



DEPARTMENT OF LABOR
BUREAU OF LABOR STANDARDS
45 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0045

LAURA A. FORTMAN
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JANET T. MILLS
GOVERNOR

WAGE & HOUR DIVISION

MICHAEL ROLAND
DIRECTOR

July 5, 2023

Crafted Downeast, LLC
Elizabeth "Beth" Carpenter – Owner
Robert "Scott" Carpenter - Officer
1451 Cutler Road
Cutler, ME 04426

CC: Kenneth Fredette, Esq.
264 Moosehead Trail
Newport, ME 04953

RE: Violations of Title 26 MRS. Inspection #450495

Dear Elizabeth and Robert Carpenter,

When our Inspector investigated complaints against your place of business in August 2020 and points thereafter, the following violations of Maine's Labor laws were found.

26 MRS §591-A Employee Misclassification - An employer that intentionally or knowingly misclassifies an employee as an independent contractor commits a civil violation for which a fine of not less than \$2,000 and not more than \$10,000 per violation may be adjudged. A determination of misclassification of a worker as an independent contractor may result in the assessment of penalties under section 1051, 1082, 1225 or Title 39-A, section 105-A or 324.

In this case, the employer operates a woodworking shop. [REDACTED], and [REDACTED] all performed general laborer duties in the woodworking shop at the direction of the employer. These workers do not meet the employment standards criteria required for independent contractor status in Maine. Inspector [REDACTED] gave a copy of the employment standard to Mr. Carpenter on 08/05/2020. The employer continued to pay [REDACTED] as an independent contractor through October 2020 and [REDACTED] through November 2020.

With respect to criterion 1(a) of the employment standard, the employer exercised control of the means and progress of the work being performed. Statements provided by the employer, Elizabeth Carpenter and employees [REDACTED] [REDACTED] verified that the employer would assign tasks that needed to be completed by the workers and the work was performed in the employer's shops or locations assigned by the employer. The employer would instruct the workers on what tasks needed to be completed as well as instructions on the specifications of each job.

With respect to criterion 1(b), the individuals performing the work were not customarily engaged in an independently established trade.

Statements provided by the employer, Elizabeth Carpenter and employees [REDACTED] failed to show that the individuals had independently established businesses and they did not provide wood working services or cleaning services to others. The employer stated that the workers did not provide invoices but reported their hours worked on a calendar that the employer kept in the business.

With respect to criterion 1(c), the investigation revealed facts showing that the individuals had no opportunity for profit and loss as a result of services being performed for the employer. Questionnaires and statements provided verified that the workers were paid by the hour. None of the workers could have a profit or loss from their work at Crafted Downeast. Equipment and materials were provided by Crafted Downeast.

With respect to criterion 1(d), the investigation revealed facts showing the workers did not hire assistants nor would it have been allowed.

With respect to criterion 1(e), the investigation revealed facts showing the individuals did not make their services available to the community.

Statements provided by the employer, Elizabeth Carpenter and employees [REDACTED] state they did advertise their services. However, they could not verify this, and they also stated they did not work for anyone else as an independent contractor.

Statement provided by [REDACTED] indicate he did not advertise or make his services available to the community.

Having failed to pass all 5 criteria of section 1 of the employment standard, it is determined that the work performed by [REDACTED] was, in fact, employment.

2 violations x \$2,000 = \$4,000.

26 MRS §622 Records requires that employers keep a true record showing the date and amount paid to each employee. Every employer shall keep a daily record of the time worked by each such employee. Records required to be kept by this section must be accessible to any representative of the department at any reasonable hour.

In this case, the employer failed to keep a daily record of the hours worked for [REDACTED] for each of the 10 weeks she worked between 08/10/2020 and 10/11/2020. **10 violations**

The employer failed to keep a daily record of the hours worked for [REDACTED] for work performed in November 2020. **1 violation**

26 MRS §626-A PENALTIES Whoever violates any of the provisions of sections 621-A to 623 or section 626, 628, 628-A, 629 or 629-B is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation.

11 violations of §622 x \$100 = \$1,100.

26 MRS §665 (1) Pay Statement requires that employers provide to the employee with each payment of wages a statement which clearly shows the date of the pay period, hours worked, total earnings and itemized deductions.

In this case, the employer failed to provide a detailed pay statement to [REDACTED] with each payment of wages between 08/10/2020 and 10/11/2020. **10 violations**

The employer failed to provide a detailed pay statement to [REDACTED] with each payment of wages in November 2020. **1 violation**

26 MRS §671 PENALTIES Any employer who violates this subchapter shall, upon conviction thereof, be punished by a fine of not less than \$50 nor more than \$200. In the event of the violation of any of the provisions of this subchapter, the Attorney General may institute injunction proceedings in the Superior Court to enjoin further violation thereof.

11 violations of §665(1) x \$50 = \$550.00

The total penalty for the above violation(s) is \$5,650.00.

Make checks payable to the “Treasurer, State of Maine”

The violations identified above will become a final order within fifteen (15) business days from the day it was received unless you request a penalty discussion or file an appeal within 15 business days.

(see employer options below)

Employer options (within 15 business days):

If you intend to correct all violations identified and wish to work with the Wage & Hour Division to possibly reduce the penalty amount, you may request a “Penalty Discussion”. This discussion will pertain only to the penalty(s) and not the violation(s). All proposed penalties will be stayed until after the penalty discussion.

Or

You may file a formal appeal of any violation or penalty within fifteen (15) days of receipt of this citation. Please be specific as to what violation(s) or penalty you wish to appeal. If a request for a formal appeal is received, the Director will set a time and date for a “hearing”. The Director will serve as the hearing officer or may assign the appeal to the Administrative Hearings Division within the Department of Labor. The hearing will be at the headquarters of the Bureau or at a place mutually agreeable to the parties. All proposed penalties will be stayed until after the formal appeal is heard.

As the employer, you must respond in writing to the Director of the Bureau, at the address above, within fifteen (15) business days of receipt of this report stating what option you intend to choose. If no response is received within that time frame you accept all citations and any penalties assessed. The citation will become a final order and payment will be due at that time, made payable to “**Treasurer, State of Maine**” and mailed to the address at the top of this citation.

We strongly recommend that any correspondence be sent by certified mail. Failure to correct violations may result in additional penalties for each violation that is not corrected.

If you have questions regarding this citation, you may contact the Bureau of Labor Standards, Wage & Hour Division at (207) 623-7900.

Dates to remember:

Respond in writing, to the Director of the Bureau within fifteen (15) business days of receipt of this citation indicating what option you choose.

Respectfully,

A handwritten signature in black ink that reads "Scott R. Cotnoir". The signature is written in a cursive, slightly slanted style.

Scott Cotnoir, Director
Wage and Hour Division
Inspection # 450495