



THE DION-KINDEM LAW FIRM

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August 21, 2024

Via Certified Mail, Return Receipt Requested

Labor & Workforce Development Agency
Attn: PAGA Administrator
pagafilings@dir.ca.gov

Ro Health, LLC
440 N Barranca Ave., #1884
Covina, CA 91723

Incorp Services, Inc.
Steven Pickett, et al.
5716 Corsa Ave., Suite 110
Westlake Village, CA 91362
Agent for Service of Process for
Ro Health, LLC

Re: Notice of California Labor Code violations

Peter R. Dion-Kindem, P.C. and the Blanchard Law Group, APC represent Miriam Wilson. Pursuant to the provisions of Labor Code sections 2699, *et seq.*, please be advised that during Ms. Wilson's employment, Ro Health, LLC violated the provisions of the California Labor Code as set forth in Addendum 1 hereto.

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A handwritten signature in black ink that reads 'Peter R. Dion-Kindem'. The signature is written in a cursive, flowing style.

PETER R. DION-KINDEM, P.C.
PETER R. DION-KINDEM

ADDENDUM 1

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I. THE EMPLOYER

IWC Wage Order No. 4, section 2(H) defines an employer as follows:

[A]ny any person as defined in section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

Ro Health, LLC (“Defendant”) was Plaintiff Miriam Wilson’s (“Plaintiff”) and aggrieved employees’ employer because it directly or indirectly, or through an agent or other person, employed or exercised control over wages, hours, and/or working conditions of Plaintiff and the aggrieved employees.

II. THE EMPLOYEES

A. Miriam Wilson

Plaintiff is a California resident. Plaintiff worked for Defendant in California. Plaintiff was an hourly paid, non-exempt employee eligible for overtime pay. Defendants paid Plaintiff hourly compensation. In addition to Plaintiff’s regular hourly pay, Defendants paid Plaintiff compensation in the form of per diems and other types of compensation.

Pursuant to the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (the “PAGA”), Plaintiff is entitled to recover civil penalties on behalf of Plaintiff and other persons who are or were employed by the alleged violator and against whom one or more of the alleged violations was committed. The alleged violations set forth below were committed against Plaintiff, and Plaintiff is therefore an “aggrieved employee” under Labor Code section 2699(c).

B. Aggrieved Employees

The aggrieved employees include, but are not limited to, Plaintiff and all other non-exempt workers who were employed by Defendant in California during the applicable limitations period.

III. DEFENDANT’S LABOR LAW VIOLATIONS

Some of the violations of the California Labor Code that were committed and/or are currently being committed by Defendant are set forth below.

A. Defendant failed to compensate Plaintiff and other aggrieved employees for all hours worked at the proper rate.

1. Applicable Law

Under the applicable Wage Order, Defendant was required to pay Plaintiff and the aggrieved employees for all hours worked. Labor Code section 1197 in relevant part provides: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

2. Facts

Plaintiff's shift was from approximately 6:00 a.m. to 2:00 p.m. She arrived somewhere between 5:30 am to 6:00 a.m. so that she could get through security and start work on time and fill in any personnel "gaps" if there was a shortage of nurses. She and other employees were required to undergo a security process before clocking in. It was a long walk and people sometimes waited in line. The security check could take longer if the Warden was present. When Plaintiff showed up for a shift, going through security involved going through two "sallyports," that consisted of a series of doors and/or gates. She was subjected to a bag check at the first sallyport and was required to flash her ID at the second sallyport. She then clocked in by signing an attendance sheet. Plaintiff and other aggrieved employees were not paid for the security time prior to clocking in. Plaintiff and other aggrieved employee were docked pay if they were one minute late.

Defendant did not accurately record and pay Plaintiff and other aggrieved employees for all hours worked, including sick pay, overtime, and meal and rest period premiums to which they were entitled at the correct rate. Plaintiff and other aggrieved employees worked off the clock and during their meal and rest periods. Defendant improperly rounded hours worked, including meal periods, which resulted in the payment of less wages to which they were entitled. Defendant paid overtime pay, sick pay, meal period premiums, and/or rest period premiums to Plaintiff and other aggrieved employees without properly calculating the regular rate based on all compensation received, including per diems and other compensation.

B. Defendant violated their meal and rest period obligations.

1. Applicable Law

Under California law, an employer must provide each non-exempt employee a minimum 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. (Lab. Code § 512; IWC Wage Order No. 5, § 11(A); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 [139 Cal.Rptr.3d 315, 273 P.3d 513].) An employer satisfies this obligation only where "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, and does not impede or discourage them from doing so." (*Brinker* 53 Cal.4th at 1040 (emphasis added).)

