



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

AAM 15 Management LLC
d/b/a/ Hilton Garden Inn
Attn: Kelly Correia, VP of HR
78 Blanchard Rd STE 100
Burlington, MA 01803

RE: Violations of Title 26 MRS. Inspection #484294

Dear Kelly Correia,

When our Inspector investigated a complaint against your place of business initiated on October 06, 2023, the following violation of Maine Labor Law was found:

Earned Paid Leave

Maine's Earned Paid Leave law provides for employees to accumulate leave, based on the number of hours they work. They may generally use the leave as they wish; it is paid time off. The law is set out at Section 637 of Title 26 and (materially) states:

2. Earned paid leave. An employer that employs more than 10 employees in the usual and regular course of business for more than 120 days in any calendar year shall permit each employee to earn paid leave based on the employee's base pay as provided in this section.

3. Accrual. An employee is entitled to earn one hour of paid leave from a single employer for every 40 hours worked, up to 40 hours in one year of employment. Accrual of leave begins at the start of employment, but the employer is not required to permit use of the leave before the employee has been employed by that employer for 120 days during a one-year period.

The Division has further fleshed out employers' legal obligations, and employees' legal rights, with regard to earned paid leave, through rulemaking: *Chapter 18: Rules Governing Earned Paid*

*Leave.*¹ The Rules state that “[a]n employer shall not deny an employee the right to use paid leave available for use by that employee in accordance with the conditions of this section”² and clarify that “[e]ach denial of paid leave for each affected covered employee in violation of Section 637 and this Rule is a separate violation.”³

In this case, the employer denied employee [REDACTED] the right to use her accrued paid leave on 07/25/2023 and 08/03/2023. [REDACTED] had 10.35 hours of accrued paid leave available to use as of 08/05/2023.

[REDACTED] called out sick for her 7-hour shift on 07/25/2023 and was only paid for 4 hours. [REDACTED] called out sick for her 7-hour shift on 08/03/2023 and was not paid for any of that time.

Violations: 2

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*.⁴ 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.

¹

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.maine.gov%2Fsos%2Fcec%2Frules%2F12%2F170%2F170c018.docx&wdOrigin=BROWSELINK>

² Section V(F).

³ Section VI(A).

⁴The 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. In this case, the employer has between 51 and 100 employees. This means that, pursuant to Section III(B)(2), the penalty amount in all violations will be reduced by 5%. 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 5%.

Earned Paid Leave

The Earned Paid Leave statute, Section 637, does not provide a penalty range. Instead, it simply states: “Penalties for violations of this section are the same as those provided in section 53.”⁵ The only reference to the penalty amount in Section 53, as seen above, states: “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[,]” so we use \$1,000 as the starting point. We then multiply the 2 violations by \$1,000, resulting in \$2000. We then reduce by 5% to account for employer size, **resulting in a total penalty amount of \$1,900.00 for the violations in this category.**

Appeals and Settlements

The total penalty for the above violation(s) is \$1,900.00. 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.

⁵ <https://legislature.maine.gov/statutes/26/title26sec637-2.html>

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, slightly slanted style.

Scott Cotnoir, Director
Wage and Hour Division
Inspection #484294