



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

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WAGE & HOUR DIVISION

DR. JASON MOYER-LEE
DIRECTOR

June 13, 2024

Blaze Bar Harbor LLC and
Blaze Blue Hill
And Matthew Haskell
198 Main St
Bar Harbor, ME 04609

RE: Violations of Title 26 MRS. Inspection #481028

Dear Mr. Haskell,

When our inspector visited your places of business on June 27, 2023 the following violations of Maine Labor Law 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.

The employee [REDACTED] was found to be treated as an independent contractor when the conditions of employment are that of an hourly employee. [REDACTED] was treated as an independent contractor per his request. [REDACTED] received hourly wages from December 8, 2022 until May 3, 2023. These wages included properly paid overtime for hours over 40.

The misclassification of [REDACTED] constitutes one (1) violation of this statute.

Section 591-A provides for a penalty range of \$2,000 to \$10,000 per violation. The Division relies on rules to determine what level of penalty to apply. The Rules referred to are entitled: *Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations*.¹ Pursuant to these rules, fines start at the minimum penalty or the lowest amount in the penalty range for a particular violation, and then must be increased for the severity of the violation, when the employer

¹The rules which are currently in force, and upon which this citation relies, can be found here: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.maine.gov%2Fsos%2Fcec%2Frules%2F12%2F170%2F170c009.docx&wdOrigin=BROWSELINK>.

has a history of violations, and if the violations are “willful”. The fines decrease, on the other hand, when the employer demonstrates “good faith” or has 100 or fewer employees.

Employer size is the only relevant criterion to the imposition of fines in this case. It is unclear how many people the employer employs. As such we have used the smallest employer category. This means that, pursuant to Section III(B)(2), the penalty amount in all violations will be reduced by 33.3%. Therefore, to calculate the penalty amount the Division imposes for the violations in this case, the Division starts with the minimum penalty provided by the statute in question and then reduces the amount by 33.3%.

So, we start with the minimum fine of \$2,000 and then reduce by 33.3%, resulting in a **total penalty amount of \$1,334.00.**

Appeals and Settlements

The total penalty for the above violation(s) is \$1,334.00. Please make checks payable to “Treasurer, State of Maine” and mail to the address at the top of this letter.

Pursuant to Section 53 of Title 26, you have the right to appeal this citation. The Bureau’s appeals process is set out in Section IV of the Chapter 9 Rules.

If you choose to file an appeal of any violation or penalty, you must do so within fifteen (15) business days of receipt of this notice. The appeal must be submitted in writing to the Deputy Director of the Bureau, at the address listed above. If you file an appeal, be specific as to which violation(s) or penalties you wish to appeal. If a request for a formal appeal is received timely, a hearing will be scheduled. The Deputy Director will assign the appeal to a qualified hearing officer. The hearing will be at the headquarters of the Bureau or at a place mutually agreeable to the parties. The hearing may be held telephonically or by remote video, at the discretion of the hearing officer. All proposed penalties will be stayed until after the formal appeal is heard.

If no response is received within the designated timeframe, you accept all citations and any penalties assessed. The notice will become a final order and payment will be due at that time.

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.

You may approach the Bureau to negotiate a settlement to waive the violations or penalties at any time during this process. However, settlement negotiations will not affect the deadline to appeal.

If you have questions regarding this notice, you may contact the Bureau of Labor Standards, Wage & Hour Division at (207) 623-7925.

Respectfully,



Scott Cotnoir, Director
Wage and Hour Division
Inspection #481028

26 M.R.S.A., Chapter 13, 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)

