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GOVERNOR

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

WAGE & HOUR DIVISION

LAURA A. FORTMAN
COMMISSIONER

DIRECTOR

October 16, 2024

Northern Maine Medical Center
Attention: Erik Peters-Verrill Dana LLP
One Portland Square
Portland, Maine 04101-4054

CC: Alain Bois, Chief Operations Officer, Northern Maine Medical Center
194 East Main Street
Fort Kent, Maine 04743

RE: Violations of Title 26 MRS. Inspection #488134

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Background

The Northern Maine Medical Center is a full-service hospital located in the town of Fort Kent, Maine. It serves most of Aroostook County, including more than ten (10) small and medium-sized communities. Northern Maine Medical Center is a modern, fully accredited, 49-bed acute care facility, employing over 180 licensed employees and additional support staff.

On March 28, 2024, the Wage and Hour Division (“the Division”) - part of the Bureau of Labor Standards (“the Bureau”) in the Maine Department of Labor – contacted your place of business.

The Division requested, and the employers provided, records of employees working at your facility, the payroll, and time records, and workers' status questionnaire. The Division has since reviewed these records. Between the time your business was contacted and the review of records, the Division has identified a very high number of violations, resulting in a total fine of **\$92,800.00**. This is explained in more detail below.

Violations

Employee Misclassification

Section §591-A of title 26 (materially) states:

An employer that intentionally or knowingly misclassifies an employee as an independent contractor commits a civil violation for which a fine of not less than \$2,000 and not more than \$10,000 per violation may be adjudged.

A determination of misclassification of a worker as an independent contractor may result in the assessment of penalties under Section, 1082 or 1225 or Title 39-A, section 105-A or 324.

In this case, the employer hired [REDACTED], [REDACTED], [REDACTED], and [REDACTED] as independent contractors to perform temporary nursing services at Northern Maine Medical Center between 06/05/2023 and 01/26/2024. [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were, at the time of their "hiring" as independent contractors, already employees of NMMC as per diem nurses.

Under Maine's independent contractor test, workers are presumed to be employees unless the employer proves that the worker meets all of the employment standards, set out at 26 M.R.S. § 1043(E)(11). The employment standard is also attached to this citation letter. In this case, the workers did not meet all of the requirements to constitute bona fide independent contractors, and therefore they were, at all times, employees.

With respect to criterion 1(a) of the employment standard, the employer exercised control of the means and progress of the work being performed. Statements provided by the employer and employees [REDACTED], [REDACTED], [REDACTED], and [REDACTED] verified that the employer controlled the means and progress of the work.

With respect to criterion 1(b), the individual performing the work was not customarily engaged in an independently established trade. Statements provided by the employer and employees [REDACTED], [REDACTED], [REDACTED], and [REDACTED] showed that none of them had an independently established business.

With respect to criterion 1(c), the investigation established that [REDACTED], [REDACTED], [REDACTED], and [REDACTED] did not hire assistants, nor would they have been allowed to hire assistants per the employer's statements.

With respect to criterion 1(e), the investigation established that [REDACTED], [REDACTED], [REDACTED], and [REDACTED] did not advertise or make their services available to the community.

In this case, the employer required four employees to sign a special contract stating they would be working as independent contractors as a means to exempt the employer from the overtime pay requirement on 12 separate occasions between 08/12/2023 and 12/16/2023.

Because these workers were employees, not independent contractors, and the employer intentionally misclassified them, each pay cycle that the workers worked while misclassified as independent contractors is counted as a separate violation of section 591-A. These violations are identified in Table 1, below.

Table 1: Employee Misclassification Violations

[REDACTED]

Week Ending	Hours Worked	§591-A Violations
09/09/23	39.25	1
09/23/23	67.00	1
10/07/23	68.75	1
10/21/23	55.50	1
11/04/23	76.75	1
11/18/23	52.75	1
12/02/23	55.25	1
12/16/23	50.00	1
12/30/23	61.25	1
01/13/24	67.25	1
01/27/24	37.00	1
Total		11

[REDACTED]

Week Ending	Hours Worked	§591-A Violations
09/09/23	101.00	1
09/23/23	101.50	1
10/07/23	101.25	1
10/23/23	98.00	1
11/04/23	97.50	1

11/18/23	96.25	1
12/02/23	61.25	1
12/16/23	97.25	1
12/30/23	37.75	1
Total		9



Week Ending	Hours Worked	§591-A Violations
0/9/09/23	83.25	1
09/23/23	75.00	1
10/07/23	37.50	1
10/21/23	78.00	1
11/04/23	76.00	1
11/18/23	95.50	1
Total		6



Week Ending	Hours Worked	§591-A Violations
06/17/23	72.50	1
07/01/23	71.25	1
07/15/23	72.00	1
07/29/23	36.25	1
07/30/23	83.85	1
08/12/23	72.75	1
08/26/23	23.00	1
09/09/23	51.25	1
10/07/23	73.25	1
10/21/23	82.50	1
11/04/23	12.00	1
11/18/23	87.50	1
12/02/23	73.75	1
12/16/23	73.50	1
12/30/23	72.75	1
Total		15

Violations: 41

Overtime

Section 664 (3), entitled "Overtime rate", (materially) states:

3. Overtime rate. 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 employer failed to pay overtime to three employees on 12 separate occasions between 08/12/2023 and 12/16/2023. The employer paid the employees straight time for all hours worked over 40, instead of time and one-half. These violations are set out in Table 2, below.

