

Labor Standards Investigator

New York State Department of Labor  
Division of Labor Standards  
20 Bloomingdale Road  
White Plains, NY 10605

August 14, 2015

Refer to:

Dear

As you are aware this Department recently visited your place of business located at Bronx, NY on 7/13/15. According to employees' interviews, they work 4 -5 days per week, 10 to 10.5 hours per day, they are being paid a flat rate of \$70 - \$75 per day, cash, without a wage statement. On this same day you acknowledged that you do not maintain or have payroll records reflecting wages and hours paid to your workers. You mentioned that you previously prepared a document which your employees refused to sign and therefore never asked them again to fill out.

During the follow up visit on 7/14/15 you presented the document mentioned above however, the document which consisted of a composition notebook listing a weekend of January 2015 and employees name was not filled out. In absence of payroll records we have proceeded to compute an underpayment based on the employees' interviews for the period of July 2012 thru July 2015 which cover underpayments due for minimum wage, overtime and spread of hours.

Please note that the New York State Labor Law requires employers to pay manual workers an hourly rate of pay and overtime at time and a half their regular rate of pay after 40 hours of work per week. Every employee must be allowed at least 30 minutes for an uninterrupted meal period for shifts in excess of 6 hours. In addition, if an employee is scheduled to be on premises more than 10 hours in a day (including meal break) they must be paid an additional hour at minimum wage for each day where this occurs, this is called a spread of hours. Along with all payments of wages, the employer must furnish each employee with a wage statement. Also, Please be advised, §215 of the New York State Labor Law makes it illegal for employers to discharge, penalize, or in any manner discriminate or retaliate against an employee who has engaged in any activity protected by Labor Law.

Following is an example of how we computed the underpayment. Please note that we have applied maximum tip credit although you failed to maintain record of tips earned by each employee.

Miscellaneous Wage Order example - Employee

Example: 2015, State minimum wage \$8.75, rate paid \$70 per day, 52.5 hours, 5 Spread of hour,  
Maximum tip credit: \$2.15



Department  
of Labor

You paid: 5 Days X \$70 = \$350

\*NYS Minimum Wage Due:

40 hours X \$8.75=	\$350.00
12.5 overtime hours X \$13.13 =	\$164.06
Total: 50 Hours	\$514.06
Plus 5 Spreads X \$8.75 =	\$ 43.75
	\$557.81
Minus tips credit: 52.5 hours X \$2.15 =	\$112.87
Minimum wages due for 50 hours	\$444.94

The underpayment is equal to minimum wage due minus wages you already paid:

Minimum Wages Due	\$444.94
- Wages paid	\$350.00
Underpayment for this week:	\$94.94

Enclosed is a Recapitulation Sheet-Preliminary Report in the amount of \$19,401.94 covering the audit period from 7/14/2012 to 7/11/2015. It is your responsibility to conduct an up to date self-audit and come into compliance immediately.

We are also enclosing a Notice of Labor Law Violation for Article 5 §162, Article 19 §661, NYS Codes, rules and Regulation Title 12 Parts 142-2.7 (See enclosed violation notice for detailed explanation). Be advised that these violations carry a monetary penalty of up to \$1,000 per week in which the violation occurred. However, we are imposing penalties in the total amount of \$500 for each violation.

Please remit payment for **\$20,901.94** by check or money order payable to the Commissioner of Labor by **September 4, 2015**. Under the New York State Labor Law, the responsible officers of the corporation are held personally liable for the corporation's violation of these sections.

If such payment is not received by **September 4, 2015**, we will refer this case for civil action without further notice. Contact us by **September 4, 2015** to discuss a payment plan if unable to make payment in full by deadline. **Failure to remit payment may result in the issuance of a civil Order to Comply including all wages due, 100% liquidated damages, interest at 16% per annum, and civil penalties not to exceed 200% without further notice**

If you do not agree with these amounts due and payable to the claimant(s), provide a full statement giving your reasons. Include a copy of any payroll records, policies, contracts, etc. to substantiate your position. Your federal employer identification number (FIEN) must be shown on all payments and correspondences submitted to this office.

If you would like to have this situation mediated via an informal compliance hearing, you may request that this case be heard by a hearing official at your local Department of Labor office. Please contact us prior to **September 4, 2015** if you would like us to schedule a compliance conference concerning this matter, contact Senior Investigator

As a courtesy, the Department of Labor reminds you that Section 215 of the New York State Labor Law prescribes that no employer shall penalize any employee for making a complaint to the

employer, to the Commissioner of Labor, or to the Commissioner's representative, about any provision of the Labor Law. ***Violation of §215 can bring a civil fine and separate civil action by the employee. Where violations of §215 exist, the Department assesses \$20,000.00 Liquidated Damages per employee and a \$10,000.00 civil penalty per incident.***

We trust that we can count on your cooperation in this matter.

