid overtime hours, her manager stated that she understood where Plaintiff was coming from, but nothing changed with respect to overtime pay.

65. Although Defendants had a legal obligation to do so, Defendants did not make, keep, or preserve adequate or accurate records of the hours worked by Plaintiffs and the other similarly situated individuals.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

66. Plaintiffs restate and incorporate by reference the above paragraphs as if fully set forth herein.

67. Plaintiffs bring Count I individually and on behalf of the putative FLSA Collective.

68. Plaintiffs file this action on behalf of themselves and all other similarly situated individuals. The putative FLSA Collective is defined as follows:

Any individual who: (1) worked/works in Virginia for the Anthem, Inc. (or one of its subsidiaries) in the Medical Management Nurse or Utilization Review Nurse Family, (2) was/is paid a salary, (3) was/is treated as exempt from overtime laws, (4) worked/works over forty (40) hours during any week, and (5) was/is primarily responsible for performing medical necessity reviews at any time since June 3, 2019.

69. Plaintiffs have consented in writing to be a part of this action pursuant to 29 U.S.C. § 216(b). Plaintiff Midkiff's signed consent form was attached as Exhibit A to the First Amended Complaint, ECF No. 19-1. In addition, at the time the initial complaint was filed, three (3) other individuals had consented in writing to be a part of this action. Their consent forms were attached as Exhibit B to the First Amended Complaint, ECF No. 19-2. Other individuals, including Plaintiff Brown, have since filed consent forms and have joined this case as "opt-in" plaintiffs. (*See Brown's consent, Dkt. 56-1 at p. 4.*)

70. During the applicable statutory period, Plaintiffs and the other similarly situated individuals routinely worked in excess of forty (40) hours in a workweek without receiving overtime compensation for their overtime hours worked.

71. Defendants willfully engaged in a pattern of violating the FLSA, as described in this Complaint in ways including, but not limited to, requiring Plaintiffs and the other similarly situated individuals to work excessive hours and failing to pay them overtime compensation.

72. Defendants are liable under the FLSA for failing to properly compensate Plaintiffs and the putative FLSA Collective. Accordingly, notice should be sent to the putative FLSA Collective. There are numerous similarly situated current and former employees of Defendants who have suffered from Defendants' practice of denying overtime pay, and who would benefit from the issuance of court-supervised notice of this lawsuit and the opportunity to join. Those similarly situated employees are known to Defendants and are readily identifiable through their records.

73. Plaintiff Midkiff and the individuals with consent forms attached at Exhibit B to the First Amended Complaint, ECF No. 19-2, were previously opt-in Plaintiffs in the FLSA collective action in the U.S. District Court for the Western District of Tennessee titled *Laura Canaday, et al. v. The Anthem Companies, Inc.*, case number 1:19-cv-01084-STA-jay. The *Canaday* court limited the scope of the conditionally certified collective to individuals who worked for The Anthem Companies, Inc. within the state of Tennessee.

### **CLASS ALLEGATIONS**

74. Plaintiff Brown brings this lawsuit as a class action pursuant to Federal Rule of Civil Procedure 23. She sues on behalf of herself and the following Virginia Rule 23 Class:

Any individual who: (1) worked/works in Virginia for the Anthem, Inc. (or one of its subsidiaries) in the Medical Management Nurse or Utilization Review Nurse Family, (2) was/is paid a salary, (3) was/is treated as exempt from overtime laws, (4) worked/works over forty (40) hours during any week, and (5) was/is primarily responsible for performing medical necessity reviews at any time since July 1, 2021.

75. On July 1, 2021, Code of Virginia § 40.1-29.2 known as the Virginia Overtime Wage Act (“VOWA”) was newly enacted and went into effect for employers in Virginia, and for the first time provided employees in Virginia with a state law right of action to cover overtime premiums for all work performed in excess of 40 hours per week. A copy of VOWA as effective July 1, 2021 is attached hereto as Exhibit A.

76. On July 1, 2022, VOWA was amended to follow the FLSA and applicable federal regulations. A copy of VOWA as effective July 1, 2022 is attached hereto as Exhibit B.

77. Class action treatment of Plaintiff Brown’s VOWA claims are appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

78. The class, upon information and belief, includes dozens of individuals, all of whom are readily ascertainable based on Defendants’ business records and are so numerous that joinder of all class members is impracticable. Plaintiffs estimate that as many as 284 individuals are putative class members for the VOWA claims.

79. Plaintiff Brown is a class member, and her claims are typical of the claims of other class members, and she has no interests that are antagonistic to or in conflict with the interests of other class members.