Table 2: Overtime



Week Ending	Hours Worked	Overtime Hours Worked	Rate of Pay	Half-time wages owed	§664(3) violations
09/09/23	101.00	21.00	\$60.00	\$630.00	1
09/23/23	101.50	21.50	\$60.00	\$645.00	1
10/07/23	101.25	21.25	\$60.00	\$637.50	1
10/21/23	98.00	18.00	\$60.00	\$540.00	1
11/04/23	97.50	17.50	\$60.00	\$525.00	1
11/18/23	96.25	16.25	\$60.00	\$487.50	1
12/16/23	97.25	17.25	\$60.00	\$517.50	1
Total		132.75		\$3982.50	7



Week Ending	Hours Worked	Overtime Hours Worked	Rate of Pay	Half-time wages owed	§664(3) violations
09/09/23	83.25	3.25	\$60.00	\$97.50	1
11/18/23	95.50	15.50	\$60.00	\$465.00	1

Total		18.75		\$562.50	2
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Week Ending	Hours Worked	Overtime Hours Worked	Rate of Pay	Half-time wages owed	§664(3) violations
08/12/23	72.75	10.75	\$50.00	\$268.75	1
10/21/23	82.50	2.50	\$60.00	\$75.00	1
11/18/23	87.50	7.50	\$60.00	225.00	1
Total		31.50		\$300.00	3

Violations: 12

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, each of the weeks that the employer failed to pay overtime to the three employees identified in Table 2 above, also constitutes separate violations of section 621-A because the employees were not paid in full all wages earned.

Violations: 12

Unfair Contracts

Section 672 entitled “Unfair contracts”, (materially) states:

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

The subchapter referenced in this section is subchapter 3 which includes the overtime pay requirement. In this case, the employer required the following three employees to sign a special contract stating they would be working as independent contractors to exempt the employer from the overtime pay requirement on 12 separate occasions between 08/12/2023 and 12/16/2023.

[REDACTED] : 7 violations between 09/09/2023 and 12/16/2023.
[REDACTED] : 2 violations on 09/09/2023 and 11/18/2023.
[REDACTED] : 3 violations between 08/12/2023 and 11/18/2023.

Violations: 12

Summary of Violations

The table, below, sets out the total number of violations the Division found.

Table 3: Total Violations

Statute	Number of Violations
26 M.R.S. § 591-A (Employee Misclassification)	41
26 M.R.S. § 664(3) (Overtime)	12
26 M.R.S. § 621-A (Timely and full payment of wages)	12
26 M.R.S. § 672 (Unfair Contract)	12
Total	77

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.

In this case, the employer is not entitled to any reductions in the penalty amount because they have more than 100 employees and they are being cited for multiple grave violations.

Employee Misclassification

The violations for Employee Misclassification (Section 591-A) are identified in this section. Section 591-A Materially states that an employer that intentionally or knowingly misclassifies an employee as an independent contractor commits a civil violation for which a fine of not less than \$2,000 and not more than \$10,000 per violation may be adjudged.

The minimum penalty set in statute may not be less than \$2,000 per violation. Therefore, we use the statutory minimum of \$2,000 multiplied by the 41 violations, resulting in **a total penalty amount of \$82,000 for the violations in this category.**

Overtime Rate and Unfair Contracts

The violations for overtime rate (Section 664(3)), and unfair contracts (Section 672) are subject to the same penalty range. This is 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 24 violations. Chapter 9 Rules require us to start at \$1,000. The \$1,000 figure is multiplied by the 24 violations resulting in a penalty amount of \$24,000. Since the statutory maximum cannot exceed \$200 per violation, the penalty is reduced by \$19,200, resulting in **a total penalty amount of \$4,800 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 12 violations. Chapter 9 Rules require us to start at \$1,000. The \$1,000 figure is multiplied by the 12 violations resulting in a penalty amount of \$12,000. Since the

statutory maximum cannot exceed \$500 per violation, the penalty is reduced by \$6,000, resulting in a **total penalty amount of \$6,000 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 sections 625-B, 626-A, 654, 670, or 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 three employees overtime wages totaling \$4,845. The employer owes these employees an additional \$9,690.00 in liquidated damages.

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 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 amount of wages, liquidated damages, and interest owed to each employee is set out in Table 4, below.

Table 4: Wages, Liquidated Damages, Interest

Employee	Wages Owed	Liquidated Damages	Interest	Total
	\$3,982.50	\$7,965.00	\$959.19	\$12,906.69
	\$562.50	\$1,125.00	\$135.48	\$1,822.98
	\$300.00	\$600.00	\$77.26	\$977.26
	\$4,845.00	\$9,690.00	\$1,171.93	\$15,706.93

Appeals and Settlements

The total penalty for the above violation(s) is \$92,800. Please make checks payable to "Treasurer, State of Maine" and mail to the address at the top of this letter.

The total wages, liquidated damages, and interest owed to the workers for the above violations is \$15,706.93. 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. 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 that reads "Scott R. Cotnoir". The signature is written in a cursive, flowing style.

Scott Cotnoir, Director
Wage and Hour Division
Inspection #488134