



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

November 20, 2024

First Atlantic Healthcare
A/K/A Portland Center for Assisted Living
Attn. Christine Riendeau, VP of Human Resources
68 Devonshire St.
Portland, ME 04103

RE: Violations of Title 26 MRS. Inspection #489348

Dear Andrea Otis-Higgins,

When our Inspector investigated your place of business on May 7, 2024, the following violations of Maine Labor Law were found:

Nursing Mothers in the Workplace

Section 604, entitled "Nursing Mothers in the Workplace", (materially) states:

An employer, as defined in section 603, subsection 1, paragraph A, shall provide adequate unpaid break time or permit an employee to use paid break time or mealtime each day to express breast milk for the employee's nursing child for up to 3 years following childbirth. The employer shall make reasonable efforts to provide a clean room or other location, other than a bathroom, where an employee may express breast milk in privacy. An employer may not discriminate in any way against an employee who chooses to express breast milk in the workplace.

In this case, the employer told an employee to use a conference room, with no means of locking the door to ensure privacy, during the 2nd and 3rd week of March 2024, to express milk. During this 2-week period, the employee was required to use the conference room on 8 separate days. Over the course of those 8 days someone walked in on the employee while she was expressing milk on 3 separate occasions.

Violations: 8

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, 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, history, and gravity of the violation are the relevant criterion to the imposition of fines in this case. The employers have more than 21 employees but less than 50 employees. This means that, pursuant to Section II (1), the penalty amount in all violations will be reduced by 15%. Pursuant to Section II (2), the result will then be reduced by 20% if the employers have no history of previous violations and they are not being cited for multiple violations. Since the employer is being cited for multiple violations they are not entitled to any additional penalty reduction.

Nursing Mothers in the Workplace;

The penalty for violations of Nursing Mothers in the Workplace (Section 604) is set out at Section 602, which (materially) states: “Whoever violates this subchapter commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 for each violation may be adjudged.”

In this case, there are 8 violations. Chapter 9 Rules require us to start at \$1,000. The \$1,000 figure is multiplied by the 8 violations, resulting in a penalty amount of \$8,000. The penalty is then reduced by 15% for employer size, resulting in a penalty amount of \$6,880. Since the statutory maximum cannot exceed \$500 per violation, the penalty is reduced by \$2,880, resulting in a total penalty amount of \$4,000.00 for the violations in this category.

Appeals and Settlements

The total penalty for the above violation is \$4,000.00. 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 that reads "Scott R. Cotnoir". The signature is written in a cursive, slightly slanted style.

Scott Cotnoir, Director
Wage and Hour Division
Inspection #489348