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GOVERNOR

DEPARTMENT OF LABOR
BUREAU OF LABOR STANDARDS
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04333-0045

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WAGE & HOUR DIVISION

KATE BURKHART
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May 1, 2025

William Faulkingham
P O Box 121
Winter Harbor, Maine, 04693
Or
Attorney Joshua Tardy - Rudman Winchell
jtardy@rudmanwinchell.com

RE: Violations of Title 26 MRS. Inspection #494493

Dear William Faulkingham,

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

26 MRS §772 Hazardous Occupations declares certain occupations as hazardous and subject to a minimum age.

2. Rules; list of employment and occupations. The director shall adopt rules to develop and maintain a list of employment and occupations not suitable for a minor. The rules must conform as far as practicable to the child labor provisions of the federal Fair Labor Standards Act of 1938, 29 United States Code, Section 212 and any associated regulations.

In this case, the employer allowed a 14-year-old minor to work on the employer's lobster boat on 4 separate occasions: 06/28/2024, 07/08/2024, 08/02/2024, and 08/29/2024. Occupations in connection with transportation of persons or property by water is strictly prohibited under 29 Code of Federal Regulations Section 570.33 (n)(1).

Violations: 4

26 MRS §774 (7) Record of work hours of minors. 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 employer failed to keep a daily time record on the 14-year-old minor who worked 4 hours per day on 06/28/2024, 07/08/2024, 08/02/2024, and 08/29/2024.

Violations: 4

26 MRS §665 (1) Pay Statement requires that employers provide to the employee with each payment of wages, a statement which clearly shows the date of the pay period, hours worked, total earnings and itemized deductions.

In this case, the employer failed to provide a detailed pay statement with each payment of wages made to the 14-year-old minor on 06/28/2024, 07/08/2024, 08/02/2024 and 08/29/2024 in accordance with this statute:

Violations: 4

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 employer in this case had 1 employee. This means that, pursuant to Section II (1), the penalty amount in all violations will be reduced by 33%. Pursuant to Section II (2), because the employer is being cited for multiple violations, the employer is not entitled to any further reductions.

Hazardous Occupations; Record of hours of minors

The violations for minors under 18 years of age working in hazardous occupations (Section 772) and record of hours of minors (Section 774(7)) are set out in 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.... 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.

In this case, there were 8 violations. Chapter 9 Rules require us to start at \$1,000.00. The \$1,000.00 figure is multiplied by the 8 violations resulting in a penalty amount of \$8,000.00. A 33.3% reduction based on employer size is then applied, **resulting in a total penalty amount of \$5,336.00 for violations in this category.**

Pay Statement

The penalty for violations of pay statements (Section 665 (1)) are 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 are 4 violations. Chapter 9 Rules require us to start at \$1,000. The \$1,000 figure is multiplied by the 4 violations, resulting in a penalty amount of \$4,000. The penalty is then reduced by 33% for employer size, resulting in a penalty amount of \$2,668.00. Since the statutory maximum cannot exceed \$200 per violation, the penalty is reduced by \$1,868.00, resulting in **a total penalty amount of \$800.00 for the violations in this category.**

The total penalty for the above violations is \$6,136.00. Checks should be made payable to “Treasurer, State of Maine” and mailed to the address at the top of this letter.

Appeals and Settlements

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, and any wages, liquidated damages, or interest ordered to be paid. 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
Wage and Hour Division
Inspection #494493