

K2 EMPLOYMENT LAW GROUP, LLP

11751 Zelzah Avenue
Granada Hills, California 91344
(800) 590-7674
www.k2employmentlaw.com

Douglas H. Hoang
dhoang@k2employmentlaw.com

Matthew T. Kramer
mkramer@k2employmentlaw.com

March 30, 2020

Via Online Filing

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

Via U.S. Certified Mail

Human Resources
Keck Medicine of USC
1500 San Pablo Street
Los Angeles, California 90033

**RE: Andy Sandoval v. Keck Medicine of USC
Cal. Labor Code Section 2699.3 PAGA Notice**

Dear LWDA PAGA Administrator and Keck Medicine of USC:

This office represents Andy Sandoval ("Complainant" or "Sandoval") in connection with his claims under the California Labor Code. Complainant was a non-exempt hourly employee of Keck Medicine of USC ("Employer"). Complainant seeks recovery of civil penalties pursuant to the Private Attorneys General Act ("PAGA") on behalf of himself and other current and former aggrieved employees of Employer against whom one or more of the violations of the Labor Code was committed as discussed below.

Employer has violated and/or continues to violate multiple California Labor Code sections, and is liable for civil penalties under the PAGA. This letter shall serve as notice in accordance with the requirements of the PAGA.

It is believed that at any given time Employer has over 100 or more persons employed and working as non-exempt employees in California. Employer does not comply with California

RE: Andy Sandoval v. Keck Medicine of USC

March 30, 2020

Page 2

labor law. Among other things, Employer failed/fails to keep accurate and complete time records for employees; failed/fails to pay employees for all hours worked; failed/fails to pay employees at least minimum wage for all hours worked or overtime rates for overtime work; failed/fails to provide employees with proper meal, and/or compensate Complainant and aggrieved employees an additional hour of premium pay for missed/improper meal periods; failed/fails to provide employees with proper rest breaks, and/or compensate Complainant and aggrieved employees an additional hour of premium pay for missed/improper rest breaks; failed/fails to pay all wages earned by employees on at least semi-monthly paydays; refused/refuses to make and/or falsely denied the amount of payments due to employees; failed/fails to provide proper and accurate wage statements to employees; failed/fails to provide proper notices regarding employee pay; and failed/fails to pay employees all earned and unpaid wages when they separated/separate from employment. Additional descriptions of the above-mentioned violations and others are set forth in more detail below.

Complainant and the Aggrieved Employees

At all relevant times, Complainant was a non-exempt employee working for Employer until his wrongful termination in September 2019. During his employment, Complainant did not receive required rest and meal breaks nor paid the requisite premiums for the missed rest and meal breaks. Other non-exempt hourly employees also did not receive their rest and meal breaks. Moreover, Complainant was not paid for off the clock work or overtime premiums for overtime hours worked. As such, Complainant did not receive proper wage statements nor paid all monies owed to him at time of his termination from Employer.

At all relevant times, Complainant was an aggrieved employee as defined in Labor Code §2699(c) ("any person who was employed by the alleged violator who was employed by the alleged violator and against whom one or more of the violations was committed"). He seeks recovery for the Labor Code violations set forth herein on behalf of himself and other current and former aggrieved employees who were/are employed by Employer in the State of California within one year of the filing of this Notice and who were subject to the same or similar Labor Code and IWC Wage Order violations as Complainant.

Labor Code Violations

Recordkeeping Requirement Violations:

California Labor Code Section 1174 requires employers to keep accurate and complete payroll records showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 4-2001, Section 7 requires employers to keep time records showing when the employees begin and end each work period, and reflecting the time during which meal periods were provided each day.

RE: Andy Sandoval v. Keck Medicine of USC

March 30, 2020

Page 3

At all relevant times, Employer has failed, to keep the required time records. Employer did not provide and/or record Complainant and aggrieved employees time spent working off-the-clock or premiums for missed rest breaks and meal periods.

Employer's failure to keep accurate and complete payroll records for Complainant and other aggrieved employees violates Labor Code Sections 1174, 1198, 1199, and Wage Order 4-2001, Section 7. These violations subject Employer to civil penalties under Labor Code sections 1174.5 and 2699. Each violation of the Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

Meal Period Violations:

California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage Order 4-2001, §11; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Id.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Id.*

Employers covered by the Industrial Welfare Commission Wage Order 4-2001 have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 4-2001, §7(A)(3) ("Meal periods ... shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing IWC Wage Order 4-2001, §7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper meal period. Lab. Code §226.7; IWC Wage Order 4-2001, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

Here, Employer failed to provide Complainant and other aggrieved employees with proper meal periods. Specifically, Complainant and other aggrieved employees were required to take late

RE: Andy Sandoval v. Keck Medicine of USC

March 30, 2020

Page 4

meal periods or required to work through meal periods. Liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004. Employer failed to pay Complainant and aggrieved employees meal period premiums in violation of California law for missed meal periods. *Brinker, supra*, 53 Cal.4th 1004.

The aforementioned conduct results in violations of Labor Code Sections 226.7, 512, and 1198, 1199, and IWC Wage Order 4-2001, §11(A) and (C). These violations subject Employer to civil penalties under Labor Code sections 558 and 2699, and Wage Order 4-2001, §20. Each violation of the Labor Code section and Wage Order provision results in a separate civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.

Employer's failure to provide valid meal periods, ultimately resulted/results in further violations, such as violation of Labor Code Section 1174 discussed above, and the violation discussed below.

