

OTTINGER

EMPLOYMENT LAWYERS

Robert W. Ottinger
Direct: (917) 566-2037
robert@ottingerlaw.com

79 Madison Avenue
New York, NY 10016
(347) 492-1904

535 Mission Street
14th Floor
San Francisco, CA 94105
(415) 262-0096

OTTINGERLAW.COM

August 8, 2025

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Via Certified Mail

Reiss USA Retail Inc.
822 Washington Blvd
Marina del Ray, CA 90292

Subject: *PAGA Notice Re: Wendy Medina v. Reiss USA Retail Inc.*

Dear Representative:

This office represents Wendy Medina regarding claims under the California Labor Code relating to their employment with Reiss USA Retail Inc. ("Employer"). The Employer's contact information is as follows:

Reiss USA Retail Inc.
822 Washington Blvd
Marina del Ray, CA 90292

The Plaintiff suffered the alleged Labor Code violations described below during their employment within the one-year statutory limitations period. Accordingly, Plaintiff intends to pursue penalties under PAGA on behalf of themselves and all similarly aggrieved non-exempt employees who experienced similar violations in California within the applicable time frame (the "PAGA Period").

As provided by statute, Employer may take the following steps to mitigate penalties:

Demonstrate Existing Compliance: If the Employer had already implemented all reasonable steps to comply with the Labor Code provisions prior to receipt of this notice, penalties may be reduced to 15% of the statutory maximum. If Employer believes it has done so, it is encouraged to provide documentation of these efforts and confer with our office.

Take Remedial Action Promptly: If all reasonable steps toward compliance are taken within 60 days of receiving this notice, penalties may be reduced to 30% of the maximum. Employer is encouraged to participate in a good faith discussion with our office as part of that effort. Refusal to do so may serve as evidence that Employer did not satisfy the statutory standard.

Cure Violations Where Permissible: For curable violations, taking corrective action and notifying both our office and the LWDA may lead to full avoidance of civil penalties. Early engagement may help ensure sufficient time for such a cure to be deemed adequate.

All related communications should be directed to:

The Ottinger Firm
2108 N Street, Suite N
Sacramento, CA 95816

This letter is submitted pursuant to Labor Code §2699.3. The following violations are alleged:

Willful Misclassification

The employer has engaged in the willful misclassification of employees as exempt in violation of California Labor Code §§ 226.8 and 515. If a Court determines that a person or employer has willfully misclassified an employee as an independent contractor, the employer shall be subject to a civil penalty not less than \$5,000 and not more than \$15,000 for each violation, in addition to any other penalties or fines permitted by law.

The misclassification is demonstrably willful as evidenced by multiple clear violations of California's exemption requirements. Specifically, the Aggrieved Employees' primary job duties are plainly non-exempt in nature. The majority of work time is spent performing operational tasks including client communication and merchandising. These duties are routine operational functions that do not involve the exercise of discretion and independent judgment with respect to matters of significance as required for the administrative exemption under 29 C.F.R. § 541.200.

The commission sales exemption under Wage Order 4-2001 § 3(D) is similarly inapplicable, as employees' primary duties do not involve sales activities. Additionally, the outside sales exemption fails because employees do not spend more than 50% of their working time engaged in sales activities away from the employer's place of business as required by Labor Code § 1171. Instead, the predominant duties involve non-sales operational tasks at fixed locations.

Minimum Wage Violations

Labor Code section 1197 and the applicable Wage Order requires an employer to pay an employee no less than the minimum wage for all hours worked.

Employer failed to pay the Aggrieved Employees the minimum wage for all hours worked because the Aggrieved Employees were required to perform work while off the clock. Specifically, the Aggrieved Employees were required to engage with customers inside the store even if they were not on the clock.

Civil Penalties Applicable to Minimum Wage Violations

As a result of the above minimum wage violations, Employer is subject to the civil penalties listed in Labor Code sections 1197.1 and 2699.

Overtime Violations

Labor Code section 510 and the applicable Wage Order provides that an employee shall be paid one and one-half times their regular rate of pay for any work in excess of eight hours in one workday or 40 hours in any one workweek. Labor Code section 510 and the applicable Wage Order further provides that an employee shall be paid twice their regular rate of pay for any work in excess of 12 hours in one day.

The Aggrieved Employees regularly worked in excess of eight hours in a day and 40 hours in a workweek. Since the Aggrieved Employees were required to perform work off the clock, it follows that this time was often overtime. Thus, the Aggrieved Employees were not paid all overtime wages owed.

Civil Penalties Applicable to Overtime Violations

As a result of the above overtime violations, Employer is subject to the civil penalties listed in Labor Code sections 558, 1197.1, and 2699.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order provides that an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided.

An employer provides compliant meal breaks to its employees “if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break.” (Brinker Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1040 (2012)).

Here, the Aggrieved Employees often had delayed, shorted, interrupted, or entirely missed meal breaks because there were customers in the store and they were unable to take a meal break while leaving a customer unattended.

Civil Penalties Applicable to Meal Break Violations

As a result of the above meal break violations, Employer is subject to the civil penalties listed in Labor Code sections 558 and 2699.

Rest Break Violations

Labor Code section 226.7 and the applicable Wage Order requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided.

The Aggrieved Employees' rest breaks were regularly missed.

The Aggrieved Employees were required to assist customers in the stores even if it was there designated rest period. Courts have repeatedly held that employers may not impose any limits on rest breaks. (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 269 (2016) (an employer cannot "satisfy its obligation to relieve employees from duties and employer control during rest periods when the employer [] requires its employees to remain on call")). Thus, Employer violated the Labor Code by requiring the Aggrieved Employees to assist customers at all times when they were present in the store.

An employer generally may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the California Division of Labor Standards and Enforcement has provided the following guidance on its website:

Q. Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, since the Aggrieved Employees were not allowed to leave the work premises during their rest breaks, they were subject to Employer's control during the rest breaks. Thus, the Aggrieved Employees were not provided with compliant rest breaks.

Civil Penalties Applicable to Rest Break Violations

As a result of the above rest break violations, Employer is subject to the civil penalties listed in Labor Code section 2699.

Unreimbursed Work Expenses

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

Here, the Aggrieved Employees incurred out of pocket expenses in connection with their employment, but these expenses were not reimbursed by Employer. Specifically, the Aggrieved Employees paid for parking and Reiss clothing for a uniform.

Civil Penalties Applicable to Work Expense Violations

As a result of Employer’s failure to reimburse all work-related expenses, Employer is subject to the civil penalties listed in Labor Code section 2699.

Wage Statement Violations

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned, and total hours. Employer failed to provide wage statements which accurately reflected this information.

Civil Penalties Applicable to Wage Statement Violations

As a result of the wage statement violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee’s resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day’s wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203). Employer failed to pay all wages owed at the conclusion of the Aggrieved Employees’ employment.

Civil Penalties Applicable to Waiting Time Penalties

Because of Employer’s failure to pay all wages at the conclusion of employment and to pay the resulting waiting time penalties, Employer is subject to the civil penalties listed in Labor Code section 2699.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional facts or theories of liability, they expressly reserve the right to revise these facts and/or add any new claims by amending and/or supplementing this letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robert Ottinger', is positioned above a horizontal line.

Robert Ottinger
The Ottinger Firm, P.C.
robert@ottingerlaw.com