



DEPARTMENT OF LABOR
BUREAU OF LABOR STANDARDS
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04333-0045

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WAGE & HOUR DIVISION

MICHAEL ROLAND
DIRECTOR

Corrected

January 24, 2022

Harbour Towne Inn
Attn: Stephanie McElman, Owner
71 Townsend Ave.
Boothbay Harbor, ME 04538

RE: Violations of Title 26. Inspection #460475
Certified mail: 701515200001096288867 and 70151520000109628850

Dear Stephanie McElman,

When our inspector, [REDACTED], investigated complaints against your business on October 2021, the following violations of Maine’s labor laws were found. The previous citation letter of December 15, 2021 is withdrawn, and this letter replaces it.

26 MRS §664 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.

In this case, the employer classified [REDACTED] as exempt from minimum wage and overtime and paid them a salary that did not meet the minimum standard for each of the 13 weeks between 05/26/2021 and 08/23/2021.

26 MRS §663 defines the following terms:

(3) Employee. “Employee,” any individual employed or permitted to work by an employer but the following individuals shall be exempt from this subchapter:

(K) A salaried employee who works in a bona fide executive, administrative or professional capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher.

In this case, the employer agreed to pay [REDACTED] an annual salary of \$35,000. These employees were paid \$673.08 per week for each of the 13 weeks

between 05/26/2021 and 08/23/2021 which is less than the State's minimum salary requirement.

Maine's minimum salary for 2021 is calculated as follows:

- Minimum wage in 2021 was \$12.15 per hour.
- $\$12.15 \times 3000 = \$36,450$ annual rate.
- $\$36,450 \div 52 \text{ weeks} = \$700.96 \text{ per week} + .01\text{¢} = \700.97 per week (the rate must exceed 3000 times the State's minimum hourly wage.)

Since Maine's minimum salary is higher than the rate established by the federal Fair Labor Standards Act, which in 2021 was \$684.00 per week, Maine's minimum salary must be paid to qualify for the exemption.

For the time period encompassing 05/11/21 through 05/25/21, [REDACTED] did not qualify for the salary exemption because their primary duties did not meet the Executive, Administrative, or Professional categories as defined in the department regulations, Chapter 16: Rules Governing Definitions for Executive, Administrative, and Professional Exemptions From Minimum Wage and Overtime.

[REDACTED] primary duties did not meet the Administrative exemption because they were not performing nonmanual work directly related to management policies or general business operations of the employer.

[REDACTED] primary duty consisted of manual work relating to cooking, cleaning, and checking in/out customers.

[REDACTED] primary duty consisted of manual work relating to cooking, cleaning, checking in/out customers and maintenance.

[REDACTED] primary duty did not meet the Executive exemption because she was not managing and directing the work of two or more full-time employees or the equivalent in part time employees.

[REDACTED] primary duty did not meet the Executive exemption because he was not managing and directing the work of two or more full-time employees or the equivalent in part time employees.

[REDACTED] primary duty did not meet the Professional exemption because the work did not require knowledge of an advanced type in a field of science or learning; she was not working as a teacher in the activity of imparting knowledge; and the work did not require invention, imagination, or talent in a recognized field of artistic endeavor.

[REDACTED] primary duty did not meet the Professional exemption because the work did not require knowledge of an advanced type in a field of science or learning; he was not working as a teacher in the activity of imparting knowledge; and the work did not require invention, imagination, or talent in a recognized field of artistic endeavor.

Because the employees did not qualify as “salaried employees” under §663(3)(K), the employer is in violation of the following:

26 MRS §664 (3) Overtime Rate requires that employees be paid time-and-one-half their regular hourly rate for all hours worked in excess of 40 hours per week.

In this case, the employer failed to pay overtime to [REDACTED] for each of the 15 weeks between 05/12/2021 and 08/23/2021. (See attached spreadsheet and calculations.)(15 weeks x 2 employees = 30 violations)

26 MRS §671. Penalties Any employer who violates this subchapter shall, upon conviction thereof, be punished by a fine of not less than \$50 nor more than \$200. Any employer, who discharges or in any other manner discriminates against any employee because such employee makes a complaint to the director or to the county attorney concerning a violation of this subchapter, shall 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.

- **30 Violations of §664 (3) x \$50 per violation = \$1,500.00**

The citation letter dated December 15, 2021 incorrectly identified 32 violations of this statute and assessed a penalty of \$1,600.00. The number of violations has been corrected along with the penalty amount. The citation letter also incorrectly identified violations of §663(3)(K), which have been withdrawn.

26 MRS §621-A (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. 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.

In this case, the employer failed to pay [REDACTED] in full on each of the following established pay dates: 05/25/21, 06/11/21, 06/25/21, 07/09/21,07/23/21, 08/06/21, 08/20/21, and 08/24/21. 8 pay dates x 2 employees = 16 violations.

The employer was previously cited for violations of this statute on November 22, 2019 and informed that continued noncompliance would result in penalties being assessed.

26 MRS §626-A. Penalties Whoever violates any of the provisions of section 600-A, sections 621-A to 623 or section 626, 628, 628-A, 629 or 629-B is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation.

- **16 violations of §621-A (1) x \$100 = \$1,600.00 x 1.5 multiplier = \$2,400.00**

The original letter dated December 15, 2021 incorrectly identified 32 violations of this statute and assessed a penalty of \$4,800.00. The number of violations has been corrected along with the penalty amount.

**The total penalty for the violations of §664 (3) and §621-A is \$3,900.00
Make checks payable to the “Treasurer, State of Maine”**

The violations identified above will become a final order within fifteen (15) business days from the day it was received unless you request a penalty discussion or file an appeal (see employer options) within the specified time frame listed above.

Employer options (within 15 business days):

If you intend to correct all violations identified and wish to work with the Wage & Hour Division to possibly reduce the penalty amount, you may request a “Penalty Discussion”. This discussion will pertain only to the penalty(s) and not the violation(s). All proposed penalties will be stayed until after the penalty discussion.

Or

You may file a formal appeal of any violation or penalty within fifteen (15) days of receipt of this citation. Please be specific as to what violation(s) or penalty you wish to appeal. If a request for a formal appeal is received, the Director will set a time and date for a “hearing”. The Director will serve as the hearing officer or may assign the appeal to the Administrative Hearings Division within the Department of Labor. The hearing will be at the headquarters of the Bureau or at a place mutually agreeable to the parties. All proposed penalties will be stayed until after the formal appeal is heard.

As the employer, you must respond in writing to the Director of the Bureau, at the address above, within fifteen (15) business days of receipt of this report stating what option you intend to choose. If no response is received within that time frame you accept all citations and any penalties assessed. The citation will become a final order and payment will be due at that time, made payable to “Treasurer, State of Maine” and mailed to the address at the top of this citation.

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.

If you have questions regarding this citation, you may contact the Bureau of Labor Standards, Wage & Hour Division at (207) 623-7900.

Dates to remember:

Respond in writing, to the Director of the Bureau within fifteen (15) business days of receipt of this citation indicating what option you choose.

Respectfully,

A handwritten signature in black ink that reads "Scott R. Cotnoir". The signature is written in a cursive style with a large initial 'S'.

Scott Cotnoir, Director
Wage and Hour Division
Inspection # 460475