



WORKWORLD LAW

Ruben Escobedo, Esq.
731 S. Lincoln Street
Santa Maria, CA 93458
ruben@workworldlaw.com
(805) 335-2476 (Tel.)
(805) 892-6213 (Fax)

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VIA ELECTRONIC FILING

CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

CALIFORNIA DIVISION OF
OCCUPATIONAL SAFETY AND HEALTH
455 Golden Gate Ave., Rm. 9516
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL

Durant Harvesting Inc.
2350 A St.
Santa Maria, CA 93455

Re: Erick Mejia's Notice of Claims/Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

To the California Labor and Workforce Development Agency, the California Division of Occupational Safety and Health, and Durant Harvesting Inc. ("Durant Harvesting" or "Employer"):

WorkWorld Law Corp. represents Erick Mejia, who intends to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately 1,500 similarly situated current and former aggrieved employees employed by Durant Harvesting Inc. between January 27, 2021, and the conclusion of the forthcoming action ("Statutory Period"), and the People of the State of California (hereinafter collectively "Employees").

PAGA, specifically Section 2699, subdivision (a) of the California Labor Code, permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violations 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. Employees intend to bring a civil action to recover civil penalties for the violations identified below, including civil penalties pursuant to Section 2699, subdivision (f) as well as

those civil penalties specifically set forth within the text of the California Labor Code. Those penalties are sought for violations committed against Employees of Durant Harvesting Inc.

* * *

Pursuant to Section 2699.3, the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, are as follows:

A. Failure to Establish, Implement, and Maintain Effective Injury Prevention Program

“Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements: (1) Identification of the person or persons responsible for implementing the program. (2) The employer’s system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices. (3) The employer’s methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner. (4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee’s job assignment. (5) The employer’s system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. (6) The employer’s system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.” Lab. Code, 6401.7, subd. (a). “The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.” Lab. Code, 6401.7, subd. (b).

“The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.” Lab. Code, 6401.7, subd. (c). “The employer shall keep appropriate records of steps taken to implement and maintain the program.” Lab. Code, 6401.7, subd. (d). The standards board shall adopt a standard setting forth the employer’s duties under this section....” Lab. Code, 6401.7, subd. (e)(1).

To substantially comply with Section 6401.7, the employer must provide adequate “meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.” Cal. Code Regs., tit. 8, § 3203, subd. (a)(3).

“Records of the steps taken to implement and maintain the Program shall include: (1) Records of scheduled and periodic inspections required by subsection (a)(4) [of § 3203] to identify unsafe conditions and work practices, including person(s) conducting the inspection, the unsafe conditions and work practices that have been identified and action taken to correct the identified unsafe conditions and work practices. These records shall be maintained for at least one (1) year; and ... (2) Documentation of safety and health training required by subsection (a)(7) for each employee,

including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for at least one (1) year.” Cal. Code Regs., tit. 8, § 3203, subd. (b).

Throughout the Statutory Period, Employer subjected all Employees, including Mr. Mejia, to working conditions that exposed them to hazards from the lack of a legally mandated injury prevention program. Employer was subject to all of the foregoing requirements with regard to all of its operations. Employer failed to establish, implement, and maintain an effective injury prevention program. Employer failed to perform periodic inspections to identify unsafe conditions and work practices

For example, whatever system(s) were in place, they were plainly ineffective because they failed to inspect farm machinery and equipment to ensure that they were equipped with all required safety devices, including adequate lighting. Employer permitted Employees to operate tractors in violation of Title 8, Section 3441 of the California Code of Regulations. Employees, such as Mr. Mejia, were discouraged from reporting such safety violations and encouraged to get the job done on time with whatever tools and equipment, without making employee safety a priority. Employer must revise its practices to require regular inspections of all equipment, vehicles, and tractors to ensure they maintain all safety devices required by Title 8 of the California Code of Regulations.

Employer failed to provide occupational health and safety training designed to instruct Employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each Employee’s job assignment; Employer failed to provide such training to Employees, including Mr. Mejia. During Mr. Mejia’s employment with Employer, Employer did not provide injury prevention program materials to him, and did not provide any safety training to Mr. Mejia or his colleagues.

Employer also failed to keep appropriate records of steps taken to implement and maintain its program and comply with regulations set by the standards board. Employer failed to provide adequate meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with Employees, including Mr. Mejia, regarding health and safety conditions and workplace injury reporting. During Mr. Mejia’s employment with Employer, Employer did not conduct adequate safety meetings or implement adequate safety training programs.

Employer also failed to keep records of steps taken to implement and maintain a compliant program, including adequate records of scheduled and periodic inspections to identify unsafe conditions and work practices, including person(s) conducting the inspection, the unsafe conditions and work practices that have been identified, and action taken to correct the identified unsafe conditions and work practices, and documentation of required safety and health training for each of the Employees, including each employee’s name or other identifier, training dates, type(s) of training, and training providers.

Employer is subject to civil penalties as provided by law.

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B. Violation of Title 8, California Code of Regulations, § 3441

“Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.” Lab. Code 6407.

Among these rules, regulations, and orders is Title 8, Section 3441 of the California Code of Regulations, which was applicable to Durant Harvesting and the Employees. The regulation provides that “All tractors, self-propelled farm equipment, and trucks used between sunset and sunrise shall be equipped with at least one headlight which shall be used to illuminate the area in front of the equipment or truck at least 50 feet. There shall be at least one rear light which shall illuminate equipment at the rear. Additional lighting shall be provided where the operation requires field adjustment or the operator's attention.” Cal. Code Regs., tit. 8, § 3441, subd. (g).

Throughout the Statutory Period, Durant Harvesting violated Sections 6407 and 3441 by requiring Employees, including Mr. Durant, to operate tractors between sunset and sunrise without any headlight and/or rear light. For example, because the tractor assigned to Mr. Durant lacked lighting, he was required to use the light from his mobile phone to see where he was driving in the early morning hours, as he often started working before 5:00 a.m. when it was still dark outside. Durant Harvesting is liable for additional civil penalties as a result of the foregoing.

C. Permitting Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes

Employees incorporate the preceding sections herein. By committing the acts and omissions described in the preceding sections throughout Employees’ employment and throughout the past year, Employer also violated Labor Code, §§ 6400, 6401, 6402, 6403, 6404 by requiring and permitting unsafe work, and failing to provide safe workplaces, practices, and processes to its Employees, including Mr. Mejia.

Employer is subject to additional civil penalties as provided by law.

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Please do not hesitate to contact the undersigned if you would like to discuss this matter further. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ruben Escobedo', written in a cursive style.

Ruben Escobedo

cc: Brian T. Daly, Esq.