Sincerely,

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Labor Standards Investigator

Case #

## RECAPITULATION SHEET - PRELIMINARY REPORT

SUMMARY OF CLAIMS FOR UNPAID WAGES, WAGE SUPPLEMENTS OR WAGES DUE UNDER THE PROVISIONS OF THE MINIMUM WAGE ORDER AND/OR STATUTORY MINIMUM RATE UNDER THE NEW YORK STATE MINIMUM WAGE ACT, GOVERNING WAGES IN THE Miscellaneous INDUSTRY

NAME AND ADDRESS OF EMPLOYER

FEIN \_\_\_\_\_

ESTABLISHMENT I.D. LS05 2015004850

INVESTIGATOR \_\_\_\_\_

DATE \_\_\_\_\_

08/14/2015

Note: Violation of the Wage and benefit Sections of the Labor Law is a misdemeanor for a first offense and a felony for a second offense. The amount listed on this Recapitulation Sheet is the total gross due to the employee(s) listed. If you remit the net amount due you must itemize the legal deductions for each employee separately on an additional sheet.

## THE EMPLOYEES LISTED BELOW ARE DUE: Minimum Wage

NAME AND SOCIAL SECURITY NUMBER OF EMPLOYEE	ADDRESS	PERIOD COVERED BY CLAIM OR UNDER-PAYMENT	Amount Due	Gross Amount Due	Liquidated Damages	Total Liquidated Damages	Grand Total Due	TOTAL DEDUCTIONS	NET DUE AFTER ALL DEDUCTIONS
		07/14/2012 to 07/11/2015	Min Wage \$9,741.11		\$2,435.28				
Total Amounts Due to:				\$9,741.11		\$2,435.28	\$12,176.39		
		07/14/2012 to 07/11/2015	Min Wage \$5,780.44		\$1,445.11				
Total Amounts Due to:				\$5,780.44		\$1,445.11	\$7,225.55		
TOTAL GROSS AMOUNT				\$15,521.55	TOTAL LIQUIDATED DAMAGES	\$3,880.39	\$19,401.94		



State of New York  
Department of Labor  
Division of Labor Standards

**Notice of Labor Law Violation**

Employer

FEIN:  
Phone:  
Entity Type:  
Name and Address:

Case ID#:  
Job Location(if different):

Investigation

Responsible Person Notified:  
(Name, Title, Address)

Violation Date and Time: 7-14-12  
Date of Issuance: 8-14-15  
Phone: \_\_\_\_\_

**A VIOLATION OF THE WAGE AND BENEFIT SECTIONS OF CHAPTER 31 IS A MISDEMEANOR FOR A FIRST OFFENSE AND A FELONY FOR A SECOND OFFENSE, WITH PENALTIES AS PRESCRIBED BY LAW. YOU ARE HEREBY NOTIFIED TO TAKE IMMEDIATE ACTION TO COMPLY WITH ALL PROVISIONS OF THE LAW.**

Carmine Ruberto, Director  
FOR THE COMMISSIONER OF LABOR

By: \_\_\_\_\_  
LABOR STANDARDS INVESTIGATOR

Labor Standard Investigator

**New York State Department of Labor**  
Division of Labor Standards  
400 Oak St, Suite 101  
Garden City, NY 11530  
(516)228-3939

September 21, 2015

Re:

Dear

On July 14, 2015 we visited your establishment to determine compliance with the minimum wage provisions of the New York State Labor Law. During this visit, you informed us that no records of daily /weekly hours were kept for any employee; that employees were paid in cash without a wage statement and that you will try to gather records of payments by our next visit, scheduled for July 21, 2015.

On July 21, 2015 we returned to your premises to inspect any payroll records available. At that time, you submitted for inspection time sheets, showing employees working 4 to 5 days, from 35 to 45 hours a week, but no payroll records were produced, showing daily and weekly hours worked, or any payroll registers showing wages paid to any employee. We then advised you that in the absence of contemporaneous payroll records, the Department would base our findings, on employee's statements of hours worked and wages paid.

Section 661 of Article 19 {Minimum Wage} of the NYS Labor Law requires employers to keep and have available for inspection a true and accurate records for each employee, showing daily and weekly hours worked, gross wages, deductions, any allowances claimed and net wages; Part 142-2.7 of the Minimum Wage Order for the Miscellaneous Industry require employers to furnish to each employee a statement with every payment of wages listing hours worked, rates paid, gross wages, any allowances claimed, deductions, and net wages.

