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GOVERNOR

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

LAURA A. FORTMAN
COMMISSIONER

WAGE & HOUR DIVISION

DIRECTOR

December 17, 2024

Ambidextrous, Inc.
and
Kevin Allen, owner
319 Old Post Road
Arundel, Maine 04046

RE: Violations of Title 26 MRS. Inspection #485632

Dear Kevin Allen:

When our inspector visited your place of business on December 4, 2023, the following violations of Maine Labor Law were found:

Overtime Rate

Section 664(3) of Title 26 (materially) states:

An employer may not require an employee to work more than 40 hours in any one week unless 1 1/2 times the regular hourly rate is paid for all hours actually worked in excess of 40 hours in that week. The regular hourly rate includes all earnings, bonuses, commissions and other compensation that is paid or due based on actual work performed and does not include any sums excluded from the definition of "regular rate" under the Fair Labor Standards Act, 29 United States Code, Section 207(e).

In this case, the employers failed to pay overtime wages equaling 1 1/2 times the regular hourly rate to 5 employees on 11 separate occasions between April 2023 and July 2023. The employers failed to include incentive payments when calculating the regular hourly rate. The incentive payments are considered nondiscretionary bonuses and must be included in the regular rate. These violations are set out in Appendix A.

Timely and Full Payment of Wages

Section 621-A, entitled "Timely and Full Payment of Wages", (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 employers failed to pay the same 5 employees in full on 11 separate occasions between 04/14/2023 to 07/07/2023. These violations are set out in Appendix A.

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*. 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.

Employees’ size is the only relevant criterion to the imposition of fines in this case. The employers in this case have 18 employees. This means that, pursuant to Section II (1), the penalty amount in all violations will be reduced by 33.3%. Pursuant to Section II (2), because the employers are being cited for multiple violations, the employers are not entitled to any further reductions.

Overtime Rate

The violations for overtime rate (Section 664(3)) are set out in Section 671, which (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.”

In this case, there were 11 violations. Chapter 9 Rules require us to start at \$1,000.00. The \$1,000.00 figure is multiplied by the 11 violations resulting in a penalty amount of \$11,000.00. A 33.3% reduction based on employer size is then applied, resulting in a penalty amount of \$7,337.00. Since the statutory maximum cannot exceed \$200 per violation, the penalty is reduced by \$5,137.00, resulting in a **total penalty amount of \$2,200.00 for violations in this category.**

Timely and Full Payment of Wages

The violations for timely and full payment of wages (Section 621-A) are set out in 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.”

In this case, there were 11 violations. Chapter 9 Rules require us to start at \$1,000.00. The \$1,000.00 figure is multiplied by the 11 violations resulting in a penalty amount of \$11,000.00. A 33.3% reduction based on employer size is then applied, resulting in a penalty amount of \$7,337.00. Since the statutory maximum cannot exceed \$500 per violation, the penalty is reduced by \$1,837.00, resulting in a **total penalty amount of \$5,500.00 for violations in this category.**

Wages, Liquidated Damages, and Interest

Section 53 of Title 26 M.R.S. authorizes the Director to order an employer to pay wages, liquidated damages and interest:

In addition, the director may order any employer, officer, agent, or other person who the director finds in violation under chapter 7, subchapters 1 to 4 or section 1312, to pay unpaid wages determined to be due, as well as an additional amount equal to twice the amount of unpaid wages to any employee as liquidated damages and a reasonable rate of interest.

In this case, the employer failed to pay five employees overtime wages totaling \$83.93. The employers owe the wages plus an additional \$167.86 in liquidated damages, resulting in a total amount of \$251.79.

The interest in this case is calculated at 10.88% per year, the same rate used in Kennebec County Superior Court. We multiply the 10.88% interest by the sum of the wages owed plus the liquidated damages owed to each individual employee. We then divide that amount by 365 days, resulting in a daily amount of interest. The daily interest is then multiplied by the number of days between the first day the wages went unpaid and the date of this notice, the result is a total interest amount of \$42.74 owed to the employees.

The total amount of wages, liquidated damages, and interest owed to each employee is set out in Appendix A.

Appeals and Settlements

The total penalty for the above violations is \$7,700.00. Checks should be made payable to “Treasurer, State of Maine” and mailed to the address at the top of this letter.

The total wages, liquidated damages and interest owed to the workers for the above violations are \$294.53. Payment must be made directly to the workers and proof of payment submitted to the Wage and Hour Division.

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 III 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 Commissioner. The employer may request the appeal by U.S. mail, hand delivery, or email. 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 Commissioner may serve as the hearing officer or 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, and any wages, liquidated damages, or interest ordered to be paid. 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 #485632

APPENDIX A

| Employee Name | Established Pay Date | Overtime Wages Owed | Liquidated Damages | Notice of Violation Date | Number of days unpaid | Interest | Total Amount Owed | §621-A Violation | §664(3) Violation |
|---------------|----------------------|---------------------|--------------------|--------------------------|-----------------------|----------|-------------------|------------------|-------------------|
| [REDACTED] | 5/12/2023 | \$11.32 | \$22.64 | 12/17/2024 | 585 | \$5.92 | \$39.88 | 1 | 1 |
| [REDACTED] | 6/9/2023 | \$19.50 | \$39.00 | 12/17/2024 | 557 | \$9.71 | \$68.21 | 1 | 1 |
| [REDACTED] | 6/23/2023 | \$4.25 | \$8.50 | 12/17/2024 | 543 | \$2.06 | \$14.81 | 1 | 1 |
| | | | | 12/17/2024 | | | | | |
| [REDACTED] | 4/14/2023 | \$1.41 | \$2.82 | 12/17/2024 | 613 | \$0.77 | \$5.00 | 1 | 1 |
| [REDACTED] | 4/28/2023 | \$22.04 | \$44.08 | 12/17/2024 | 599 | \$11.81 | \$77.93 | 1 | 1 |
| [REDACTED] | 5/12/2023 | \$7.12 | \$14.24 | 12/17/2024 | 585 | \$3.72 | \$25.08 | 1 | 1 |
| | | | | 12/17/2024 | | | | | |
| [REDACTED] | 7/7/2023 | \$11.95 | \$23.90 | 12/17/2024 | 529 | \$5.65 | \$41.50 | 1 | 1 |
| | | | | 12/17/2024 | | | | | |
| [REDACTED] | 6/23/2023 | \$4.42 | \$8.84 | 12/17/2024 | 543 | \$2.15 | \$15.41 | 1 | 1 |
| | 7/7/2023 | \$1.12 | \$2.24 | 12/17/2024 | 529 | \$0.53 | \$3.89 | 1 | 1 |
| | | | | 12/17/2024 | | | | | |

| | | | | | | | | | |
|---|-----------|----------------|-----------------|------------|-----|----------------|-----------------|-----------|-----------|
|  | 4/14/2023 | \$0.31 | \$0.62 | 12/17/2024 | 613 | \$0.17 | \$1.10 | 1 | 1 |
| | 6/9/2023 | \$0.49 | \$0.98 | 12/17/2024 | 557 | \$0.24 | \$1.71 | 1 | 1 |
| Total | | \$83.93 | \$167.86 | | | \$42.74 | \$294.53 | 11 | 11 |