

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Superior Court Department
of the Trial Court

MARY RACHEL NALEHUA, individually
and for all others similarly situated,

Plaintiffs,

v.

TRUSTEES OF BOSTON UNIVERSITY
and MELISSA L. GILLIAM, M.D., in her
official capacity as PRESIDENT OF
BOSTON UNIVERSITY,

Defendants.

Case No. _____

JURY DEMANDED

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CLASS ACTION COMPLAINT

Introduction

1. Mary Rachel Nalehua is a graduate student at Boston University (BU), one of the nation's largest private research institutions. She brings this class action individually and for all other similarly situated graduate student workers whom BU has failed to timely pay their earned wages in violation of the Massachusetts Wage Act, M.G.L. c. 149, § 148.

2. BU offers graduate degrees in more than 225 programs. Numerous graduate students who participate in these programs perform compensable work for BU – e.g., conducting research for the advisors, performing laboratory or technical work for research faculty, acting as teaching assistants for undergraduate courses, reviewing assignments and grading papers, etc. In exchange for this work, BU pays the graduate students fixed sums, called “service stipends,” generally on a weekly basis.

3. On March 25, 2024, BU's graduate student workers voted to go on strike in an effort to improve their economic and working conditions. In response, BU implemented a new compensation policy for the graduate student workers: they would now be required to submit weekly written "attestations" that they performed compensable work in order to get paid. Due to the hasty and haphazard manner in which BU "rolled out" that policy, however, numerous graduate student workers have consistently failed to receive all their earned wages in a timely manner – instead being paid weeks and, in some instances, months late – as required by the Wage Act.

4. Like most graduate student workers at BU, Nalehua has not participated in the strike. But as with many other graduate student workers in similar circumstances, BU has failed to timely pay Nalehua the wages she is owed for the work she has performed since the strike commenced in March 2024. The same is true for numerous other graduate students at BU, who have continued to perform compensable work throughout the strike but who have not received their wages, timely and in full, in violation of the Wage Act's requirements.

5. In this action, Nalehua seeks certification of the following class pursuant to Massachusetts Rule of Civil Procedure 23: all individuals who have performed services as "graduate student workers" in connection with a graduate degree program at BU, and who have failed to timely receive payment of any portion of a "service stipend," at any time since March 25, 2024. Individually and for that proposed class, Nalehua seeks monetary damages for all untimely service stipend payments, interest, and attorneys' fees and costs.

Jurisdiction & Venue

6. The Superior Court has jurisdiction here pursuant to M.G.L. c. 212, § 3, because this is a civil action for money damages where there is a reasonable likelihood that the plaintiff will recover more than \$50,000 in damages for the proposed class members.

7. Venue is proper in Suffolk County pursuant to M.G.L. c. 223, § 1, because this is a transitory action, both parties are residents of Boston, and because the acts and occurrences giving rise to this dispute occurred in Suffolk County.

The Parties

8. Mary Rachel Nalehua is an adult resident of Boston, Massachusetts. Since July 1, 2019, Nalehua has worked in the Ph.D. Bioinformatics Program at BU's Graduate School of Arts and Sciences, College of Engineering.

9. Nalehua brings this action individually and for all "others similarly situated," as set forth in M.G.L. c. 149, § 150 and pursuant to Mass. R. Civ. P. 23. Subject to later amendment or revision, Nalehua seeks to represent the following class:

all individuals who have performed services as "graduate student workers" in connection with a graduate degree program at BU, and who have failed to timely receive payment of any portion of a "service stipend," at any time since March 25, 2024.

10. The Trustees of BU (the "Trustees") is the governing body chartered by the Massachusetts Legislature to administer BU, including managing and overseeing its academic, financial, and business affairs.

11. Dr. Melissa L. Gilliam is the current President of BU (the "President"). In her capacity as President, Dr. Gilliam is responsible for the day-to-day affairs and management of BU.

Statement of Facts

A. BU and Graduate Student Workers.

12. BU is a private research and education institution that maintains its primary campus and facilities in Boston, Massachusetts.

13. BU is managed by the Trustees. Among other things, the Trustees are responsible for selecting the President and overseeing BU's administrative team.

14. The President is elected by the Board of Trustees and is responsible for managing BU's overall operations and daily affairs, including its employee compensation practices.

