



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ROBERT HUNT

Plaintiff

- and -

UNITED PARCEL SERVICE CANADA LTD.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____

Issued by _____
Local registrar

Address of 330 University Avenue, 8th Floor
court office: Toronto, ON M5G 1R7

TO: **United Parcel Service Canada Ltd.**
1930 Derry Road East
Mississauga, ON L5S 1E2

CLAIM

1. The plaintiff claims on his own behalf and on behalf of the other Class Members as against the defendant, United Parcel Service Canada Ltd. (“UPS”):¹
 - (a) damages and/or disgorgement in an amount to be provided prior to trial;
 - (b) punitive damages in an amount to be provided prior to trial;
 - (c) an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended (the “CPA”);
 - (d) an order appointing the plaintiff as representative plaintiff on behalf of the Class pursuant to the CPA;
 - (e) an order defining the Class as set out in paragraph 8;
 - (f) a declaration that the terms of Part III of the *Canada Labour Code*, R.S.C. 1985, c. L-2, as amended (the “CLC”), are implied terms of the Class Members’ employment contracts;
 - (g) a declaration that all compensation paid to the Class Members under the SIP and MIP is “wages” within the meaning of section 166 of the CLC;
 - (h) a declaration that UPS breached the CLC by failing to pay the Class Members the minimum vacation pay and general holiday pay required by the CLC;

¹ Capitalized terms not defined in paragraph 1 are defined below.

- (i) a declaration that the Class Members are owed vacation pay and general holiday pay on all amounts paid under the SIP and MIP;
- (j) a declaration that UPS breached its employment contracts with the Class Members by failing to pay them the minimum vacation pay and general holiday pay prescribed by the *CLC*;
- (k) a declaration that UPS was negligent and breached its duty of care to the Class Members by failing to take reasonable steps to ensure that it paid the Class Members the vacation pay and general holiday pay required by the *CLC*;
- (l) a declaration that UPS is in breach of trust to the Class Members by failing to remit funds for vacation pay and general holiday pay to Class Members when those funds were impressed with a trust for the benefit of the Class Members;
- (m) a declaration that UPS was unjustly enriched by its failure to pay the Class Members their vacation pay and general holiday pay on all amounts paid under the SIP and MIP, and an order requiring UPS to pay restitution to Class Members for the amounts it failed to remit;
- (n) a declaration that UPS breached its contracts with Class Members by improperly excluding vacation pay and general holiday pay on amounts paid under the SIP and MIP in calculating their pension entitlements;
- (o) costs of providing notice to the Class Members in respect of this action;

- (p) an order, if necessary, directing the process for determination of individual damages, disgorgement and/or restitution;
- (q) costs of distributing the proceeds of any judgment and/or order to the Class Members;
- (r) pre-judgment and post-judgment interest at the rate of return Class Members would have achieved on a reasonably prudent investment, compounded monthly, or, in the alternative, at the rate provided under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”), compounded monthly;
- (s) costs of this action; and
- (t) such further and other relief as this Court considers just.

A. The plaintiff

- 2. The plaintiff, Robert Hunt (“Hunt”), has been employed by UPS for 28 years, since 1997. He is a resident of Hamilton, Ontario.
- 3. Hunt and each of the other Class Members is or was a non-unionized employee of UPS who received compensation under the Sales Incentive Plan (“SIP”) and/or Management Incentive Plan (“MIP”).

B. The defendant

- 4. The defendant, UPS, is a corporation incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.

5. UPS offers logistics, and packages and freight transportation, services to the public.
6. UPS is a federally-regulated employer, employing approximately 13,500 employees, including unionized and non-unionized employees, across Canada.
7. The *CLC* regulates the employment relationship between UPS and all of its employees.

C. *The Class*

8. The plaintiff brings this action pursuant to the *CPA* on behalf of the following class (the “Class” and “Class Members”):

All individuals who (a) were and/or are employees of UPS, (b) were and/or are not members of a bargaining agent, and (c) received amounts under the UPS Sales Incentive Plan and/or the UPS Management Incentive Plan.

D. *The incentive plans*

9. Two plans govern incentive-based compensation for non-unionized sales and/or management employees of UPS. Some employees are eligible for compensation under both plans.

