



September 21, 2021

*Via LWDA Website:*

Labor Workforce Development Agency  
Attn: PAGA Administrator

**Re: Elizabeth Joy Dumolt v. United Parcel Service of America, Inc., et al.  
Written Notice Under Labor Code § 2699.3**

Dear PAGA Administrator:

The Pride Law Firm represents Ms. Elizabeth Joy Dumolt (hereinafter "Ms. Dumolt"), a former employee of the United Parcel Service of America, Inc., ("UPS") in Kearny Mesa, California. This letter is intended to constitute notice of claims, including notice pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code §2698, et seq. ("PAGA") that Ms. Dumolt intends to bring a civil action for penalties under PAGA for California Labor Code violations committed by UPS against Ms. Dumolt. By way of this letter, my client also intends to represent all other current and former non-exempt employees of Defendants in California who have suffered at least one of the violations described herein during the relevant period. Ms. Dumolt's PAGA action involves UPS's violation of sections 226(a), 226.3, 510, 558, 1174.5, 1197.1, and 1198 of the California Labor Code as well as the California Industrial Welfare Commission ("IWC") Wage Order No. 9 ("Wage Order"), which deals with the transportation industry.

A copy of this letter, along with the \$75.00 filing fee, is being sent regular mail and will be filed through the online portal with the LWDA in accordance with Cal. Lab. Code § 2699.3(a)(1)(A).

**Factual Background:**

Ms. Dumolt worked for UPS as a Payroll Clerk at Surf Center UPS, the Kearny Mesa hub located in California. Ms. Dumolt was employed from August 2014 to January 2021. During this time, Ms. Dumolt performed her regular duties as well as filled in for a full-time car wash manager, but was never compensated for this extra work or responsibility. During a week-long period, UPS managers entered the payroll system and intentionally changed Ms. Dumolt's time card, shaving off upwards of fifteen (15) minutes every day of the week. Ms. Dumolt discovered this and confronted management, who feigned ignorance. When Ms. Dumolt proffered uncontroverted proof of the error, UPS managers apologized profusely and sent her the "difference" between her regular paycheck and the altered paycheck utilizing the money transferring app "Venmo." Ms. Dumolt's actual time card was never updated.

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UPS altered Ms. Dumolt and her fellow employee's time cards to reflect fewer hours than were actually worked. UPS would also alter hours worked within certain pay periods, moving hours to different weeks to keep overtime from accruing or to keep drivers' time cards from reflecting that they went over hours. These altered and incorrect time cards were reflected on Ms. Dumolt and UPS employee's wage statements. UPS has done this on a regular and systematic basis since Ms. Dumolt started working for them. Ms. Dumolt and her employees strongly suspect that it has been going on long before her employment with UPS as well. These actions keep employment hours' low, which results in higher bonuses for upper-management. As a payroll clerk, upper-management encourage Ms. Dumolt to alter UPS driver's time cards as well, but she refused, aware that this was both grossly unethical and in clear violation of current labor laws. When Ms. Dumolt confronted UPS about these violations on both her and her driver's behalves, she was retaliated against, harassed, and ultimately terminated.

UPS has routinely violated wage and hour law in that they did not provide Ms. Dumolt and her fellow employees with accurate wage statements and refused to pay Ms. Dumolt and her fellow workers for all hours worked, thereby owing Ms. Dumolt and her fellow workers unpaid hours and unpaid overtime.

**UPS's Violation of Section 226(a), 226.3, Wage Order No. 9 "Records" Section:**

Section 226(a) states in pertinent part that: "Every employer shall . . . at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all deductions . . . , (5) net wages earned, (6) inclusive dates of the period for which the employee is paid, . . . (9) all applicable hourly rates in effect during the pay period . . . ." Additionally, the "Records" section of the applicable California IWC Wage Order No. 9, regarding Transportation Industries, requires accurate recordkeeping. This includes records relating to time and pay.

Section 226.3 continues on to states that "any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake."

During at least the year immediately preceding the date of this letter, Ms. Dumolt and other California UPS employees were issued itemized wage statements that did not comply with the requirements under either Section 226(a), or the "Records" section requirements of the applicable IWC Wage Order. This is a direct violation of Section 1198. The wage statements UPS provided to Ms. Dumolt and other UPS employees in California failed to pay for and itemize all hours worked during the pay period and pay premium wages for any overtime hours worked due to UPS's fraudulent altering of employee time cards to reflect lower hours. As a result, the number of hours actually worked and the corresponding earned wages (net and gross) were not adequately listed. These willful and continuous violations result in civil penalties as set forth above, i.e., two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation.

