

November 20, 2020

Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
*Filed Online and Courtesy Copy Delivered
via Certified Mail*

**Re: Written Notice – Private Attorney General Act (“PAGA”) –
California Labor Code § 2698 et seq.**
Omar J. Alvarez v. ABM Aviation, Inc.

PAGA Administrator:

Notice is hereby provided that, pursuant to California *Labor Code* §2699.3, Omar J. Alvarez (“Employee”) contends that, ABM Aviation, Inc., (“ABM”) has violated, and continues to violate, provisions of the California *Labor Code* and wage orders promulgated by the Industrial Welfare Commission (“IWC Wage Order”), including, but not limited to, California *Labor Code* §§ 200, 201-203, 226(a), 226.7, 510, 1194, and the applicable wage order.

In accordance with the required notice under California *Labor Code* § 2699.3 of the Private Attorney General Act (“PAGA”), this letter shall serve as formal written notice to the Labor and Workforce Development Agency (“LWDA”).

Employee was a full-time, non-exempt, hourly employee of ABM from approximately January 2016 through May 26, 2020. Employee and worked as an ‘janitor’ and worked in Los Angeles, California. Employee earned approximately \$16 per hour.

ABM is a Georgia corporation that does business in California.

Employee is an “aggrieved employee” as defined in California *Labor Code* § 2699, subdivision (a) and brings this action on behalf of himself and all other aggrieved employees of

ABM. Employee, also on behalf of himself and all other aggrieved employees, seeks penalties under PAGA for ABM's violations

Employee and aggrieved employees seek unpaid wages, penalties and other compensation from ABM for the relevant time period because ABM:

1. Failed to pay Employee and other aggrieved employees for all hours worked (California *Labor Code* §§ 1194, 1194.2, 1197 & 1198, applicable wage order);
2. Failed to provide Employee and other aggrieved employees with mandated meal breaks (California *Labor Code* §§226, 226.7, 512, 1198 and IWC Wage Order section 12);
3. Failed to provide Employee and other aggrieved employees with mandated rest breaks (California *Labor Code* §§226, 226.7, 512, 1198 and IWC Wage Order section 12);
4. Failed to provide Employee and other aggrieved employees with proper wage statements (California *Labor Code* § 226(a)); and
5. Failed to pay Employee and other aggrieved employees all final wages in a timely fashion (California *Labor Code* §§201-203).

Below please find the relevant facts and legal theories to support the aforementioned violations. In addition, a copy of the Complaint is attached hereto.

Failure to Pay for All Hours Worked

Security Checks

Pursuant to a uniform policy originated by ABM, all hourly employees are subject to a security check at the beginning and end of each shift. Hourly employees were and are required to wait in line and be searched for potential or possible items of contraband. Employees were/are required to place all of their belongings in plastic containers and open their bags. Thus, at the discretion and control of ABM and solely for their benefit, Employee and other aggrieved employees were and are required to walk to the security check, and wait in lengthy lines for approximately five (5) to ten (10) minutes. This daily uncompensated waiting time during security checks was done in order to undergo searches for possible contraband. Because such screening is designed to prevent and deter employee contraband, the security checks and consequential wait time are necessary to the employee's primary work.

Supervisors employed by ABM had knowledge of and required Employee and other aggrieved employees to undergo these uncompensated security screenings and waiting times, in accordance with ABM's corporate policy. Supervisors required and enforced the corporately derived and mandated security checks and requested that Employee perform these integral and indispensable duties without proper wages or overtime compensation.

Failure to Provide Compliant Rest Breaks

At all times, relevant hereto, California *Labor Code* § 226.7 and IWC Wage Order, section 12, required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved of all duty.

At all times, relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage Order, section 12 required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period is not provided.

Employee is informed and believes, and based thereon alleges, that ABM failed to effectively communicate California rest period requirements to Employee and other aggrieved employees. Employee is further informed and believes and based thereon alleges that throughout the relevant time period ABM failed to provide compliant rest periods.

Employee alleges the walk time to break rooms was lengthy. Specifically, the break room in was a five (5) minute walk each way, thereby reducing the amount of rest time.

Employee alleges that ABM regularly:

- a. Failed to provide paid rest periods of ten (10) minutes during which Employee and other aggrieved employees were relieved of all duty for each four (4) hours of work and able to take rest periods within the middle of the shift; and
- b. Failed to pay which Employee and other aggrieved employees one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not permitted.