15. The Trustees and the President are "employers" because they control, direct, and participate to a substantial degree in formulating and determining employment policies at BU.

16. Each year, BU admits hundreds of individuals into various graduate degree programs facilitated by its constituent schools and colleges.

17. Many of these graduate students perform work in connection with their programs, but which is not directly related to advancing their degree.

18. The work performed by BU's graduate students includes a variety of compensable tasks that are not central to their educational experience.

19. For example, BU's graduate students perform research for their advisors and laboratory work for faculty. Other provide undergraduate teaching and grading assistance.

20. In exchange for this work, BU pays its graduate student workers annual sums, akin to a salary, which it calls a "service stipend" or "service fellowship."

21. The amount of the service stipend varies based on school, program, and academic calendar, but generally ranges from about \$25,000 to about \$45,000 per year.

22. BU requires graduate student workers to perform up to 20 hours of work per week – or, in certain cases, up to 1,500 hours annually – in order to receive a service stipend.

23. By contrast, BU offers "non-service stipends" to certain graduate students, who are not expected to perform any work in exchange for those payments.

24. In fact, BU does not require first-year graduate students to perform any work other than academic work towards their degrees, while still paying them a stipend.

25. Unlike the non-service stipends, BU treats service stipends as “wages” for tax purposes, for which it issues the students W-2 forms.

26. BU also prohibits graduate students who receive service stipends from accepting employment outside the University.

27. BU periodically adjusts the amount of the service stipends it pays to the graduate students to account for inflation and cost-of-living.

28. Certain graduate students are required to sign “funding contracts” concerning their service stipends in order to qualify for payment of those sums.

29. For example, Nalehua was required to sign a funding contract in connection with her work. That contract stated:

In exchange for my per-semester support stipend, I agree to work a minimum of 20 hours/week if the semester falls within the academic year, and 39 hours/week if it falls within the summer term. I must have prior written approval from my research advisor before undertaking any other employment, either inside or outside the University. Because this appointment requires service to the University, I am aware that taxes may be deducted from the stipend portion of my award. I also agree to sign the University’s standard patent agreement form.

B. The Grad Student Strike and BU’s Response.

30. In December 2022, graduate students at BU voted 1,414 to 28 to form a union called the Boston University Graduate Workers Union, or BUGWU.

31. Over the next several months, BUGWU attempted to negotiate with BU concerning improvements to graduate student working conditions and compensation.

32. Negotiations were unsuccessful. Accordingly, between February 28 and March 11, 2024, BUGWU’s membership voted to strike. The strike commenced on March 25, 2024.

33. Participation in the strike was not substantial. In fact, by late April 2024, BU estimated that over 80 percent of graduate students were “back to work.”¹

34. Still, BU was determined to break the union.

C. The “Attestation” Process.

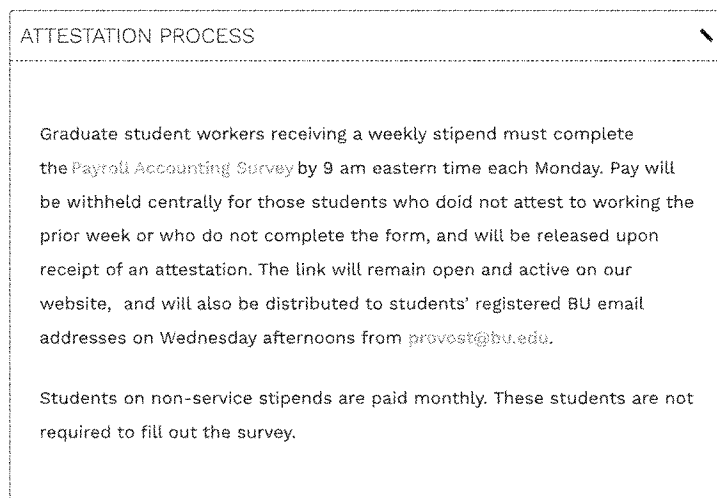
35. In response to the strike, BU announced that it would not pay service stipends to graduate student workers who did not submit weekly “attestations” about their work.

36. Prior to the strike, BU had never required graduate students to submit documentation concerning the work they performed in order to receive their stipends.

