



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

DIRECTOR

October 18, 2024

Lufkin Toys
and
Todd Lufkin, owner
521 Middle Road
Bradford, ME 04410

RE: Violations of Title 26 MRS. Inspection #478349

Dear Todd Lufkin,

When our Inspector visited your place of business on May 15, 2023 and points thereafter, 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", (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.

The employers did not establish regularly recurring pay intervals in this instance. Therefore, in order to calculate the number of violations of this section, we will use the greatest period of time allowed between pay dates which is 16 days. In this case, the employers failed to pay the following employees in full at intervals not to exceed 16 days on 13 separate occasions.

[REDACTED] was not paid in full on 6 separate pay dates between 4/1/2022 and 6/30/2022.

[REDACTED] was not paid in full on 6 separate pay dates between 4/1/2022 and 6/30/2022.

█ was not paid in full on 1 pay date for work performed on 11/9/2022.

Violations: 13

Records

Section 622 of Title 26 (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. Each pay cycle that an employer fails to keep a record of the amount paid to each employee is also considered a separate violation.

In this case, the employers failed to keep daily time records on the following employees on the following dates:

█ – 2 daily records per week for 13 weeks between 4/1/2022 and 6/30/2022 for a total of 26 violations.

█ 2 daily records per week for 13 weeks between 4/1/2022 and 6/30/2022 for a total of 26 violations.

Violations: 52

Unfair Agreements

Section 629(1) of Title 26, titled “Unfair Agreements”, (materially) states:

....A person, firm or corporation may not require or permit any person as a condition of securing or retaining employment to work without monetary compensation or when having an agreement, oral, written or implied, that a part of such compensation should be returned to the person, firm or corporation for any reason other than for the payment of a loan, debt or advance made to the person, or for the payment of any merchandise purchased from the employer or for sick or accident benefits, or life or group insurance premiums, excluding compensation insurance, that an employee has agreed to

pay, or for rent, light or water expense of a company-owned house or building. This section does not apply to work performed in agriculture or in or about a private home.

In this case, the employers required or allowed the following employee(s) to work without monetary compensation during the following pay cycles based on the minimum number of pay periods required in accordance with Section 621-A:

██████████ worked two days per week without monetary compensation during each of the weeks between 04/01/2022 and 06/30/2022 for a total of 6 minimum pay cycles.

██████████ worked two days per week without monetary compensation during each of the weeks between 04/01/2022 and 06/30/2022 for a total of 6 minimum pay cycles.

██████ worked without monetary compensation for work performed on 11/09/2022.

Violations: 13

Minimum Wage

Section 664 of Title 26 (materially) states: “Except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section.” The extract below from Subsection 1 explains how the minimum wage is calculated:

On January 1, 2021 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢.

The minimum wage in 2022 was \$12.75.

For the period in question, the employers failed to pay Aakon Ellis at least minimum wage in each of the 13 weeks that he worked between 04/01/2022 and 06/30/2022.

The employers failed to pay ██████████ at least minimum wage in each of the 13 weeks that he worked between 04/01/2022 and 06/30/2022.

The employers failed to pay ██████ at least minimum wage for the work performed on 11/09/2022.

Violations: 27

Unfair Contract

Subchapter 3, Section 672 of Title 26 (materially) states:

No employer shall by a special contract with an employee or by any other means exempt himself from this subchapter.

Subchapter 3 addresses minimum wage, overtime, and certain record keeping requirements. In this case, the employers exempted themselves from the minimum wage requirements of this subchapter with the following employees, on the following date(s):

██████████ for 13 separate weeks between 04/01/2022 and 06/30/2022.
██████████ for 13 separate weeks between 04/01/2022 and 06/30/2022.
██████████ for work performed on 11/9/2022.

Violations: 27

Minors

Hazardous Occupations

Section 772 of Title 26 (materially) states:

A minor under 18 years of age may not be employed in any capacity that the director determines to be hazardous, dangerous to life or limbs or injurious to the minor's health or morals.

The Rules referred to above are entitled: *Chapter 11: Rules Governing Hazardous Occupations for Minors Under the Age of Eighteen in Non-Agricultural Employment*. Pursuant to these rules, all roofing operations are determined to be hazardous for minors sixteen and seventeen years of age.

In this case, the employers allowed ██████████ a 17-year-old minor, to perform work on a roof on 11/09/2022. K H was injured when he fell off the roof on that day.