Additionally, our investigation showed that employees at consistently worked over 40 hours weekly and were paid a flat daily rate instead of an hourly rate. They were not required to punch a time card or to sign a time sheet on a daily basis, and worked a set schedule every week. There were instances where the hourly rate fell below the state minimum wage and some above state minimum wage. As per interviews conducted, employees were not allowed a ½ meal break. Finally, employees who worked over 10 hours daily were not paid for spread of hours.

Accordingly, we have computed wages due to all employees affected based on their statements of hours worked and wages paid by applying the appropriate statutory regulations. Using I as an example we computed her additional wages as follows:

She was paid a daily rate, however the law requires that all employees be paid an hourly rate, not to fall below the State Basic Minimum Hourly Wage rate (Minimum Wage). Where no hourly rate exists one must be derived by dividing the total weekly wages paid by the total number of hours worked:

$$[\$75.00/\text{day} \times 5 \text{ days} = \$375.00/52.5 \text{ hrs} = \$7.14/\text{hr}]$$

$$\$7.14 \times 40 = \$285.60$$

As of April 1, 1987, New York State Labor Law requires that employers pay those employees who work in excess of 40 hours per week one and one half times the regular hourly rate of pay for the hours worked in excess of 40. Therefore, based on a derived rate of \$7.14 the hours worked in excess of 40 should have been paid at \$11.52 per hour after applying a partial tip allowance as follows:

$$[\$8.75 \text{ per hour} \times 1.5 = \$13.13 - \$1.61 \text{ tip allowance} = \$11.52 \text{ per hour O.T. rate}]$$

$$\$11.52 \times 12.5 \text{ O/T hours} = \$144.00$$

She is also entitled to an additional hour of pay at the State Basic Minimum Hourly Rate on each day that the length of the interval between the start and end of his work day exceeded ten hours per day. This is called a spread of hours and applies to all employees who early hourly rates at or very near the minimum wage.

$$[\$8.75/\text{hr} \times 5 \text{ days} = \$43.75 \text{ (spreads of hours due)}]$$

The total weekly wages that should have been paid to her per the above = **\$473.35** (\$285.60 = \$144.00 + \$43.75). However, she only received \$375 per week. The difference between weekly wages earned and weekly wages paid is the underpayment **[\$98.35]**.

Minimum wage/overtime underpayment were also computed for other employees as per the method explained above. The enclosed Recapitulation Sheet – Preliminary Reports reflects additional wages/unpaid wages due to all affected employees in the total amount \$35,782.41 covering the period from 7/14/2012 to 7/14/2015. Liquidated Damages of 25% (\$8,945.60) have been assessed on the amount due as required per Section 663 of the New York Labor Law for a grand total of \$44,728.01. It is your responsibility to conduct an up to date self audit and come into compliance immediately.

We have also included a Notice of Labor Law Violation for Section 661 of the New York State Labor Law, and Part 142-2.7 which we explained above, and Article 5 Section 162 to allow employees prescribed meal period. Accordingly, we have imposed an \$800.00 fine for a total penalty of \$2,400.00.

Please remit payment of **\$47,128.01** by check or money order made payable to the Commissioner of Labor no later than 10/18/2015, and mail it to Division of Labor Standards, 400 Oak St., Garden City NY 11530. Failure to remit payment may result issuance of an Order to Comply including all wages due, 100% liquidated damages, interest at 16% per annum, and civil penalties not to exceed 200% without further notice.

Please contact Senior Investigator \_\_\_\_\_ by email at [@labor.ny.gov](mailto:@labor.ny.gov) with questions, to request a compliance conference or to discuss a payment plan if unable to make payment in full by deadline.

Also please be advised that as per Section 215, it is illegal for an employer to retaliate against an employee for providing information to the Department of Labor, and that if it is determined that such action has occurred, a penalty in the amount of \$10,000 per employee will be imposed, plus \$10,000 payable to the employee, and you may be required to reinstate any employee that was terminated as a result of this investigation, and pay any back wages that may be owed.

We trust that we can count on your cooperation in this matter, and remit the amount requested, so that no further legal action needs to be taken.