37. In fact, BU’s usual practice, prior to the strike, was to pay “salaried graduate students ... weekly, without payroll attestation, throughout the semester.”²

38. BU described the attestation process on a website it published called “Strike Payroll” as follows:

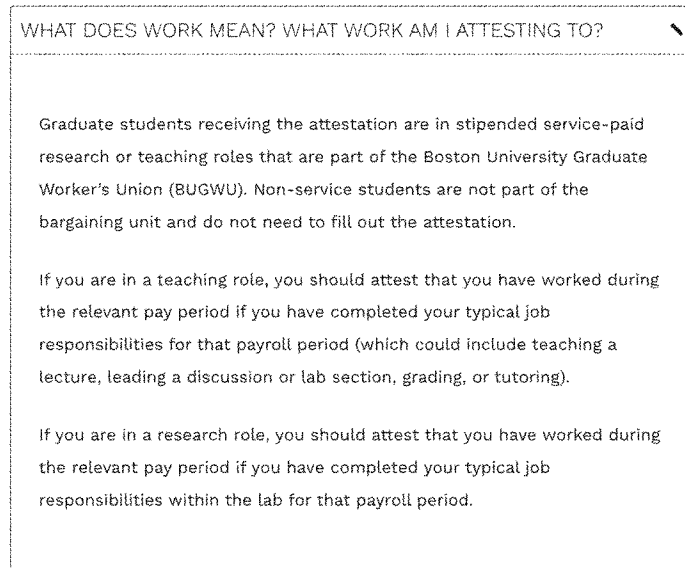
Stipended Graduate Student Workers



¹ Dr. Kenneth Lutchen, “Update to BU Community on Strike Activity and Bargaining,” Apr. 29, 2024, *available at* <https://www.bu.edu/provost/2024/04/29/update-to-the-bu-community-on-strike-activity-and-bargaining>.

² “BU Negotiations with BUGWU, SEIU Local 509: Strike Payroll,” *available at*: <https://www.bu.edu/provost/students/enrollment-student-life/bugwu-information/strike-payroll>.

39. BU also published certain FAQs concerning stipend payments during the strike on its website, including the following:



40. BU implemented the attestation process in a rushed and haphazard manner, without regard for statutory requirements concerning the payment of wages.

41. For example, for the first several months of the program, BU had no system for graduate student workers to file attestations late or for missed weeks.

42. Instead, graduate student workers who failed to timely submit attestations were required to obtain an attestation from their faculty advisor in order to get paid.

43. If a graduate student performed work but failed to submit an attestation and could not obtain a faculty attestation, BU would simply not pay that student.

44. BU blanket response to BUGWU's strike resulted in the University failing to pay numerous non-striking graduate students for work they performed.

45. For example, Nalehua – who has worked throughout BUGWU's strike – did not receive compensation for five pay periods in April and May 2024.

46. Nalehua contacted a BU administrator about her missing pay on May 13, 2024.

The administration responded merely by informing her about BU's new attestation policy.

47. In that communication, the administrator told Nalehua the following:

If you or your supervisor have submitted the attestations but you still experienced a gap in your payments, I recommend reaching out to unionfaq@bu.edu for assistance (be sure to include your UID, and feel free to attach the docs I've attached here). I have come across several instances of individuals experiencing that issue. In the majority of cases it was caused by late submission of the attestation or an error in the ID number entered.

48. On June 6, 2024, Nalehua again emailed the administrator to inquire about getting paid because she still had not received her stipend for most of April and May.

49. In response, the administrator informed Nalehua that her faculty advisor was required to "submit attestations for the weeks [she was] missing," but did not inform her how.

50. Effective July 1, 2024, BU modified the attestation program in response to the late payment issues affecting Nalehua and numerous other graduate student workers.

51. Following that modification, BU issued payments to numerous graduate student workers, including Nalehua, whose payments had previously been "missing."

52. Nalehua, for example, received the stipend payments she was originally owed from April and May on July 9, 2024.

53. BU did not include any additional sums on the late payments made to the graduate student workers to account for the delay in payment, such as interest.

54. Notwithstanding the changes made to the attestation process, BU continues to pay many graduate student workers "late" when, e.g., they fail to submit an attestation on time.