80. Plaintiff Brown and her lawyers will fairly and adequately represent the class members and their interests.

81. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant’s common compensation policies, as described herein. The legality of these policies will be determined through the application of generally applicable legal principles to common facts.

82. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

### **CAUSES OF ACTION**

#### **COUNT I – VIOLATION OF THE FAIR LABOR STANDARDS ACT**

##### **FAILURE TO PAY OVERTIME**

##### **(On Behalf of Plaintiffs and the Putative FLSA Collective)**

83. Plaintiffs restate and incorporate by reference the above paragraphs as if fully set forth herein.

84. The FLSA, 29 U.S.C. § 207, requires employers to pay non-exempt employees one and one-half times the regular rate of pay for all hours worked over forty (40) hours per workweek.

85. Defendants suffered and permitted Plaintiffs and the other similarly situated individuals to routinely work more than forty (40) hours in a workweek without overtime compensation.

86. Defendants' actions, policies, and practices described above violate the FLSA's overtime requirement by regularly and repeatedly failing to compensate Plaintiffs and the other similarly situated individuals their required overtime compensation.

87. As the direct and proximate result of Defendants' unlawful conduct, Plaintiffs and the other similarly situated individuals have suffered and will continue to suffer a loss of income and other damages. Plaintiffs and the other similarly situated individuals are entitled to liquidated damages and attorneys' fees and costs incurred in connection with this claim.

88. By failing to accurately record, report, and/or preserve records of hours worked by Plaintiffs and the other similarly situated individuals, Defendants have failed to make, keep, and preserve records with respect to each of their employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of the FLSA, 29 U.S.C. § 201, *et seq.*

89. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a). Defendants knew or showed reckless disregard for the fact that their compensation practices were in violation of these laws.

**COUNT II - VIOLATION OF VA. CODE § 40.1-29.2 (VIRGINIA OVERTIME WAGE  
ACT)**  
**(On Behalf of Plaintiff Brown and the Putative Rule 23 Class)**

90. Plaintiff Brown restates and incorporates by reference the above paragraphs as if fully set forth herein.

91. Since July 1, 2021, Defendants have been “employers” within the meaning of VOWA.

92. Since July 1, 2021, Plaintiff Brown and those similarly situated have met the definition of “employee” within the meaning of VOWA.

93. Plaintiff Brown and the putative Virginia Rule 23 Class were or have been employed by Defendants in Virginia at any time since July 1, 2021, and have been covered employees entitled to the protections of VOWA.

94. Defendants are not exempt from paying Plaintiff Brown and the Virginia Rule 23 Class overtime premiums in accordance with VOWA.

95. Since July 1, 2021, Defendants have violated VOWA by failing to pay Plaintiff, and those similarly situated an overtime premium for all hours worked beyond 40 hours per week.

96. Defendants knew that Plaintiff Brown and the Rule 23 Class members were not paid overtime wages for all hours worked over 40 hours per week. Defendants knowingly or willfully failed to pay Plaintiff and the Rule 23 Class members all overtime wages due.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and the putative FLSA Collective and Virginia Rule 23 Class pray for judgment against Defendants as follows:

- A. Designation of this action as a collective action on behalf of Plaintiffs and those similarly situated, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all those similarly situated, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consent forms;
- B. A finding that Plaintiffs and the FLSA Collective are non-exempt employees entitled to protection under the FLSA;
- C. A finding that Defendants violated the overtime provisions of the FLSA;
- D. Judgment against Defendants in the amount of Plaintiffs' and the putative FLSA Collective's and Rule 23 Class Members' unpaid back wages at the applicable overtime rates;
- E. Certification of a class pursuant to Fed. R. Civ. P. 23 on the VOWA claims;
- F. An award of all damages, liquidated damages, triple damages, pre-judgment interest and post-judgment interest;
- G. An award of attorneys' fees and costs incurred in prosecuting this action;
- H. Leave to add additional plaintiffs and/or state law claims by motion, the filing of written consent forms, or any other method approved by the Court; and
- I. For such other and further relief, in the law or equity, as this Court may deem appropriate and just.

DATED: July 27, 2023

Respectfully Submitted,  
Winifred Midkiff and Ardaith Brown, individually  
and on behalf of all others similarly situated

By: /s/ Craig J. Curwood  
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**Attorneys for Plaintiffs, the FLSA Collective,  
and Putative Rule 23 Class**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of July, 2023, I have filed the foregoing document with the Clerk of the Court via CM/ECF which will send electronic notification of such filing to all counsel of record.

/s/ Craig J. Curwood  
Craig J. Curwood (VSB No. 43975)