Employee is further informed and believes, and based thereon alleges, that as a matter of policy and/or practice, ABM routinely failed to provide Employee and other aggrieved employees with rest periods as required by law.

Failure to Provide Compliant Meal Breaks

Employee alleges that meal breaks were short as a result of having to walk five (5) minutes to the breakroom each way, thereby depriving Employee and other aggrieved employees of the full meal break as required.

Employee alleges that ABM regularly:

- a. Failed to provide Employee and other aggrieved employees with a first meal period of not less than thirty (30) minutes during which they are relieved of all duty before working more than five (5) hours;

- b. Failed to pay Employee and other aggrieved employees one hour of pay at their regular rate of compensation for each workday that a meal period was not provided; and
- c. Failed to accurately record all meal periods.

Termination/Final Wages

ABM willfully and knowingly failed to pay Employee and other aggrieved employees, upon termination of employment, all accrued compensation.

Specifically, Employee and other aggrieved employees were entitled to be paid for all hours worked, however, due to security checks, all aggrieved employees were not fully compensated for earned wages. Employee and other aggrieved employees were also owed meal and rest break premiums.

ABM's failure to pay for all wages due prior to termination constitutes violations of California *Labor Code* §§ 201-203.

Wage Statements

ABM violated California *Labor Code* § 226(a) which provides that, "(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when 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 for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission (5) net wages earned...(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..."

ABM failed to comply with California *Labor Code* Section 226(a) because the hours worked were incorrect pursuant to *Labor Code* § 226(a). Specifically, Defendant includes other items within total hours, including sick pay.

Attached hereto as Exhibit "A" is a true and correct copy of Employee's pay check with the pay date of 1/31/20 with sick pay included within total hours.

Conclusion

Enclosed please find a copy of the class action complaint that is in the process of being filed in the Superior Court for the State of California, Los Angeles County. Employee respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this

LWDA – PAGA Notice

Re: Omar J. Alvarez v. ABM Aviation, Inc.

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matter further. A copy is being sent via certified mail to ABM. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Very truly yours,

BRADLEY/GROMBACHER, LLP



Marcus J. Bradley Esq.

Enclosures – as stated above.

cc: AGENT FOR SERVICE OF PROCESS FOR ABM AVIATION
CT CORPORATION
818 WEST SEVENTH STREET, SUITE 930
LOS ANGELES CA 90017

ABM AVIATION, INC.
14141 SOUTHWEST FREEWAY, SUITE 477
SUGAR LAND TX 77478-4630

ABM Aviation, Inc.

14141 Southwest Frwy, Suite 425

Sugar Land, TX 77478

Tel: 713-776-5100

OMAR J ALVAREZ		Company	00750	Begin Date	01/11/20	Check #	58584	Vacation Bal	
EE #	9694907	Bus Unit	76060003	End Date	01/24/20	Check Date	01/31/20	Sick Bal	43.99-
SSN	XXX-XX-6215	Gross Wages	1,256.16	Taxable YTD	3,792.80	Net Pay	998.26	BIN	47903877
EARNINGS					DEDUCTIONS				
Pay Description	Hours	Rate	Amount	YTD Amount	Description	Current	YTD		
REGULAR	61.01	16.00	976.16	3,166.88	Federal Income Tax	105.76	320.20		
OVERTIME	7.00	24.00	168.00	216.00	Federal FICA Withheld	77.88	235.15		
HOL WKD N				217.92	Federal Medicare Withheld	18.22	55.00		
MEAL BR P				32.00	CALIFORNIA WH	21.03	64.17		
SICK PAY	7.00	16.00	112.00	160.00	CALIFORNIA SDI EE	12.56	37.93		
					Union Dues	22.45	72.84		
Total	75.01		1,256.16			257.90	785.29		

DETACH BEFORE DEPOSITING

Bank No.	Name of Bank / Saving & Loan	Account Number	Amount

DEPOSITED FOR:

OMAR J ALVAREZ
1853 WEST 38TH PLACE
LOS ANGELES CA 90062

NON-NEGOTIABLE - NON-NEGOTIABLE - NON-NEGOTIABLE - NON-NEGOTIABLE

ABM Aviation, Inc.
14141 Southwest Frwy, Suite 425
Sugar Land, TX 77478
Tel: 713-776-5100

00750 76060003 00750- 76060003-6215-7606

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LOS ANGELES CA 90062

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