A purported "meal period" which does not satisfy these criteria or which is not provided at the required time in the employee's workday does not constitute a meal period as defined by California law. (*Brinker* 53 Cal.4th at 1035-1037, 1049.) An employee who was not provided a meal period or who was provided a purported "meal period" that does not conform to the specific requirements of California law has been deprived of a meal period and is entitled to one hour of pay for each workday the meal period is not provided. (Lab. Code. § 226.7(b); IWC Wage Order No. 5, § 11(B); *Brinker* 53 Cal.4th at 1035-1040.)

Under California law, an employer must authorize and permit each non-exempt employee a 10-minute rest period for each 4 hours of work *or major fraction thereof*. (See, IWC Wage Order No. 5, § 11(A); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1028-30 [139 Cal.Rptr.3d 315, 334, 273 P.3d 513, 528-29].) "Thus, under the initial calculation called for by

this part of the wage order, an employee would receive no rest break time for shifts of two hours or less, 10 minutes for shifts lasting more than two hours up to six hours, 20 minutes for shifts lasting more than six hours up to 10 hours, and so on.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029 [139 Cal.Rptr.3d 315, 334, 273 P.3d 513, 529].)

An employee who was not provided a rest period or who was provided a purported “rest period” that does not conform to the specific requirements of California law has been deprived of a rest period and is entitled to one hour of pay for each workday the rest period is not provided. (Lab. Code. § 226.7(b).)

2. Facts

Plaintiff worked on the suicide watch and was required to always be watching the prisoners while on her shift. Plaintiff could not take a break unless and until she was relieved by another nurse. Plaintiff was promised a 30-minute lunch break and two 10-minute rest breaks. There were many days when Plaintiff received late 15-minute breaks and, on occasion, Plaintiff did not get all her breaks. Many people complained about not getting their breaks on time. On some days when Plaintiff did not get any breaks, she would get a single 50-minute break (that single break would combine the time she was supposed to get for her lunch and rest breaks). During lunch, although she was allowed to go to the prison cafeteria, it was difficult to leave the prison because she had to undergo security processes.

Defendant did not provide Plaintiff and other aggrieved employees with the requisite duty-free, timely, and number of meal and rest periods of the legally required duration. As a result of their work schedules, aggrieved employees were on occasion unable to take duty-free meal and rest periods and did not receive all meal and rest periods to which they were entitled. Defendant did not pay all meal and/or rest premiums due Plaintiff and aggrieved employees at the proper rate.

C. Defendant violated Labor Code sections 201, 202, and 203 by failing to pay aggrieved employees all wages earned and unpaid at the time of the termination of their employment.

1. Applicable Law

Labor Code section 201 provides:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately...

Labor Code section 202 provides:

If an employee not having a written contract for a definite period quits Plaintiff’s or her employment, Plaintiff’s or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of Plaintiff’s or her intention to quit, in which case the employee is entitled to Plaintiff’s or her wages at the time of quitting.

Labor Code section 203 provides:

(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment.

2. Facts

Defendant violated section 201 or 202 as to aggrieved employees whose employment terminated by willfully failing to timely pay the wages earned and unpaid upon the termination of their employment at the proper rate. Defendant violated section 203 as to other aggrieved employees by failing to pay the wages owing to them under section 201 or 202 at the proper rate. Defendant's failure to pay all final wages was willful within the meaning of Labor Code section 203.

D. Defendant violated Defendant's obligations under Labor Code section 226(a).

1. Applicable Law

Labor Code section 226 provides in relevant part:

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept

on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

2. Facts

Defendant violated section 226(a)(1) as to Plaintiff and other aggrieved employees by failing to provide them statements of wages that accurately showed gross wages earned.

Defendant violated section 226(a)(5) by failing to provide Plaintiff and other aggrieved employees with statements of wages that accurately showed net wages earned.

Defendant violated section 226(a)(9) by failing to provide Plaintiff and other aggrieved employees with statements of wages that accurately showed the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by failing accurately to show the actual number of hours worked at the applicable hourly rate at which they should have been paid.

E. Defendant violated Defendant’s obligations under Labor Code section 246.

1. Applicable Law

Labor Code section 246(l)(2) requires that paid sick time for nonexempt employees 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.

2. Facts

Defendant failed to pay all sick pay owing aggrieved employees at the properly calculated rate of pay by failing to include per diems and other compensation in the calculation of the regular rate of pay.

F. Defendant violated Section 204 by failing to timely pay all wages owing.

1. Law

Labor Code section 204 requires the timely payments of wages due. Section 204(d) provides: “The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

2. Facts

Defendant did not timely pay aggrieved employees all wages owing as required by section 204 because Defendant did not pay wages owing at the properly calculated rate of pay.

IV. DEFENDANT IS LIABLE FOR PENALTIES PURSUANT TO THE PAGA.

Defendant is liable for penalties pursuant to Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699(f), *inter alia*.

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