



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

July 10, 2024

NJS Productions
D/B/A Other Side Delicatessen
and Peter Sueltenfuss, owner
164 Veranda St
Portland, ME 04102

RE: Violations of 26 MRS Inspection #474561

Dear Peter Sueltenfuss,

When the Wage and Hour inspector visited your place of business, on February 14, 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.

Based on the information provided from the POS system and timesheets. Tips were not fully allocated to the employees on 41 occasions. This means the employees were not paid in full.

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

Total violations: 41

Tips

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.

The records provided indicate that there were 41 instances of misallocation of tips.

Total violations: 41

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*.² 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.

²The 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>.

Employer size is the only relevant criterion to the imposition of fines in this case. It is unclear how many employees the employer has in this case. As such, we have treated the employer as falling into the smallest employer size 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%.

Timely and Full Payment of Wages

The violations for timely and full payment of wages (Section 621-A) are subject to the penalty range set out at Section 626-A, which (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.”³

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 41 violations under this category, resulting in an initial fine of \$4,100. The 33.3% reduction is then applied, resulting in a **total penalty amount of \$2,734.70 for the violations in this category.**

Tips Violations

The penalty range for tips violations is set out at Section 671⁴ 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 41 violations in this category, resulting in a penalty amount of \$2,050. After reducing by 33.3% to account for employer size, **the result is a total penalty amount of \$1,367.35 for the violations in this category.**

Appeals and Settlements

The total penalty for the above violation(s) is \$4,102.05. 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.

³ <https://legislature.maine.gov/statutes/26/title26sec626-A.html>

⁴ <https://legislature.maine.gov/statutes/26/title26sec671.html>

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) 623-7900.

Respectfully,



Scott Cotnoir, Director
Wage and Hour Division
Inspection # 474561

Attachment

| | |
|--------------|-----------------|
| ██████████ | |
| 08/9/2022 | \$84.32 |
| 08/23/2022 | \$19.74 |
| Total | \$104.06 |

| | |
|--------------|-------------------|
| ██████████ | |
| 08/09/2022 | \$149.53 |
| 08/23/2022 | \$126.32 |
| 09/06/2022 | \$155.53 |
| 10/04/2022 | \$128.73 |
| 10/18/2022 | \$133.61 |
| 11/01/2022 | \$122.62 |
| 11/15/2022 | \$68.31 |
| 11/29/2002 | \$145.21 |
| 12/13/2022 | \$150.18 |
| 12/27/2022 | \$143.25 |
| Total | \$1,323.29 |

| | |
|--------------|-------------------|
| [REDACTED] | |
| 10/04/2022 | \$108.41 |
| 10/18/2022 | \$143.23 |
| 11/01/2022 | \$140.19 |
| 11/15/2022 | \$164.18 |
| 11/29/2022 | \$144.41 |
| 12/13/2022 | \$164.98 |
| 12/27/2022 | \$140.54 |
| Total | \$1,005.94 |

| | |
|--------------|----------------|
| [REDACTED] | |
| 10/04/2022 | \$13.55 |
| 10/18/2022 | \$18.17 |
| 11/01/2022 | \$18.82 |
| 11/15/2022 | \$12.25 |
| Total | \$62.79 |

| | |
|--------------|-----------------|
| [REDACTED] | |
| 11/01/2022 | \$48.49 |
| 11/15/2022 | \$86.38 |
| 11/29/2022 | \$108.11 |
| 12/13/2022 | \$131.90 |
| 12/27/2022 | \$101.56 |
| Total | \$476.44 |

| | |
|--------------|-----------------|
| [REDACTED] | |
| 08/09/2022 | \$71.21 |
| 08/23/2022 | \$120.81 |
| 09/06/2022 | \$119.71 |
| Total | \$311.73 |

| | |
|--------------|-----------------|
| [REDACTED] | |
| 08/23/2022 | \$89.57 |
| 09/06/2022 | \$87.17 |
| 10/04/2022 | \$33.79 |
| Total | \$210.53 |

| | |
|--------------|-----------------|
| [REDACTED] | |
| 08/09/2022 | \$131.54 |
| 08/23/2022 | \$174.67 |
| 09/06/2022 | \$144.52 |
| 10/04/2022 | \$121.96 |
| 10/18/2022 | \$121.05 |
| 11/01/2022 | \$101.11 |
| 11/15/2022 | \$110.27 |
| Total | \$905.12 |