Rest Period Violations:

California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. IWC Wage Order 4-2001, §12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period. Lab. Code §226.7; IWC Wage Order 4-2001, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Employer did not properly authorize and provide Complainant and other aggrieved employees with appropriate rest periods due to business requirements. Further, Employer failed to pay Complainant and other aggrieved employees with an additional hour of pay at Complainant's and other aggrieved employees' regular rates of pay for each missed or improper rest period.

Employer does not allow Complainant and other aggrieved employees to take proper and timely rest breaks in strict accordance to law. Thus, Complainant and other aggrieved employees would not receive all of their proper rest breaks, nor would they be separately compensated for missed rest breaks in violation of California law.

The aforementioned conduct results in violations of Labor Code Sections 226.7 and 1198, 1199, and IWC Wage Order 4-2001, §12(A). These violations subject Employer to civil penalties under Labor Code Section 2699, and Wage Order 4-2001, §20. Each violation of the Labor Code section and Wage Order provision results in a separate civil penalty, for each aggrieved

RE: Andy Sandoval v. Keck Medicine of USC

March 30, 2020

Page 5

employee for each pay period during which the referenced statutes and Wage Order provisions were violated.

Minimum Wage Violations:

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour the aggrieved employees worked for which they were not paid, including hours worked off the clock by Complainant and other aggrieved employees. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. Employer has violated Labor Code Sections 11194, 1197, 1197.1, 1198 and IWC Wage Order 4-2001. Employer is liable for civil penalties as set forth in Labor Code Sections 1194, 1197, 1197.1, 1198, 558 and the PAGA, for Complainant and each aggrieved employee.

Overtime Violations:

California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order 4-2001, §3(A). Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Id.*

Employer violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by Complainant and other aggrieved employees. On numerous occasions, Employer failed to pay Complainant and other aggrieved employees overtime premiums as required by law.

This conduct results in violations of Labor Code Sections 510 and 1198-1199, and IWC Wage Order 4-2001, §12(A). These violations subject employer to civil penalties under Labor Code Sections 510, 1194, 1198, 558 and 2699, and Wage Order 4-2001, §20. Each violation of the Labor Code section and Wage Order provision results in a separate civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.

Statutory Wage Violations:

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, Employer willfully and systematically denied Complainant and other aggrieved employees minimum wage compensation for all hours worked which resulted in the payment of less than the statutorily required wages to them. Employer acted with the intent to deprive Complainant

RE: Andy Sandoval v. Keck Medicine of USC

March 30, 2020

Page 6

and aggrieved employees of the statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, Employer paid Complainant and other Aggrieved Employees lower wages than those they were entitled to while purporting that Complainant and other Aggrieved Employees were properly classified. Complainant and other Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code Section 2699.

Refusal to Make Payment:

Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due. Employer violated/violates this section by failing to pay aggrieved employees for time spent working off-the-clock, for overtime compensation, and an additional hour of pay for meal/rest periods not provided. These violations subject Employer to civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.

Wage Statement/Paystub Violations:

California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his, her, or its employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (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; (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 (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. Lab.Code §226.

As a result of Employer's violations of various Labor Code and Wage Order provisions, as discussed above, Employer failed to provide accurate wage statements with respect to multiple categories set forth in Labor Code Section 226, and therefore Employer violated Section 226. Employer failed to provide accurate and itemized listings for, amongst other violations the following items of Labor Code Section 226(a): (1), (2), (5), and (9). These violations subject Employer to civil penalties under Labor Code Sections 226, 226.3 226.6, 558 and the PAGA. Each violation results in a separate civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.

Standard Conditions of Labor Violations:

Labor Code Sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to

RE: Andy Sandoval v. Keck Medicine of USC

March 30, 2020

Page 7

comply with any provision within Part 4, Chapter 1 of the Labor Code, including Sections 1174, 1197, 1198, 1199, or order or ruling of the commission. Employer's violations with respect to meal/rest periods, and minimum/overtime wage result in separate violations of Sections 1198 and 1199, which subject Employer to civil penalties under Labor Code Sections 1197.1 and 2699. In addition, Employer failed to maintain accurate records as required by Section 7 of the Wage Order, thus exposing it to further violations.

Final Pay Violations:

Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge. Labor Code section 202 states similar requirements for employees who resign. Employer still has not paid aggrieved employees all wages earned and unpaid at the time of discharge.

Complainant has still not received her final and full paycheck from Employer. These violations subject Employer to civil penalties under Labor Code Sections 203, 210, and/or 256. Each violation results in a separate civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated. Also, Employer failed to pay all of Complainant's wages at the time of termination.

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties Complainant and other aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter to the employer in question and to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code Sections 2699 and 2699.3(a) prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. Please respond to this notice according to the time frame contemplated by the Code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of Complainant and all aggrieved employees of Employer within one year of the date of this letter as allowed by law.

The parties can be contacted as follows:

Complainant/Aggrieved Employees:

Douglas H. Hoang/Matthew T. Kramer

K2 EMPLOYMENT LAW GROUP, LLP

RE: Andy Sandoval v. Keck Medicine of USC
March 30, 2020
Page 8

K2 Employment Law Group, LLP
11751 Zelzah Avenue
Granada Hills, California 91344
(800) 590-7674
dhoang@k2employmentlaw.com

Employer:

Human Resources
Keck Medicine of USC
1500 San Pablo Street
Los Angeles, California 90033

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this notice to the undersigned and to that of other charged parties. Thank you for your attention to this matter.

Very truly yours,

K2 EMPLOYMENT LAW GROUP, LLP.

A handwritten signature in blue ink, appearing to read 'Douglas H. Hoang', with a long horizontal flourish extending to the right.

DOUGLAS H. HOANG
MATTHEW T. KRAMER