Violations: 1

Record of Work Hours of Minors

Section 774(7) of Title 26 (materially) states:

Every employer shall keep a time book or record for every minor employed in any occupation, except household work or the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, stating the number of hours worked by each minor on each day of the week. The time book or record must be open at all reasonable hours to the inspection of the director, a deputy of the director or any authorized agent of the bureau. An employer who fails to keep the time book or record required by this subsection or who makes any false entry to the time book

or record, refuses to exhibit the time book or record or makes any false statement to the director, a deputy of the director or any authorized agent of the bureau in reply to any question in carrying out this section is liable for a violation of this section and is subject to penalties specified in section 781.

In this case, the employers failed to keep a daily time record on [REDACTED] a 17-year-old minor, for work performed on 11/09/2022.

Violations: 1

Summary of Violations

Table 1, below, sets out the total number of violations the Division has found.

Table 1: Total Violations

Statute	Number of Violations
26 M.R.S. § 621-A (Timely and full payment of wages)	13
26 M.R.S. § 622 (daily time records)	52
26 M.R.S. § 629 (unfair agreements)	13
26 M.R.S. § 664 (minimum wage)	27
26 M.R.S. § 672 (unfair contract)	27
26 M.R.S. § 772 (hazardous occupations)	1
26 M.R.S. § 774(7) (record of hours -minors)	1
TOTAL	134

Penalties

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

...[T]he director may assess a fine against any an employer, officer, agent or other person that violates any provision of chapter 7, subchapters 1 to 4 for each violation of those subchapters. The fine may not exceed \$1,000 or the amount provided in law or rule as a penalty for the specific violation, whichever is less. In addition, the director may order any employer, officer, agent or other person that the director finds is 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 as liquidated damages and a reasonable rate of interest. ... The director shall adopt rules to govern the administration of the civil money fine or penalty 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, the number of violations will be multiplied by \$1,000. The result will then be reduced if the employer has fewer than 100 employees, no history of previous violations, the employer is not being cited for multiple or grave violations, and the employer has demonstrated “good faith”, all of which are defined in the rules.

Employer size is the only relevant criterion to the imposition of fines in this case. The employers in this case have an unknown number of employees. As such, we have used the smallest employer size category. This means that, pursuant to Section II (1), the penalty amount in all violations will be reduced by 33.3%. The employers are not entitled to any further reductions because they are being cited for multiple violations of the same statute.

Timely and Full Payment of Wages; Records; and Unfair Agreements

The violations for timely and full payment of wages (Section 621-A), records (Section 622), and unfair agreements (Section 629) 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.”

There are 78 violations in this category. Chapter 9 Rules require us to start at \$1,000. The \$1,000 figure is multiplied by the 78 violations resulting in a penalty amount of \$78,000. The penalty is then reduced by 33% for employer size, resulting in a penalty amount of \$52,026. Since the statutory maximum cannot exceed \$500 per violation, the penalty is reduced by \$13,026, resulting in **a total penalty amount of \$39,000 for the violations in this category.**

Minimum wage and Unfair Contracts

The violations for minimum wage (Section 664) and unfair contracts (Section 672) are subject to the penalty range set out at 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 the event of the violation of any of the provisions of this subchapter, the Attorney General may institute injunction proceedings in the Superior Court to enjoin further violation thereof.”

There are 54 violations in this category. Chapter 9 Rules require us to start at \$1,000. The \$1,000 figure is multiplied by the 54 violations resulting in a penalty amount of \$54,000. The penalty is then reduced by 33% for employer size, resulting in a penalty amount of \$36,018. Since the statutory maximum cannot exceed \$200 per violation, the penalty is reduced by \$25,218, resulting in **a total penalty amount of \$10,800 for the violations in this category.**

Hazardous Occupations and Record of Hours of Minors

The violations for hazardous occupations (Section 772) and record of hours of minors (Section 774(7)) are subject to the penalty range set out at Section 781, which (materially) states: “An employer who employs, permits or suffers any minor to be employed or to work in violation of this article or Title 20-A, section 5054 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

- A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than \$250 nor more than \$5,000;
- B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture or penalty of not less than \$500 nor more than \$5,000; or
- C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a penalty of not less than \$2,000 nor more than \$10,000.”

There are 2 violations in this category. Chapter 9 Rules require us to start at \$1,000. The \$1,000 figure is multiplied by the 2 violations resulting in a penalty amount of \$2,000. The penalty is then reduced by 33% for employer size, resulting in **a total penalty amount of \$1,334 for the violations in this category.**

Appeals and Settlements

The total penalty for the above violations is \$51,134.00. 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 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. 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,

A handwritten signature in black ink, reading "Scott R. Cotnoir". The signature is written in a cursive style with a large, stylized "S" and "C".

Scott Cotnoir, Director
Wage and Hour Division
Inspection #478349