1. *Sales Incentive Plan (“SIP”)*

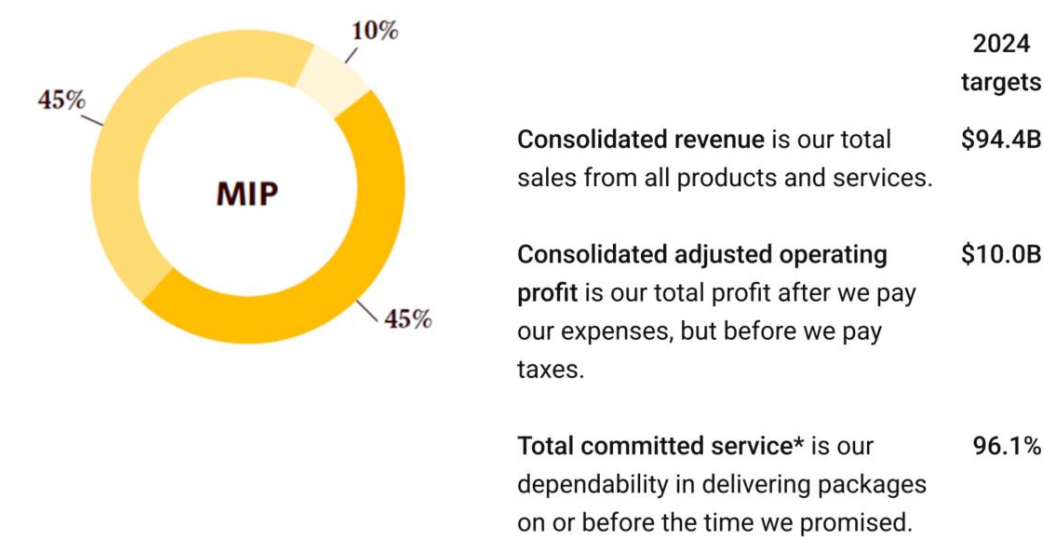
10. Employees who are in sales positions, including (without limitation) Inside Sales Representatives, Inside Sales Coordinators, Sales Supervisors, Account Executives, Senior Account Executives, Area Sales Managers, Segment Managers, Directors of Sales, Enterprise Account Managers and Enterprise Segment Managers, are eligible to participate in the SIP.

11. Under the SIP, employees have a Target Pay, which is the amount paid to the employee when all sales compensation targets are met. Actual compensation under the SIP may be higher or lower than the Target Pay and is dependent on the performance of the employee as compared to their sales compensation targets.
12. Payments under the SIP ("SIP Earnings") are calculated quarterly, based on year-to-date performance, and paid no later than eight weeks after the end of each performance period.

2. Management Incentive Plan ("MIP")

13. Employees who are in management positions, including (without limitation) the CEO and other members of the Executive Leadership Team, Region Managers, District Managers, Region Staff Managers, District Staff Managers, Mid Managers and Supervisors, are eligible to participate in the MIP.
14. The stated objectives of the MIP include aligning incentive pay with annual performance and aligning the interests of employees and shareholders by strengthening the link between key business objectives and incentive compensation.
15. The MIP award for eligible employees is determined by the "MIP Target Award", which is a percentage, typically ranging from 10% to 200%, of the employee's salary based on their position, multiplied by the "MIP Factor" for the plan year.

16. The MIP Factor is determined by the performance of various business elements, as determined by the Management Compensation Committee.
17. An “Everything you need to know about MIP” document provided to eligible employees in 2024 explains that “MIP is a performance-based bonus with three enterprise-level metrics”. The three enterprise-level metrics used to determine the MIP Factor in 2024 were as follows:



**We calculate this measure by looking at where the package is coming from and where it's going. Bad weather, emergencies or natural disasters do not count against our total committed service result.*

18. Payments under the MIP (“MIP Earnings”) are made on an annual basis, typically by March 15 following the end of the applicable plan year (which runs from January 1 to December 31). Employees may elect to have their MIP Earnings paid in cash, UPS Class A shares or to their RRSP, or a combination of the three.

E. CLC entitlements to vacation pay and general holiday pay

19. The CLC requires federally-regulated employers, including UPS, to provide vacation and general holiday pay.
20. Vacation and general holiday pay allow employees to take time off without loss of pay for vacations and for holidays.
21. The purpose of the CLC entitlements to vacation and general holiday pay is to benefit employees, not employers.

