

April 12, 2022

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”) –
Labor Code section 2698 et seq.
Hector J. Mejia v. Walmart Inc.

PAGA Administrator:

Notice is hereby provided that, pursuant to Labor Code section 2699.3, Hector J. Mejia (“Employee”) contends that Walmart Inc. (“Walmart”) has violated, and continues to violate, provisions of the Labor Code and wage orders promulgated by the Industrial Welfare Commission (“IWC wage order”), including, but not limited to, Labor Code sections 226 and 246.

In accordance with the required notice under Labor Code section 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”).

During the relevant time period, Employee has worked for Walmart in Barstow, California from approximately 2020 through the present. Employee works at Walmart store number 1879. Employee works as a team associate. Employee earns approximately \$19.50 per hour.

Employee is an “aggrieved employee” as defined in Labor Code section 2699(a) and brings this action on behalf of himself and all other aggrieved employees of Walmart. Employee, also on behalf of himself and all other aggrieved employees, seek penalties under PAGA for Walmart’s violations of the Labor Code.

Walmart Inc. is a Delaware corporation doing business in California.

Walmart Inc. is an American multinational retail corporation that operates a chain of supercenters. Walmart operates 10,593 stores in 24 countries. Walmart is headquartered in Bentonville, Arkansas.

At all relevant times, Walmart issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all aggrieved employees in California, including Employee and others similarly situated, regardless of their location or position.

Employee and other aggrieved employees seek penalties and other compensation from Walmart for the relevant time period because Walmart:

1. Failed to provide Employee and aggrieved employees sick pay at the regular rate (Lab. Code § 246; and
2. Failed to provide Employee and aggrieved employees with accurate, itemized wage statements (Lab. Code, § 226(a)).

Below please find the relevant facts and legal theories to support the aforementioned violation.

Failure to Pay Sick Pay

Employee received compensation, including bonuses, in addition to his hourly wages while employed by Walmart. Those additional amounts should have been included when calculating his regular rate of pay and used when paying overtime wages, premium wages, and sick leave wages, but were not. For example, on 3/17/22 Employee earned “INCTV FAC HRLY” pay of \$580.73 which was not factored into his sick pay wages. On 3/3/22 Plaintiff also earned “COVID-19 PAY” for \$476.28 and \$156.00 paid on 2/17/22, neither of which were factored into his sick pay wages. Further, on 8/20/20 and 6/25/20 Employee earned “COVID-LS” pay which also was not used to calculate his sick pay wages. Moreover, on 2/17/22 Employee was paid “REFERRAL” pay of \$292.50 which was also not factored into his sick pay wages. Further, in 2020, Walmart provided cash bonuses to all hourly associates, which was not used in calculating sick pay wages.¹

In each example, Employee was improperly paid sick leave wages at his base hourly rate instead of at the regular rate.

Labor Code section 246 provides that employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]

¹ <https://corporate.walmart.com/newsroom/2020/03/19/walmart-announces-special-cash-bonus-and-early-payment-of-q1-bonuses-totaling-nearly-550-million-for-hourly-associates>

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Employee was paid sick leave wages at his base hourly rate of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(1).

Wage Statements

Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete wage records. Walmart has not provided Employee and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to section 226(a).

During the relevant time period, Walmart has knowingly and intentionally provided Employee and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, Walmart issued uniform wage statements to Employee and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate.

Specifically, Walmart violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Walmart did not correctly calculate the sick pay wages owed to Employee and aggrieved employees.

Walmart also did not maintain accurate business records. This is a result of failing to calculate sick pay wages at the regular rate of pay.

Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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, San Bernardino County. Employee respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail to Walmart. 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.

cc: CT Corporation System
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