

Call Center Workers Win Cert. In Virus Screening Time Suit

By [Max Kutner](#) · July 22, 2021, 5:07 PM EDT

Call center workers claiming that a [Maximus Inc.](#) subsidiary paid improper overtime by making them respond to coronavirus health questions without pay can proceed as a conditional collective, a Florida federal judge ruled, saying the workers showed enough evidence they suffered from the same policy.

U.S. District Judge James I. Cohn conditionally certified the collective in an order Wednesday, saying the workers showed under a lenient standard that they were similarly situated with claims against Maximus Federal Services Inc., despite concerns about how long they said it took them to use the health screening application.

The difference between the amount of time the workers claimed the assessment took them to complete — up to 20 minutes daily — and the length other employees the company put forward said it took — up to 40 seconds — could cause certification issues later on, the judge said.

"Given the significant disparity," Judge Cohn said, "the court harbors serious reservations about plaintiffs' ability to satisfy the similarly situated element at the more stringent decertification stage."

But "at this conditional certification stage, however, the court 'does not resolve factual disputes, decide substantive issues going to the ultimate merits or make credibility determinations,'" the judge added, quoting case law.

The court would instead follow the district's April holding in *Wright v. Waste Pro USA Inc.* that the Eleventh Circuit supports the two-step process and that district courts in the circuit should continue to follow it, the judge said.

Under the lenient first step in the two-part inquiry, the Maximus workers were similarly situated enough to move forward together, the judge said.

The conditional collective consists of all current and former hourly Maximus Federal Services employees who used the health screening app since May 2020.

In Wednesday's order, Judge Cohn also denied a bid by Maximus to certify an interlocutory appeal on the decision to use the two-step certification process, saying the circumstances were not so exceptional as to warrant immediate review.

Four former call center workers sued in April. They alleged that Maximus Federal Services, a subsidiary of government services provider Maximus, violated the Fair Labor Standards Act by failing to pay proper overtime, stemming from the unpaid time they spent completing the health assessments.

The judge disagreed with Maximus that the court should follow the Fifth Circuit's January holding in *Swales v. KLLM Transport Services LLC* that district courts should "rigorously scrutinize" whether workers are similarly situated and make a single certification determination instead of going through a two-step process.

In response to COVID-19, the workers had to answer daily health screening questions on a mobile app, according to the suit. Doing so would take 15 to 20 minutes each day, for which they did not receive compensation, they claimed. COVID-19 is the respiratory ailment caused by the coronavirus.

The workers filed for conditional certification in May. They argued that in addition to the four workers who brought the suit, three more workers opted in and backed the claims.

In early July, the company pushed back on the certification bid and put forward declarations by two managers and nine employees who said the health screenings took at most 40 seconds, and by a data analyst saying the average time spent was 32 seconds.

Chad E. Levy, representing the workers, said in a statement to Law360 on Thursday that the workers all faced the same policy.

"This was a universal policy for all employees that did not take into account the time it would take to complete the questionnaires or any other issues that would arise with completing it," Levy said. "It resulted in uncompensated time for all employees. It is just a question of how much time."

Counsel for Maximus did not immediately respond to a request for comment.

A Maximus spokesperson declined to comment.

The workers are represented by David Mitchell Cozad and Chad Evan Levy of the [Law Offices of Levy & Levy PA.](#)

Maximus is represented by Robert R. Hearn, Adriana S. Kosovych and Paul DeCamp of [Epstein Becker Green.](#)

The case is Fatma Ferjani et al. v. Maximus Federal Services Inc., case number [0:21-cv-60770](#), in [U.S. District Court for the Southern District of Florida.](#)

--Editing by Neil Cohen.

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