



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

Dr. JASON MOYER-LEE
DIRECTOR

June 11, 2024

Upta Camp Edible Co, LLC
and Scott Ouellette, Owner
9 Main ST
Bowdoinham, ME 04008

RE: Violations of 26 MRS. Inspection #476403

Dear Mr. Ouellette,

When our Inspector visited and inspected your place of business on April 19, 2023, 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.

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. In this case, the Division identified 142 instances in which the employers did not keep such records. These violations are set out in Table 1, below.

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

Table 1: Records



Week ending	Hours Worked	# of Days Worked*
1/2/2022	34.86	2
1/9/2022	28.64	2
1/16/2022	28.8	2
1/23/2022	19.5	1
1/30/2022	32.44	2
2/6/2022	19.73	1
2/13/2022	33.61	2
2/20/2022	29.35	2
2/27/2022	35.85	2
3/6/2022	32.64	2
3/13/2022	35.28	2
3/20/2022	27.53	2
3/27/2022	32.72	2
4/3/2022	28.77	2
4/10/2022	28.52	2
4/17/2022	34.59	2
4/24/2022	34.59	2
5/1/2022	40	2
5/8/2022	33.3	2
5/15/2022	26.78	2
10/9/2022	40	2
Total		40



Week ending	Hours Worked	# of Days Worked*
1/2/2022	32.09	2
1/9/2022	29.33	2
1/16/2022	22.61	1
1/23/2022	30.9	2
1/30/2022	38	2
2/6/2022	22.55	1
2/13/2022	34.15	2
2/20/2022	34.01	2
2/27/2022	27.65	2

3/6/2022	17.47	1
3/13/2022	29.97	2
3/20/2022	35	2
3/27/2022	18.26	1
4/3/2022	22.92	1
4/10/2022	25.54	2
4/17/2022	29	2
4/24/2022	29	2
5/1/2022	24.73	2
5/8/2022	28.15	2
5/15/2022	22.13	1
5/22/2022	39.5	2
5/29/2022	39.5	2
6/5/2022	30	2
6/12/2022	28	2
6/19/2022	27	2
6/26/2022	32	2
7/3/2022	32	2
7/10/2022	25	2
7/17/2022	28	2
Total		52



Week ending	Hours Worked	# of Days Worked*
1/9/2022	29.75	2
1/16/2022	36.52	2
1/23/2022	26.07	2
1/30/2022	31.38	2
2/6/2022	25.83	2
2/13/2022	29.23	2
2/20/2022	29.25	2
3/6/2022	27.63	2
3/13/2022	29.03	2
3/20/2022	18.98	1
3/27/2022	31.14	2
4/3/2022	31.32	2
4/10/2022	30.27	2
4/17/2022	25.04	2
4/24/2022	25.04	2
5/1/2022	24.73	2
5/8/2022	28	2

Total		33
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Week ending	Hours Worked	# of Days Worked*
2/20/2022	24.19	2
3/6/2022	6.26	1
Total		3



Week ending	Hours Worked	# of Days Worked*
7/24/2022	42.5	2
7/31/2022	38.5	2
8/7/2022	46	2
8/14/2022	40.5	2
8/21/2022	39.5	2
8/28/2022	46	2
9/4/2022	40.5	2
Total		14

Violations: 142

26 MRS §591-A Employee Misclassification - 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 1051, 1082, 1225 or Title 39-A, section 105-A or 324.

In this case, the employer knowingly misclassified [REDACTED] as an independent contractor. The employer issued [REDACTED] a 1099-Misc., for all the sales she generated for Golden Road Extracts, LLC, a division of Upta Camp Edible Co, LLC. She was misclassified for 20 weeks during the weeks ending 01/02/22 through 05/15/22, and for 23 weeks during the weeks ending 10/09/22 through 03/12/23, for a total of 43 weeks. Note that [REDACTED] left this employment on 05/15/22 but returned to work for the employer on 10/03/22. She has never worked as an independent contractor and does not hold herself out to the community as a self-employed individual. She further stated that she was coerced, by [REDACTED], Owner, into establishing a Limited Liability Company, as that was the only way he would allow her to sell his product.

When applying the employment standard to determine if the work performed by [REDACTED] qualifies her as an independent contractor, the first five criteria of the standard must be met. In this case, the work performed by [REDACTED] failed to meet all five criteria.

1. Employee [REDACTED] could not come and go as she pleased or make her own hours, as she had to adhere to the employer's set work schedule.
2. Employee [REDACTED] was not customarily engaged in an established trade or occupation and did not hold herself out to the community as a self-employed individual. She does not own her own business and has always worked as an employee. She was coerced into establishing a limited liability company by [REDACTED], Owner.
3. Employee [REDACTED] did not have the opportunity to affect her own profit or loss resulting from the sales work she performed for the employer, as she had to adhere to the employer's set product price points.
4. Employee [REDACTED] did not have the authority to hire or to terminate any individuals and couldn't make any decisions independent of the employer.
5. Employee [REDACTED] did not hold herself out to the community as a self-employed individual and has not performed sales consultant work for any other businesses.
6. The work performed is directly related to the same course of business as her employer. The employer sells their own product and provides a delivery service for his customers. Each Salesperson simply performs sales and delivery services for the employer.

Each week that the employer misclassified [REDACTED] is counted as a separate violation.

Violations: 43

Penalties

When assessing fines for violations of Title 26, Chapter 7, the Division 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

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>.

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 employers in this case have at least 5 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%.

For the applicable fines for the violations of these statutes, see Table 3, below:

Table 3: Penalties for Violations of Section 622

Statute	Number of Violations	Penalty per violation	Total Penalties
622	142	\$100 x 33.3% = \$66.70	\$9,471.40

The penalty amounts for violations of Section 591-A are set out in Table 4, below.

Table 4: Penalties for Violations of Section 591-A

Statue	Number of Violations	Penalty per violation	Total Penalties
591-A	43	\$2000 x 33.3% = \$1334	\$57,362.00

Appeals and Settlements

The total penalty for the above violation(s) is \$66,833.40. 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) 623-7925.

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 # 476403