Class Allegations

55. Nalehua brings this action pursuant to M.G.L. c. 149, §§ 148 and 150, individually and for all others similarly situated, as defined herein. The proposed class she seeks to represent satisfies all the requirements for certification under Mass. R. Civ. P. 23.

56. The scope of the class is ascertainable based on objective criteria, including information, documents, and records maintained by BU concerning graduate student worker attestations and stipend payments.

57. The members of the class are so numerous that joinder of all of them is impracticable. The size of the proposed class is estimated to include hundreds of graduate student workers, many of whom are likely reluctant to bring suit against their current educational institution and employer. Joinder of all such individuals be inefficient and uneconomical.

58. Nalehua's claims are the same as the claims of the other class members because BU's policy of failing to fully and timely pay stipends to graduate student workers who fail to timely submit attestation forms, or to obtain signed attestation forms from their faculty advisors, has resulted in the same deprivation of earned wages.

59. Common questions of law and fact concerning the claims of the proposed class members predominate over any questions affecting individual class members, including whether, *inter alia*, BU has failed to fully and timely compensate graduate student workers for all their compensable work time.

60. Nalehua is typical of the proposed class because she and the proposed class members suffered similar losses and damages as a result of BU's consistent failure to timely pay the graduate student workers their earned wages for the work they performed. Further, the relief

sought by Nalehua is typical of the relief which could be sought by each member of the proposed class in separate actions.

61. Nalehua will adequately protect the interests of the proposed class members and has retained counsel who is qualified and experienced in the prosecution of wage-and-hour class actions. Neither Nalehua nor her counsel have interests that are contrary to, or conflicting with, the interests of the proposed class members.

62. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because, *inter alia*, it is economically infeasible for the proposed class members to prosecute individual actions on their own; indeed, current graduate student workers at BU may avoid doing so due to the fear of reprisal or harm to their reputation. Prosecution of this case as a class action will also eliminate the possibility of duplicative lawsuits being filed in other courts in Massachusetts.

Administrative Filing

63. On October 3, 2024, Nalehua filed her statutory claims with the Massachusetts Attorney General's Office, Fair Labor Division.

COUNT I

Failure to Pay Wages on a Timely Basis

M.G.L. c. 149, § 148

64. The Wage Act requires every "person having employees in his service" to pay those employees "weekly or bi-weekly" the "wages earned" by them:

to [1] within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week, or [2] to within seven days of the termination of the pay period during which the wages were earned if such employee is employed seven days in a calendar week, or [3] in the case of an employee who has worked for a period of less than five days ... within seven days after the termination of such period[.]

M.G.L. c. 149, § 148B, para. 1 (bracket numbering added).

65. “The ... language and purpose of the Wage Act require prompt payment of wages and the trebling of those wages as liquidated damages when they are paid late.” *Reuter v. City of Methuen*, 489 Mass. 465, 476 (2022). The goal of this “strict liability” requirement is to “protect wage earners from the long-term detention of wages from unscrupulous employers,” who must “suffer the consequences of violating the statute regardless of intent.” *Id.* at 468-69.

66. As alleged herein, BU has failed to pay Nalehua and numerous other graduate student workers their service stipend wages for work they performed within the time periods prescribed by the Act. As a result, BU has violated the Wage Act’s requirements concerning the timely payment of earned wages.

67. Nalehua brings this claim individually and for all others similarly situated pursuant to M.G.L. c. 149, §§ 148 and 150, and Mass. R. Civ. P. 23.

Jury Demand

68. Nalehua requests a trial by jury on all claims.

Prayer for Relief

69. Wherefore, Plaintiff Mary Rachel Nalehua respectfully requests that the Court enter judgment against Defendants Trustees of Boston University and Dr. Melissa L. Gilliam, M.B., in her official capacity as President of Boston University, and award the following relief:

- a. Certification of the proposed class pursuant to Mass. R. Civ. P. 23;
- b. Appointment of herself and the undersigned counsel as class representatives;
- c. Treble damages for all late-paid wages;
- d. Pre- and post-judgment interest;
- e. Attorneys’ fees and costs; and,

f. Any other relief to which Nalehua and the proposed class is entitled.

Respectfully submitted,
MARY RACHEL NALEHUA, individually
and for all others similarly situated,

By their attorneys,

/s/ Brant Casavant
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DATE: October __ 2024.