1. Vacation pay

22. The CLC requires federally-regulated employers, including UPS, to provide their employees with annual vacation with pay. The duration of the employee's minimum annual vacation with "vacation pay" depends on the length of the employee's tenure:

Annual vacation with pay

184 Except as otherwise provided by or under this Division, in respect of every year of employment by an employer, every employee is entitled to and shall be granted a vacation with vacation pay of

(a) at least two weeks if they have completed at least one year of employment;

(b) at least three weeks if they have completed at least five consecutive years of employment with the same employer; and

(c) at least four weeks if they have completed at least 10 consecutive years of employment with the same employer.

23. “Vacation pay” is calculated under the *CLC* based on the length of an employee’s tenure and their “wages”:

Calculation of vacation pay

184.01 An employee is entitled to vacation pay equal to:

- (a) 4% of their wages during the year of employment in respect of which they are entitled to the vacation;
- (b) 6% of their wages during the year of employment in respect of which they are entitled to the vacation, if they have completed at least five consecutive years of employment with the same employer; and
- (c) 8% of their wages during the year of employment in respect of which they are entitled to the vacation, if they have completed at least 10 consecutive years of employment with the same employer.

24. Under the *CLC*, employers are required to pay vacation pay on an ongoing basis, and any vacation pay owing at the time of termination in respect of any prior completed year of employment must be paid within 30 days:

Termination of employment during year

188 When an employee ceases to be employed, the employer shall pay to the employee within 30 days after the day on which the employee ceases to be employed

- (a) any vacation pay then owing by the employer to the employee under this Division in respect of any prior completed year of employment; and
- (b) the applicable percentage, under section 184.01, of the wages of the employee during any part of the completed portion of their year of employment in respect of which vacation pay has not been paid to them.

25. As a result, under the *CLC*, entitlement to vacation pay owing “in respect of any prior completed year of employment” arises 30 days after the termination of an employee’s employment.

2. General holiday pay

26. The *CLC* also provides employees with paid “general holidays” (known more commonly as statutory holidays):

Entitlement to holidays

192 Except as otherwise provided by this Division, every employee is entitled to and shall be granted a holiday with pay on each of the general holidays falling within any period of his employment.

27. The *CLC* provides a calculation for general holiday pay, based on an employee’s “wages”:

Holiday pay

196 (1) Subject to subsections (2) and (4), an employer shall, for each general holiday, pay an employee holiday pay equal to at least one twentieth of the wages, excluding overtime pay, that the employee earned with the employer in the four-week period immediately preceding the week in which the general holiday occurs.

3. “Wages”

28. Vacation pay and general holiday pay under the *CLC* are calculated on the basis of an employee’s “wages”.
29. Pursuant to section 166 of the *CLC*, “wages includes every form of remuneration for work performed but does not include tips and other gratuities.”

30. SIP Earnings and MIP Earnings are a form of remuneration for work performed by employees, and they are not “tips” or “other gratuities”.

31. SIP Earnings and MIP Earnings are “wages” under the *CLC*.

F. UPS’s vacation pay policy

32. Until January 2024, UPS paid vacation pay on the basis of salary and hourly wages; however, UPS did not pay vacation pay on SIP Earnings or MIP Earnings.

33. In January 2024, UPS updated its vacation policy for all non-unionized employees (the “2024 Vacation Policy”).

34. The 2024 Vacation Policy confirmed that the vacation pay entitlement for salaried employees was as follows:

| Years of Service | Vacation Time per Vacation Year | | Vacation Pay Earned per Month of Service | |
|------------------|---------------------------------|----------|------------------------------------------|--------------------|
| | Weeks | Days [1] | Weeks of Salary | Days of Salary [1] |
| 0 to 4 | 2 weeks | 10 days | 0.167 weeks | 0.834 days |
| 5 to 9 | 3 weeks | 15 days | 0.25 weeks | 1.25 days |
| 10 to 19 | 4 weeks | 20 days | 0.333 weeks | 1.67 days |
| 20 to 24 | 5 weeks | 25 days | 0.417 weeks | 2.08 days |
| 25 or more | 6 weeks | 30 days | 0.5 weeks | 2.5 days |

[1] Days applicable only to employees in positions with a five (5) day workweek.

35. The vacation pay rate for hourly paid employees under the 2024 Vacation Policy was as follows:

| Completed Years of Service | Vacation Pay Rate |
|----------------------------|-------------------|
| 0 to 4 | 4.5% |
| 5 to 9 | 6.5% |
| 10 to 19 | 8.5% |
| 20 to 24 | 10.5% |
| 25 or more | 12.5% |

36. The 2024 Vacation Policy also stated that vacation pay will be paid on SIP Earnings at the end of each year:

For Salaried Employees who are also eligible for a SIP – in addition to the Vacation Pay earned as per paragraph 1, above, at the end of each Year of Employment (December 31) the Employee's Vacation Pay Bank will also be credited with an amount equal to their SIP Earnings during the Year of Employment multiplied by the applicable Vacation Pay Rate (as per the chart in paragraph 2 above).