**UPS's Violation of Section 1174.5, Wage Order No. 9 "Records" Section:**

Section 1174.5 provides that "any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by

subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500)."

UPS violated this section by failing to maintain records regarding all hours worked for both Ms. Dumolt and her fellow employees. On numerous occasions, management would alter time cards, making them inaccurate in violation of § 1174.5. Thus, Defendants shall be subject to a civil penalty of five hundred dollars (\$500).

**UPS's Violation of Section 558 and Wage Order No. 9 "Hours and Days of Work" Section:**

Section 558(a) provides that "Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. (b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, any provision regulating hours and days of work in any order of the Industrial Welfare Commission, or any applicable local overtime law, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1. (c) In a jurisdiction where a local entity has the legal authority to issue a citation against an employer for a violation of any applicable local overtime law, the Labor Commissioner, pursuant to a request from the local entity, may issue a citation against an employer for a violation of any applicable local overtime law if the local entity has not cited the employer for the same violation. If the Labor Commissioner issues a citation, the local entity shall not cite the employer for the same violation. (d) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law. (e) This section does not change the applicability of local overtime wage laws to any entity."

The "Hours and Days of Work" Section in Wage Order 9 further provides that employers must pay overtime at the appropriate rate and for the hours worked.

Here, UPS failed to pay overtime as mandated by the aforementioned IWC orders in that they changed time cards, resulting in fewer hours worked and thus, inaccurate or nonexistent overtime.

**UPS's Violation of Sections 1197, 1198, and Wage Order No. 9 "Minimum Wages" Section:**

Section 1197 provides that the payment of less than minimum wage is unlawful. Specifically, an employee is permitted to recover any unpaid balance of the minimum wage or overtime compensation not paid for all hours worked under Labor Code § 1194. As required by Labor Code § 1197.1, an employer must pay a civil penalty if it causes an employee to be paid a wage lower than that of the fixed minimum. Labor Code § 210 provides for an additional civil penalty, independent and apart from any other penalty.

Section 1198 provides that the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The "Minimum Wages" section of the applicable IWC Wage

Order provides that every employer must pay to each employee on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the pay period.

The Minimum Wage Section in Wage Order 9 states the requisite employee wages and decrees that an employer shall pay to each employee "not less than the applicable minimum wage for *all* hours worked."

During at least the year immediately preceding the date of this letter, UPS failed to pay its non-exempt California employees at least minimum wage for all time worked during the pay period and failed to pay for the entirety of hours worked at the proper rate. Not only that, but UPS failed to calculate a correct overtime rate by refusing to include all wages earned in the overtime rate calculations. Thus, Plaintiff and similarly situated employees are owed unpaid wages and unpaid overtime premiums.

**UPS's Violation of Sections 510, 1198, and Wage Order No. 9 "Hours and Days of Work" Section:**

UPS is required to pay Ms. Dumolt and other California non-exempt UPS employees overtime compensation in accordance with Section 510. Section 1198 provides that the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The "Hours and Days of Work" section of the applicable IWC Wage Order 9 provides that an employer must pay non-exempt employees daily and weekly overtime.

During at least the year immediately preceding the date of this letter, UPS failed to reimburse its California non-exempt UPS employees proper overtime compensation. These violations have occurred in part due to UPS's practices of: (i) failing to pay all hours worked during any given pay period; (ii) moving hours to different pay periods; and (iii) actively altering time cards to reflect lower hours worked.

**Applicable PAGA Civil Penalty:**

PAGA, specifically Section 2699(a) permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violation of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil penalties. Ms. Dumolt intends to bring a civil action<sup>2</sup> to recover civil penalties for the violations identified above, including civil penalties pursuant to Section 2699(f) as well as those civil penalties specifically set forth within the text of the California Labor Code. These penalties are sought for violations committed against Ms. Dumolt and other UPS employees.

Please feel free to contact the undersigned with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. T. Pride', is written over a faint, circular yellow stamp.

Dante T. Pride, Esq.

cc (by certified mail):

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