



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

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GOVERNOR

WAGE & HOUR DIVISION

MICHAEL ROLAND  
DIRECTOR

March 30, 2022

Jake Bagley  
Bagley & Son's Construction  
24 Willow Dr  
Sanford, ME 04073

RE: Violations of 26 MRS. Inspection #458562

Dear Jake Bagley,

When our Inspector investigated a complaint against your place of business 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 employee, [REDACTED], in full on the established pay dates of 06/11/2022 and 06/18/2021.

For week ending June 05, 2022, [REDACTED] worked 45 hours. His rate of pay was \$15 per hour.

- \$15 x 45 hours = \$675 straight time wages
- 5 hours of overtime x \$7.50 = \$37.50 overtime wages
- Employer paid [REDACTED] \$350 in cash
- \$675 + \$37.50 = \$712.50 - \$350 paid in cash = \$362.50 total wages owed this week.

For week ending June 12, 2022, [REDACTED] worked 41 hours.

- \$15 x 41 hours = \$615 straight time wages owed
- 1 hour of overtime = \$7.50 overtime wages owed
- Employer paid [REDACTED] \$200 in cash
- \$615 + \$7.50 = \$622.50 - \$200 paid in cash = \$422.50 total wages owed this week.

\$362.50 + \$422.50 = \$785.00 total wages owed.

**Send this office proof of payment.**

**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, [REDACTED] worked 10 days. The employer failed to provide the inspector access to the daily time records and the payroll records in accordance with this statute.

10 violations of time records and 2 violations of payroll records.

**26 MRS §626-A. Penalties** Whoever violates any of the provisions of section 600-A, 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.

- 2 violations of §621-A x \$100 = \$200
- 12 violations of §622 x \$100 = \$1,200

**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, employee [REDACTED] was misclassified as an independent contractor. [REDACTED] was hired as a general laborer, paid an hourly rate and his primary duty was roofing. [REDACTED] does not have his own business and does not meet the Employment Standard criteria attached to be classified as an independent contractor.

- 1 violation of §591-A = \$2,000

**26 MRS §665. Powers and duties of commissioner** - Every employer subject to this subchapter shall keep a true and accurate record of the hours worked by each employee and of the wages paid, such records to be preserved by the employer for a period of at least 3 years, and shall furnish to each employee with each payment of wages a statement that clearly shows the date of the pay period, the hours, total earnings and itemized deductions.

In this case, the employer did not provide detailed pay statements to [REDACTED] with each payment of wages on June 11, 2021 and June 18, 2021.

**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.

- 2 violations of §665 x \$50 = \$100

**The total penalty for the above violation(s) is \$3,500.00.**

**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 # 458562

## Employment Standard

### 26 MRS §1043 (11)(E)

Services performed by an individual for remuneration are considered to be employment subject to this chapter unless it is shown to the satisfaction of the bureau, that the individual is free from the essential direction and control of the employing unit, both under the individual's contract of service and in fact, the employing unit proves that the individual meets all of the criteria in Number 1 and three (3) of the criteria in Number 2 as listed below.

1. The following criteria must be met:

- a. The individual has the essential right to control the means and progress of the work except as to final results;
- b. The individual is customarily engaged in an independently established trade, occupation, profession or business;
- c. The individual has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
- d. The individual hires and pays the individual's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
- e. The individual makes the individual's services available to some client or customer community even if the individual's right to do so is voluntarily not exercised or is temporarily restricted; and

2. At least three (3) of the following criteria must be met:

- a. The individual has a substantive investment in the facilities, tools, instruments, materials, and knowledge used by the individual to complete the work;
- b. The individual is not required to work exclusively for the other individual or entity;
- c. The individual is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
- d. The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
- e. Payment to the individual is based on factors directly related to the work performed and not solely on the amount of time expended by the individual;
- f. The work is outside the usual course of the business for which the service is performed; or
- g. The individual has been determined to be an independent contractor by the federal Internal Revenue Service. \*(an [SS-8](#) determination)