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Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

LATARA ENTERPRISE, INC.
1716 W HOLT AVE
POMONA, CA 91768

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Claudia Garcia
Employer: LATARA ENTERPRISE, INC. DBA FOUNDATION
LABORATORY

Dear Sir or Madam:

Claimant Claudia Garcia has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM and Sahag Majarian, II, and Garen Majarian of the Majarian Law Group APC, to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, LATARA ENTERPRISE, INC. DBA FOUNDATION LABORATORY (hereafter “Employer”).

Employer is a California corporation doing business as Foundation Laboratory providing clinical laboratory services. Claimant worked for Employer as an hourly, non-exempt phlebotomist until May 26, 2023.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 4)

Section 2(K) of Wage Order 4 defines “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as described below.

Off the Clock Work

Claimant has worked at numerous locations on behalf of Employer. Because Employer staffs medical professionals at numerous locations, they often contact employees hours before their scheduled shift to let them know what location the employee is required to report to. For example, Claimant’s supervisor messages her hours before her shift is set to start to let her know that day’s location. This time spent communicating with the employee is unpaid.

Claimant and aggrieved employees are able to clock in using their personal phones (which are not reimbursed) or on the office computers. However, prior to clocking in, the employee must first turn on the computer and start up the program, which always leads to delays. Claimant explains that when she attempts to log in using company computers, it takes her 5 minutes just to upload the computer, which is unpaid.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant is often the only employee working as a phlebotomist at a time, resulting in constantly interrupted meal periods. Aggrieved employees were also required to work while clocked out for lunch. Claimant was frequently interrupted when on her lunch break but was not permitted to report this time worked on her timecard.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for

hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Additionally, employees receive zero pay for time spent working off the clock which is also a violation of the labor code. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Split Shift Pay

(Cal. Lab. Code §§1198 and 2698 *et seq.*)

Labor Code §1198 prohibits the employers from subjecting employees to "conditions of labor prohibited by the order." Wage Order 5-2001 (4C), codified at 8 C.C.R. § 11070(4C), requires that, "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

Here, Employer required Claimant and her coworkers to communicate with Employer a few hours prior to each shift on days scheduled to work. The block of unpaid time between the required communication and the assigned shift is longer than one hour and is not a designated meal period. Claimant and aggrieved employees work regular split shifts but do not receive split shift pay in the corresponding pay period.

Moreover, as a derivative claim, Claimant alleges that her pay statements were inaccurate as they failed to indicate required split shift wages, thus failing the requirements of Labor Code §226(a) and liable under 226.3. Employer is further liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Provide Reporting Time Pay
(Cal Labor Code § 1198, Wage Order)

Pursuant to the Subsection 5(A) of the Applicable Wage Orders, an employee is entitled to reporting time pay if that employee is required to report to work and does report but is not put to work or is furnished less than half of said employee's usual or schedule workday. The amount of reporting time that must be paid "is half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay..." *Id.*

The reporting time provision of the Applicable Wage Orders were meant to safeguard against unpredictable work schedules that understandably take a toll on affected employees. Without the security of definite work schedules, employees are forced to make childcare arrangements, eldercare arrangements, encounter obstacles in pursuing their education, experience adverse financial effects, and deal with the stress and strain on their family life. Employer required employees to remain on call, carry a communication device, and report to work at the assigned location within only hours of being told where to report. If an employee was called off and told not to report to work, they were not paid for reporting time despite the fact that they were required to report to and communicate with their employer.

Failure to Pay Wages Due Upon Termination
(Cal. Lab. Code §§201, 202, 203, 256 and 2698 et seq.)

An employee who is discharged must be paid all of his or her wages immediately at the time of termination. (Labor Code Sections 201 and 227.3.) Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks
Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that she almost always missed rest periods as a result of Employer's staffing and business practices, and that rest breaks were not scheduled into daily shifts.

Rest periods were either less than ten minutes, not provided, interrupted or late, “on duty,” or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant’s employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, “[a]n employer may 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...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.” Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees experienced frequent meal period violations. Although meal periods were one hour long, they are frequently interrupted due to understaffing and the constant flow of patients in the healthcare environment. Claimant explains that on most days, her meal break was either late, short, or interrupted.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant and aggrieved employees were required to use their personal cell phones for work purposes for clocking in and out and communicating with Employer prior to each shift. Employees were never reimbursed for this expense.

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual total hours worked, meal and rest period penalties, and wages earned. Additionally, the total hours worked is calculated incorrectly, including retroactive pay, sick pay, vacation, and other forms of pay in the total hours calculation.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,



Nazo Koulloukian, Esq.
Attorneys for Claimant

Cc:

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