37. "Earnings" is defined in the 2024 Vacation Policy as follows:

"Earnings" – means any pay received in respect of the following:

- Straight-time/regular pay
- Overtime pay
- Holiday pay
- Paid leave as provided under Part II of the *Canada Labour Code*
- Personal paid holidays (PPH)
- Vacation pay
- Pay pending a decision on maternity-related reassignment/leave
- Pay received during an administrative suspension
- SIP

38. As a result, since January 2024, UPS has paid vacation pay not only on salary and hourly wages, but also SIP Earnings.

39. Later in 2024, employees received payments, which they were told were retroactive payments for vacation pay on SIP Earnings for 2022 and 2023.

However, no retroactive payments have been made for vacation pay on SIP Earnings before 2022.

40. Employees are entitled to receive vacation pay on their SIP Earnings during their entire tenure as employees, including the period before 2022.
41. UPS's failure to provide employees' vacation pay on their pre-2022 SIP Earnings is contrary to the *CLC* and their employment contracts.
42. There was no change in UPS's policy or practice with respect to the payment of vacation pay on MIP Earnings. As a result, employees have not been and still are not paid vacation pay on MIP Earnings.
43. Employees are entitled to receive vacation pay on their MIP Earnings during their entire tenure as employees. UPS's failure to provide them with their vacation pay on their MIP Earnings is contrary to the *CLC* and their employment contracts.

G. UPS's failure to pay general holiday pay

44. UPS has not paid general holiday pay on employees' SIP Earnings or MIP Earnings. Its failure to do so is contrary to the *CLC* and their employment contracts.

H. Impact on pension value

45. The UPS Canada Retirement Plan (the "Pension Plan") comprises a Defined Benefit and a Defined Contribution portion:
 - (a) The Defined Benefit portion is based on an employee's years of service and their best five consecutive years of pay over the last ten years.

- (b) The Defined Contribution portion is based on employee and employer contributions, which are based on an employee's eligible earnings.
46. The Defined Benefit portion of the Pension Plan was frozen as of December 31, 2023.
47. Effective January 1, 2024, employees received an enhanced Defined Contribution component in which employees could contribute a higher percentage of their salary and UPS contributed 12% of an employee's eligible earnings to the plan.
48. In 2024, UPS began including vacation pay on SIP Earnings in the calculations for the Defined Contribution portion. Prior to this time, vacation pay on SIP Earnings was not included in the calculation of the Defined Benefit or Defined Contribution portions of the Pension Plan.
49. Vacation pay on MIP Earnings has never been and is not included in the calculation of the Defined Benefit or Defined Contribution portions of the Pension Plan.
50. UPS's policy and practice of failing to provide vacation pay and general holiday pay on SIP Earnings and MIP Earnings has the effect of understating the value of both portions of the Pension Plan:
- (a) Under the Defined Benefit portion, the best five consecutive years of pay over the last ten years for an employee is understated to the extent that it excludes vacation pay and general holiday pay on SIP Earnings and MIP Earnings from those calculations; and

(b) Under the Defined Contribution portion, UPS's contribution is understated to the extent that it excludes vacation pay and general holiday pay on SIP Earnings and MIP Earnings in the calculation of an employee's eligible earnings.

I. The plaintiff's experience with UPS

51. Hunt has been an employee of UPS since 1997. Hunt currently holds the position of Enterprise Account Manager. Hunt is a high-performing and committed employee of UPS. He continues to work diligently on behalf of UPS.
52. Hunt has received MIP Earnings since 1998 and SIP Earnings since 2001.
53. In 2024, Hunt received retroactive payments, representing his vacation pay on his SIP Earnings for 2022 and 2023.
54. In accordance with the 2024 Vacation Policy, beginning in 2024, Hunt has received vacation pay on his SIP Earnings, which was paid on a quarterly basis following the payment of each SIP award.
55. However, UPS has not paid Hunt any vacation pay on his SIP Earnings for any amounts paid between 2001 and 2021 (inclusive).
56. UPS has not paid any vacation pay on any of Hunt's MIP Earnings since 1998.
57. UPS has not paid any general holiday pay on any of Hunt's SIP Earnings since 2001 or his MIP Earnings since 1998.

