

April 7, 2021

Via Electronic Submission

REPLY TO LOS ANGELES

Labor and Workforce Development Agency
320 W. Fourth Street, Suite 450
Los Angeles, CA 90013

Via Certified Mail with Return Receipt Requested

Aya Healthcare Services, Inc.
5930 Cornerstone Ct West
Suite 300
San Diego, CA 92121

**RE: *Notice of Violations of the California Labor Code Pursuant to the
Private Attorneys General Act, Labor Code § 2698 et seq***

To Whom It May Concern:

Please be advised that Zimmerman Reed LLP represents Oscar Trevino ("Employee") an employee of Aya Healthcare Services, Inc. Employee intends to file claims for violations of Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* against Aya Healthcare Services, Inc.

Employee's claims include numerous violations of the California Labor Code, including those under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* PAGA authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations. Please consider this communication as notice of the claims detailed below pursuant to PAGA. PAGA requires that new claim notices, responses, and certain court documents be filed with the Labor and Workforce Development Agency (LWDA) prior to filing suit.

Claim Background

Employee worked for Aya Healthcare Services, Inc. as a registered nurse between 2020 and 2021. During that time, Employee worked more 8 hours in a 24-hour period and was not paid overtime wages in violation of California Labor Code § 1194(a) and §2699(a). In the event, Employee is subject to an Alternative Workweek Schedule authorized under California Labor Code § 511, Employee and the other employees did not vote to implement such a schedule and were required to work different hours other than those outlined under the Alternative Workweek Schedule. As a result, Employee seeks to recover unpaid wages, damages, interest, penalties, and attorneys' fees as permitted by the Labor Code.

Notice of Labor Code Violations

Employee seeks the maximum civil penalties available under the following sections of the Labor Code:

§ 1194

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

§204

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

§210

- (a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:
- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
 - (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.
 - (3) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

§ 221

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

§ 225.5

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

- **§ 226**

- (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

- **§ 226.2**

- This section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, "applicable minimum wage" means the highest of the federal, state, or local minimum wage that is applicable to the employment, and "other nonproductive time" means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.
- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
- (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

- (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:
 - (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.
 - (B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.
- (3)(A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
 - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
 - (ii) The applicable minimum wage.

Non-Spoilation Notice

Please be advised that Company is under a legal duty to maintain, preserve, retain, protect, and not destroy any and all documents and data, both electronic and hard copy, which may be relevant to Employee's claims as set forth herein. The failure to preserve and retain the electronic data and evidence outlined in this notice may constitute spoliation of evidence which may subject you to legal claims for damages and/or evidentiary and monetary sanctions. For purposes of this notice, electronic data or electronic evidence shall include, but not be limited to, all text files (including word-processing documents), presentation files (such as PowerPoint), financial data, spreadsheets, e-mail files and information concerning e-mail files (including logs of e-mail history and usage, header information, and deleted files), internet history files and preferences, graphical files in any format, databases, calendar and scheduling information, task lists, voice mail, instant messaging and other electronic communications, telephone logs, contact managers, computer system activity logs, and all file fragments, internet usage files, offline storage or information stored on removable media or storage media, information contained on laptops, or other portable devices, network access information and backup files containing electronic data or electronic evidence, SMS messages, any other electronic communications, including, but not limited to Google Apps, Google Mail, Confide, WhatsApp, and Telegram. Specifically, you are instructed not to destroy, disable, erase, encrypt, alter, or otherwise make unavailable any electronic data and/or evidence relevant to the Employee's claims, and you are further instructed to take reasonable efforts to preserve such data and/or evidence.

To meet this burden, you are instructed by way of example and not limitation, to:

- Preserve all data storage backup files (i.e., not overwrite any previously existing backups);
- Preserve and retain all electronic data generated or received by employees who may have personal knowledge of the facts involved in the claims against the Defendant as set forth herein;
- Refrain from operating, removing or altering, fixed or external drives and media attached to any workstations or laptops, voice mail systems, and cell phones, copy machines that are reasonably thought to have data related to the claims, including but not limited to the workstations and/or laptops used by any employee or contractor;
- Preserve and retain all data from servers and networking equipment logging network access activity and system authentication;
- Preserve and retain all electronic data in any format, media, or location relating to the claims, including data on hard drives, hard disks, floppy disks, zip drives, CD-ROMs, CD-RWs, DVDs, backup tapes, PDAs, cell phones, smart phones, memory cards/sticks, or digital copiers or facsimile machines;
- Prevent employees from deleting or overwriting any electronic data related to the Employees claims including data stored on social-media websites and services such as Facebook, Instagram, Snapchat detailing purchases made with payments from Defendant; and
- Take such other security measures, including, but not limited to, restricting physical and electronic access to all electronically stored data directly or indirectly related to the Employee s claims.

In addition, you are required to instruct all current and former employees and contractors to preserve the following for all electronic devices in their possession including but not limited to a cell phone, smartphone, tablet, iPad, laptop, and GPS:

- Maintain and preserve the actual electronic device(s) that were used and/or owned during the time they worked for Defendant;
- Maintain their cell phone and/or data usage records during the time they worked for Defendant; and
- Preserve all calls, voicemails, text messages, emails, instant messages, social-media messages, social- media posts, internet searches, GPS data, and other electronic communication or data during the time they worked for Defendant.

You are instructed not to alter, delete, destroy or discharge any of your electronic devices and/or the above-requested data until we have had an opportunity to have them inspected by an expert. To facilitate the retrieval of said data, be advised that a forensic accounting firm may be retained to forensically acquire the hard drives and other media that may contain electronic data related to the action. Please be advised that failure to preserve evidence may be considered spoliation of evidence and could result in penalties assigned by the Court.

Conclusion

Employee is entitled to recover unpaid wages, damages, interest, penalties, and attorneys' fees as permitted by the Labor Code. They intend to bring an action against Company pursuant to the Private Attorneys General Act ("PAGA") and other state laws to recover wages, damages, restitution, interest, penalties, and attorneys' fees and costs. If permitted, Employee will seek any

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and all amounts capable of being collected by the Commission pursuant to Labor Code Section 2699.3 *et seq.*

If you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'C' and 'M' intertwined, followed by a long horizontal stroke.

Caleb Marker

Partner | 877.500.8780 | caleb.marker@zimmreed.com