Department  
of Labor

Case #

## RECAPITULATION SHEET - PRELIMINARY REPORT

SUMMARY OF CLAIMS FOR UNPAID WAGES, WAGE SUPPLEMENTS OR WAGES DUE UNDER THE PROVISIONS OF THE MINIMUM WAGE ORDER AND/OR STATUTORY MINIMUM RATE UNDER THE NEW YORK STATE MINIMUM WAGE ACT, GOVERNING WAGES IN THE \_\_\_\_\_ INDUSTRY

NAME AND ADDRESS OF EMPLOYER

FEIN \_\_\_\_\_

ESTABLISHMENT I.D. LS04 2015004893

INVESTIGATOR

DATE

09/21/2015

Note: Violation of the Wage and benefit Sections of the Labor Law is a misdemeanor for a first offense and a felony for a second offense. The amount listed on this Recapitulation Sheet is the total gross due to the employee(s) listed. If you remit the net amount due you must itemize the legal deductions for each employee separately on an additional sheet.

THE EMPLOYEES LISTED BELOW ARE DUE: Minimum Wage

NAME AND SOCIAL SECURITY NUMBER OF EMPLOYEE	ADDRESS	PERIOD COVERED BY CLAIM OR UNDER-PAYMENT	Amount Due	Gross Amount Due	Liquidated Damages	Total Liquidated Damages	Grand Total Due	TOTAL DEDUCTIONS	NET DUE AFTER ALL DEDUCTIONS
		07/14/2012 to 07/14/2015	Min Wage \$17,635.68		\$4,408.92				
Total Amounts Due to:				\$17,635.68		\$4,408.92	\$22,044.60		
		07/14/2012 to 07/14/2015	Min Wage \$18,146.73		\$4,536.68				
Total Amounts Due to:				\$18,146.73		\$4,536.68	\$22,683.41		
TOTAL GROSS AMOUNT				\$35,782.41	TOTAL LIQUIDATED DAMAGES	\$8,945.60	\$44,728.01		



State of New York  
Department of Labor  
Division of Labor Standards

**Notice of Labor Law Violation**

**Employer**

**FEIN:**

**Phone:**

**Entity Type:**

**Name and Address:**

**Case ID#: LS04 2015004893**

**Job Location(if different):**

**Investigation**

**Responsible Person Notified:**

**A VIOLATION OF THE WAGE AND BENEFIT SECTIONS OF CHAPTER 31 IS A MISDEMEANOR FOR A FIRST OFFENSE AND A FELONY FOR A SECOND OFFENSE, WITH PENALTIES AS PRESCRIBED BY LAW. YOU ARE HEREBY NOTIFIED TO TAKE IMMEDIATE ACTION TO COMPLY WITH ALL PROVISIONS OF THE LAW.**

**Carmine Ruberto, Director  
FOR THE COMMISSIONER OF LABOR**

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Division of Labor Standards/Labor Standards Investigator

New York State Department of Labor  
75 Varick Street, 7<sup>th</sup> Floor  
New York, NY 10013  
www.labor.ny.gov

09/16/2015

[REDACTED]  
New York, NY 10003

Re: Case # LS20 2015006501 vs.

Dear Ms. [REDACTED]

After conducting an investigation of your business, we found that your employee was not paid THE state minimum/overtime wage for the period from 08/23/2014 to 08/22/2015. The overtime hours must be paid at 1.5 times the employees' hourly rate for weekly hours worked after 40.

It was also found that you failed to maintain complete and accurate records of daily and weekly hours worked by your employee, and that you failed to issue a proper wage statement to your employee for each wage payment with the gross and net wages, deductions, allowances, hours, pay period, and pay rate listed. New York State Labor Law dictates that all employers must keep true and accurate payroll records, including the records of daily hours worked by the manual workers, and have them available for inspection by NYS Department of Labor.

A sample computation for [REDACTED] for the week of 05/30/2015 (05/24/2015-05/30/2015):

She worked 6 days a week, Thursday-Tuesday, daily from 10am-8pm and 10:30am-8pm for Saturday and Sunday. Daily meal break was not specified. Her wage rate was \$75/day. She earned a daily tip of \$60.

Hours worked = 59 hours (10 hours/day x 4 days plus 9.5 hours/day x 2 days)

Wage paid = \$450 (\$75/day x 6 days)

Hourly wage paid = \$7.627 (\$450 divide by 59 hours)

Tips/hour = \$6.10/hour (\$60/day x 6 days divide by 59 hours)

State minimum wage for year 2015 = \$8.75

Maximum tip allowance to the employer = \$2.15

State minimum hourly rate = \$6.60 (\$8.75-\$2.15)

Minimum wage for 40 hours = \$264 (\$6.60 x 40 hours)

Required Spread of hours payment = \$35 (\$8.75 x 4 hours)

Required minimum wage for 40 hours = \$299 (\$264 + \$35)

Wage paid for 1st 40 hours = \$305.08 (\$7.627 x 40 hours)

No underpayment for the 1st 40 hours.

