



JANET T. MILLS
GOVERNOR

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

LAURA A. FORTMAN
COMMISSIONER

WAGE & HOUR DIVISION

DR. JASON MOYER-LEE
DIRECTOR

June 14, 2024

James King
and
King & Sons Paving, LLC
485 US Route 2 E
Wilton, ME 04294

RE: Violations of 26 MRS. Inspection #482235

Dear James King and King & Sons Paving, LLC,

When the Wage and Hour Division conducted an inspection of your place of business commencing on July 28, 2023, the following violations of Maine Labor Law were found:

Timely and Full Payment of Wages

Section 621-A, entitled “Timely and Full Payment of Wages”,¹ (materially) states:

1. Minimum frequency and full payment. At regular intervals not to exceed 16 days, every employer must pay in full all wages earned by each employee, except members of the family of the employer and salaried employees. Each payment must include all wages earned to within 8 days of the payment date. Payments that fall on a day when the business is regularly closed must be paid no later than the following business day. An employee who is absent from work at a time fixed for payment must be paid as if the employee was not absent. ...

2. Regular payment required. Wages must be paid on an established day or date at regular intervals made known to the employee. The interval may not be increased without written notice to the employee at least 30 days in advance of the increase.

In this case, the employer failed to pay the following employees in full on the established pay dates:

██████████ was not paid in full on 10 separate pay dates between 05/01/2023 and 07/24/2023.

¹ <https://legislature.maine.gov/statutes/26/title26sec621-A.html>

[REDACTED] was not paid in full on 9 separate pay dates between 04/17/2023 and 06/26/2023.
[REDACTED] was not paid in full on 11 separate pay dates between 04/17/2023 and 07/24/2023.
[REDACTED] was not paid in full on 2 separate pay dates between 04/17/2023 and 04/24/2023.
[REDACTED] was not paid in full on 11 separate pay dates between 05/01/2023 and 07/24/2023.

Total violations: 43

Records

Section 622 of Title 26² (materially) states:

Every employer shall keep a true record showing the date and amount paid to each employee pursuant to section 621-A. 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. ...

Records statutes, such as Section 622, are a critical element of labor standards because records help employers ensure they have met their legal obligations to pay workers what they are owed, and they provide the Division with a source of evidence when evaluating an employer's compliance with other statutes.

The Division counts each day on which an employer fails to "keep a daily record of the time worked by each such employee" as a separate violation. In this case, the employer failed to keep a true daily record of the time worked for the following employees on the following dates:

05/19/2023 time record for [REDACTED] fails to show what time he ended work.
06/09/2023 time record for [REDACTED] fails to show what time he ended work.
05/19/2023 time record for [REDACTED] fails to show what time he ended work.
05/19/2023 time record for [REDACTED] fails to show what time he ended work.

Total violations: 4

Overtime

26 MRS §664 (3) Overtime Rate requires that employees be paid time-and-one-half their regular hourly rate for all hours worked in excess of 40 hours per week.

In this case, the employer failed to pay the following employees time-and-one-half for all hours worked in excess of 40 hours on the following weeks:

Mason Drolet 10 separate weeks between 05/01/2023 and 07/24/2023.

² <https://legislature.maine.gov/statutes/26/title26sec622.html>

7 separate weeks between 04/17/2023 and 06/26/2023.
11 separate pay dates between 04/17/2023 and 07/24/2023.
2 separate pay dates between 04/27/2023 and 04/24/2023.
10 separate pay dates between 05/01/2023 and 07/24/2023.

Total violations: 40

Penalties

When assessing fines, the Division generally relies on Section 53 of Title 26, which (materially) states:

...[T]he director may assess a forfeiture against any employer, officer, agent or other person who violates any provision of chapter 7, subchapters I to IV for each violation of those subchapters. The forfeiture may not exceed \$1,000 or the amount provided in law or rule as a penalty for the specific violation, whichever is less. ... The director shall adopt rules to govern the administration of the civil money forfeiture provisions. The rules must include a right of appeal by the employer and a range of monetary assessments with consideration given to the size of the employer's business, the good faith of the employer, the gravity of the violation and the history of previous violations. ...

The Rules referred to above are entitled: *Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations*.³ 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 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. The employers in this case have between 1 and 20 employees. 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%.

Timely and Full Payment of Wages; Records

The violations for timely and full payment of wages (Section 621-A) and for daily time records (Section 622) are both subject to the same penalty range. This is set out at Section 626-A, which

³The 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>.

(materially) states: “Whoever violates any of the provisions of...sections 621-A to 623...is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation.”⁴

As \$100 is the lowest amount in the range, the Chapter 9 Rules require us to use this number as our starting point. The \$100 figure is then multiplied by the 47 violations under this category, resulting in an initial fine of \$4,700. The 33.3% reduction is then applied, resulting in a **total penalty amount of \$3,134.90 for the violations in this category.**

Overtime

The penalty range for overtime violations is set out at Section 671⁵ and (materially) states: “Any employer who violates this subchapter shall, upon conviction thereof, be punished by a fine of not less than \$50 nor more than \$200.” We therefore start with the minimum figure of \$50 per violation. We then multiply this by the 40 violations in this category, resulting in a penalty amount of \$2,000. After reducing by 33.3% to account for employer size, **the result is a total penalty amount of \$1,334.00 for the violations in this category.**

Appeals and Settlements

The total penalty for the above violation(s) is \$4,468.90. 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.

⁴ <https://legislature.maine.gov/statutes/26/title26sec626-A.html>

⁵ <https://legislature.maine.gov/statutes/26/title26sec671.html>

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) 623-7900.

Respectfully,

A handwritten signature in black ink that reads "Scott R. Cotnoir". The signature is written in a cursive style with a large initial "S".

Scott Cotnoir, Director
Wage and Hour Division
Inspection #482235