58. Hunt has not yet begun receiving any payments under the Pension Plan. However, his pension entitlements upon retirement will be lower than what they would have been had UPS included vacation pay and general holiday on all SIP Earnings and MIP Earnings during his tenure as an employee.

J. UPS is liable to the Class

59. UPS has engaged in breach of contract, negligence, breach of trust, and/or has been unjustly enriched by failing to provide the Class Members with their statutory entitlements.
60. Accordingly, UPS is liable to the Class Members for all unpaid vacation and general holiday pay and is liable for any corresponding loss to the pension value of the plaintiff and the other Class Members.

1. Breach of contract

61. UPS's employment agreements with the plaintiff and the other Class Members contain an express or implied term to include the provisions of the *CLC* and/or that UPS will comply with the *CLC*.
62. In failing to pay vacation pay and general holiday pay in accordance with the *CLC*, UPS has breached its employment agreements with the plaintiff and the other Class Members.
63. The plaintiff and the other Class Members have suffered damages as a result of UPS's breach of contract. The damages include the amount of vacation pay and

general holiday pay UPS failed to remit and the loss to the value of their pensions, where applicable.

2. Negligence

64. UPS owes the plaintiff and the other Class Members duties under the *CLC* to provide vacation pay and general holiday pay, and systemically breached those duties by failing to comply with its statutory obligations.
65. UPS owes the plaintiff and the other Class Members a duty of care to take reasonable steps to ensure that the plaintiff and the other Class Members received all of their statutory entitlements under the *CLC*.
66. By engaging in the conduct set out above, UPS failed to meet the requisite standard of care.
67. The plaintiff and the other Class Members suffered damages as a result of UPS's negligence.

3. Breach of trust

68. UPS holds the vacation pay and general holiday pay it ought to have remitted to the plaintiff and the other Class Members in trust for the benefit of the plaintiff and the other Class Members.
69. By failing to remit those statutory entitlements to the plaintiff and the other Class Members, UPS engaged in breach of trust.
70. UPS is required to disgorge any and all benefit it obtained as a result of its breach of trust. Alternatively, the plaintiff and the other Class Members suffered losses as

a result of UPS's breach of trust, and the plaintiff and the other Class Members are entitled to equitable compensation, disgorgement, or damages.

4. *Unjust enrichment*

71. UPS has been unjustly enriched by retaining vacation pay and general holiday pay to which the plaintiff and the other Class Members are entitled in breach of the *CLC*, and the plaintiff and the other Class Members suffered a corresponding deprivation. There is no juristic reason for UPS's enrichment, nor is there a juristic reason for the deprivation suffered by the plaintiff and the other Class Members.
72. The plaintiff and the other Class Members are entitled to disgorgement and/or restitution of the amounts by which UPS was unjustly enriched.

5. *Punitive damages*

73. UPS knowingly imposed a policy in which it failed to comply with its obligations under the *CLC* to provide vacation pay and general holiday pay on SIP Earnings and MIP Earnings to the plaintiff and the other Class Members.
74. Such conduct flagrantly violated UPS's obligations under the *CLC*, at common law, and in equity. Such egregious conduct justifies an award of punitive damages in an amount the Court considers appropriate.

6. *Time value of money*

75. UPS has had the benefit of amounts unlawfully withheld from the plaintiff and the other Class Members and has benefitted from its unlawful retention of those funds. UPS should not be permitted to retain enormous benefits at the expense of the plaintiff and the other Class Members, who are or were its employees.

76. The plaintiff and the other Class Members were denied amounts to which they were entitled under the *CLC* and have been unable to make use of those funds. They are entitled to pre-judgment interest at the rate of return they would have achieved on a reasonably prudent investment, compounded monthly.

77. In the alternative, the plaintiff and the other Class Members are entitled to pre-judgment interest at the rate provided under the *CJA*, compounded monthly.

K. Legislation and place of trial

78. The plaintiffs and the other Class Members plead and rely on the *CPA*, *CLC*, *CJA*, and *Pension Benefits Standards Act, 1985*, R.S.C. 1985, c. 32 (2nd Supp.), as amended.

79. The plaintiffs and the other Class Members propose that this action be tried in the City of Toronto.

August 12, 2025

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ROBERT HUNT
Plaintiff

-and-

Court File No.
UNITED PARCEL SERVICE CANADA LTD.
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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