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GOVERNOR

DEPARTMENT OF LABOR
BUREAU OF LABOR STANDARDS
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AUGUSTA, MAINE
04333-0045

LAURA A. FORTMAN
COMMISSIONER

WAGE & HOUR DIVISION

DR. JASON MOYER-LEE
DIRECTOR

August 8, 2024

Clear Creek Living, LLC
Attn: Karen Qualls / Ryan Zeestraten
499 Broadway #174
Bangor, ME 04401

RE: Violations of Title 26 MRS. Inspection #494214

Dear Mz. Qualls,

When our Inspector contacted your place of business on July 24, 2024, the following violations of Maine Labor Law were found:

Records

Section 622 of Title 26¹ (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.

When an employer fails to provide the department representative access to the daily time records and payroll records, each employee is counted as a separate violation regarding time records and a separate violation regarding payroll records.

On 07/24/2024, the inspector requested the employer produce all payroll records and time records for 11/09/2023 to 07/24/2024 by 07/29/2024. This request was made orally and in writing. The employer did not provide the records, or access to the records, by 07/31/2024. The

¹ <https://legislature.maine.gov/statutes/26/title26sec622.html>

employer provided some records titled “Earning Statement” on 08/01/2024, three days after the requested deadline.

The employer began operating the business in November 2023. They have eight employees, and they pay wages on a bimonthly basis on the 7th and 21st day of each month.

There are 34 weeks between each of the weeks ending 12/09/2023 and 07/27/2024. Since the employer failed to provide the daily time records, the violations are calculated as 1 violation per week, per employee. (8 employees x 34 weeks = 272 violations)

There are 15 pay cycles between 12/21/2023 and 07/21/2024. Since the employer failed to provide the payroll records, the violations are calculated as 1 violation per pay cycle, per employee. (8 employees x 15 pay cycles = 120 violations)

Total violations: 392

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.

Employer size is the only relevant criterion to the imposition of fines in this case. The employer has 8 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%.

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>

Records

The violations for records (Section 622) 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 392 violations in this category, resulting in an initial fine of \$39,200. The 33.3% reduction is then applied, resulting in a **total penalty amount of \$26,146.40 for the violations in this category.**

Appeals and Settlements

The total penalty for the above violation(s) is \$26,146.40. 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) 623-7900.

Respectfully,



Scott Cotnoir, Director

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

Wage and Hour Division
Inspection #494214