



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

LAURA A. FORTMAN
COMMISSIONER

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GOVERNOR

WAGE & HOUR DIVISION

MICHAEL ROLAND
DIRECTOR

Revised September 13, 2021

Luchador Tacos
Attn: Joshua Mitchell & Katherine Mitchell
243 Main Street
So. Paris, ME 04281

RE: Violations of Title 26, Inspection #454076
Certified mail: 7015 1520 0001 0962 9055

Dear Joshua Mitchell & Kathrine Mitchell,

When our Inspector, Elaine Brackett, contacted your place of business on April 12, 2021 the following violations of Maine Labor Law were found:

26 MRS §621-A Timely and Full Payment of Wages requires that employees be paid in full, on an established day or date, at regular intervals made known to the employee. The intervals may not exceed 16 days and must include all wages earned to within 8 days of the payment date.

In this case, the employer failed to pay 14 service employees in full on 75 separate pay dates between 08/02/2018 and 03/26/2021.

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 did not keep daily time records for 39 employees between 08/02/2018 and 04/16/2021.

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

Each employee is counted as a separate violation, each pay cycle.

- 219 violations of §621
- 358 violations of §622

26 MRS §664 (2) Tips - Property of Employee The tips received by a service employee become the property of the employee and may not be shared with the employer. Tips that are automatically included in the customer's bill or that are charged to a credit card must be treated like tips given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company.

In this case, the employer failed to pay credit card tips to 14 service employees between 08/02/2018 and 04/16/2021.

The employer stated that they will pay all outstanding credit card tips to the following employees by September 10, 2021:

[REDACTED]	\$7,391.38
[REDACTED]	\$1,316.34
[REDACTED]	\$887.74
[REDACTED]	\$2,649.94
[REDACTED]	\$13,237.70
[REDACTED]	\$69.35
[REDACTED]	\$10,308.01
[REDACTED]	\$262.22
[REDACTED]	\$689.47
[REDACTED]	\$3,796.04
[REDACTED]	\$525.38
[REDACTED]	\$7,478.37
[REDACTED]	\$4,978.20
[REDACTED]	\$7,136.24
Total	\$60,726.39

Please send this office proof that the payments have been made.

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.

- 234 violations of §664

26 MRS §774 (7) Record of work hours of minors. Every employer shall keep a time book or record for every minor employed in any occupation, except household work or the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, stating the number of hours worked by each minor on each day of the week. The time book or record must be open at all reasonable hours to the inspection of the director, a deputy of the director or any authorized agent of the bureau. An employer who fails to keep the time book or record required by this subsection or who makes any false entry to the time book or record, refuses to exhibit the time book or record or makes any false statement to the director, a deputy of the director or any authorized agent of the bureau in reply to any question in carrying out this section is liable for a violation of this section and is subject to penalties specified in section 781.

In this case, the employer failed to keep daily time records for their son [REDACTED] [REDACTED] for work performed during each of the pay periods ending 04/02/2021 and 05/07/2021.

26 MRS §781 PENALTIES An employer who employs, permits or suffers any minor to be employed or to work in violation of this article or Title 20-A, section 5054 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

- A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than \$250 nor more than \$5,000;
- B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture or penalty of not less than \$500 nor more than \$5,000; or
- C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a penalty of not less than \$2,000 nor more than \$10,000.

- 2 violations of §774

The total penalty for the above violation(s) is \$69,650.00

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 (see employer options) within the specified time frame listed above.

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,



Scott Cotnoir, Director
Wage and Hour Division
Inspection # 454076