State minimum overtime rate = \$13.125 (\$8.75 x 1.5)

Partial tip = \$1.123 (\$8.75 - \$7.627)

Required minimum overtime rate = \$12.002 (\$13.125 - \$1.123)



Department  
of Labor

Case # LS20 2015006501

## RECAPITULATION SHEET - PRELIMINARY REPORT

SUMMARY OF CLAIMS FOR UNPAID WAGES, WAGE SUPPLEMENTS OR WAGES DUE UNDER THE PROVISIONS OF THE MINIMUM WAGE ORDER AND/OR STATUTORY MINIMUM RATE UNDER THE NEW YORK STATE MINIMUM WAGE ACT, GOVERNING WAGES IN THE Miscellaneous INDUSTRY

NAME AND ADDRESS OF EMPLOYER

FEIN 26-4815332

ESTABLISHMENT I.D. LS20 2015006501

INVESTIGATOR

DATE

09/16/2015

Note: Violation of the Wage and benefit Sections of the Labor Law is a misdemeanor for a first offense and a felony for a second offense. The amount listed on this Recapitulation Sheet is the total gross due to the employee(s) listed. If you remit the net amount due you must itemize the legal deductions for each employee separately on an additional sheet.

THE EMPLOYEES LISTED BELOW ARE DUE: Wage Statement/Records/Payment, Minimum Wage

NAME AND SOCIAL SECURITY NUMBER OF EMPLOYEE	ADDRESS	PERIOD COVERED BY CLAIM OR UNDER-PAYMENT	Amount Due	Gross Amount Due	Liquidated Damages	Total Liquidated Damages	Grand Total Due	TOTAL DEDUCTIONS	NET DUE AFTER ALL DEDUCTIONS
		08/23/2014 to 08/22/2015	Min Wage \$2,958.31		\$739.58				
				\$2,958.31		\$739.58	\$3,697.89		
Total Amounts Due to:				\$2,958.31	TOTAL LIQUIDATED DAMAGES	\$739.58	\$3,697.89		
				TOTAL GROSS AMOUNT					

Required overtime wage = \$228. (\$12.002 x 19 hours)  
Actual overtime paid = \$144.92 (\$7.627 x 19 hours)  
Underpayment for overtime = \$83.12 (\$228.04 - \$144.92)  
The same methodology was applied to the rest computation.

Enclosed is a Recapitulation Sheet-Preliminary Report in the amount of \$2,958.31 covering the audit period from 08/23/2014 to 08/22/2015. **It is your responsibility to conduct an up to date self-audit and come into compliance immediately.**

We are also enclosing a Notice of Labor Law Violation for Article 19; section 661 and 142-2.7, and Article 6, section 195.1 (see enclosed Violation Notice for detail explanation). Be advised that these violations carry a monetary penalty of up to \$1000 for the first offence. Accordingly, we are imposing a total of \$3,000 for the violations.

We are applying a 25% liquidated damages to the total amount owed due to failure to pay proper state minimum/overtime wage as required by Law.

Please remit payment for **\$6,697.89 (\$2,958.31 for underpayment, \$739.58 for liquidated damages and \$3,000 for penalties)** by check or money order payable to the Commissioner of Labor by **10/07/2015**. Payment should be in the amount due after legal deductions. Please itemize to show differences between the gross and net amounts. Otherwise, contact Senior Labor Standards Investigator Mr. Paul Kalka at (212) 775-3649 by **10/07/2015** to discuss a payment plan if unable to make payment in full by deadline.

If you do not agree with the amount due and/or payable to the claimant(s), and would like to request a compliance conference to discuss and to try to resolve these issues please respond by **10/07/2015**. Also, your case number and/or employer identification number (FEIN) must be shown on all payments and correspondence submitted to the office.

Please be advised that Section 215 of the New York State Labor Law makes it illegal for employers to discharge, penalize, or in any manner discriminate or retaliate against an employee for providing information to the Department of Labor, testifying in an investigation or other proceedings under labor law, exercising any rights that are protected under labor law or because the employer has received an adverse determination from the Labor Department that involves the employee. If the employer violates this law, the New York State Department of Labor can assess a penalty of up to \$10,000.00 per incident and up to \$20,000.00 in damages for each affected employee.

**Failure to remit payment may result in the issuance of a civil Order to Comply including all wages due, 100% liquidated damages, interest at 16% per annum, and civil penalties not to exceed 200% without further notice.**

Sincerely,

Labor Standards Investigator  
Tel:  
Fax:  
Email: