

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Edmond James and 1Tek Building
Services, Inc.,**
Petitioners,

No. LB-25-0020

Dated: July 24, 2025

v.

**Office of the Attorney General, Fair Labor
Division,**
Respondent.

Appearances:

For Petitioners: Edmond James

For Respondent: Amy Goyer, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The individual petitioner managed two maintenance companies in sequence, the newer one of which is the corporate petitioner. As a result of his managerial responsibilities, the individual petitioner is individually liable for violations of the wage and hour laws at the older company. Those violations include failure to keep accurate records, late payment of wages, and misclassification of employees as independent contractors. A preponderance of the evidence supports only a portion of an allegation that an employee of both companies was not paid her full wages. The newer company is not liable for the older company's wrongdoing.

DECISION

This is an appeal from five civil citations issued by the Office of the Attorney General, Fair Labor Division (division). Each citation was issued to petitioner Edmond James and to a corporate entity. On four citations, the corporation cited is Tek Building Services, Inc. (OldTek), which has not appealed. On one citation, the corporation cited is petitioner 1Tek Building Services, Inc. (NewTek). I held an evidentiary hearing on June 3, 2025. The witnesses were Mr. James, his ex-wife Tymara James (Tymara), former NewTek employee Franchesca Castillo, current NewTek employees John Lewis and Samuel Marquez-Diaz, and division investigator

Kimberly Lampereur. At and after the hearing, I admitted into evidence exhibits marked 1-15 and A-AA.¹

I. Facts

A. Background

1. Mr. James's line of business is maintenance and janitorial services. He and Tymara incorporated OldTek in 2018. Tymara signed the incorporation papers, which named her as president, treasurer, secretary, and director. Tymara was the company's sole owner, but she was mostly uninvolved in its operations. (Exhibits 2, D; James; Tymara.²)

2. Mr. James signed OldTek's subsequent corporate filings, which identified him as the company's controller. In practice, Mr. James ran the business: he managed OldTek's relationships with its customers, kept the company's records, directed the work of the company's employees, and controlled their wages and benefits. (Exhibits 2, 4; James; Tymara; Castillo; Lewis.)

3. At OldTek, Mr. James used an ADP³ payroll system to track the hours, wages, and benefits of the company's employees, who were paid once every two weeks. In each pay period, each employee was credited with a total figure of 4.08 hours of paid time off (PTO). That figure was meant to combine vacation, personal days, and sick days. (Exhibit 4; James.)

B. Workers Classified as Contractors

4. In OldTek's payroll system, eight individuals who performed janitorial work were categorized as non-employee contractors (1099 workers). Mr. James was responsible for this

¹ I decline to admit another exhibit proposed by the petitioners after the hearing briefs were filed but note that its admission would not have altered this decision's determinations.

² The testimony is cited by witness name.

³ See www.adp.com.

categorization decision, which he made not based on the workers' working arrangements but based on their inability to produce certain tax documentation. (Exhibit 4; James; Lampereur.)

5. OldTek's ADP system did not track the PTO of individuals categorized as non-employees. But Mr. James believed that the company's 1099 workers were entitled to the same PTO provided to their colleagues. There is no allegation that the 1099 workers actually received less PTO than the amounts to which they were entitled. (Exhibit 4; James; Lewis.)

6. Mr. James asserts that he tracked the PTO of the 1099 workers using a standalone spreadsheet. He claims that the spreadsheet is now unavailable because Tymara "wiped" OldTek's hard drives clean while the couple were divorcing, approximately in early 2024. Tymara credibly denies that claim, which makes no appearance among the litany of accusations exchanged in the couple's divorce papers. It may be that some semblance of the spreadsheet Mr. James described did exist at some time; but on balance, it is more likely than not that records of the PTO accrued by OldTek's 1099 workers were not maintained on a precise and consistent basis. (Exhibits 4, 12; James; Tymara.)

C. Transition from OldTek to NewTek

7. In late January 2024, while Mr. James and Tymara were litigating their divorce, Tymara took decisive steps to end the couple's business relationship. She notified Mr. James that he was no longer employed by OldTek. She made similar announcements to OldTek's customers. In addition, Tymara contacted ADP and terminated OldTek's contract for payroll services. (Exhibits 4, 12, A-D, T, U; James; Tymara.)

8. During late January and February of 2024, OldTek's employees continued to provide their services to OldTek's customers. But with the ADP contract having been terminated, automated records of the employees' work were no longer being generated; and the employees were no longer scheduled to be paid on an automated basis. For their last pay date of

January 2024 and their first pay date of February 2024, Mr. James paid the employees using manual checks, the funds for which originated with OldTek's customers. (Exhibits 4, N-P, R, S; James; Lewis.)

9. On their last pay date of February 2024, OldTek's employees did not receive timely payment. Mr. James convened a meeting of the company's employees to discuss the situation. With Mr. Lewis's assistance, Mr. James told the employees that he was no longer permitted to operate OldTek and that they would each need to collect their most recent paycheck from Tymara. (Exhibits 1, H; James; Lewis.)

10. At the same meeting, Mr. James updated OldTek's employees that he had recently formed a new business, NewTek. OldTek's employees were invited to come work for NewTek. Many or all of them agreed to do so. Around the same time, many or all of OldTek's old customers entered into new agreements with NewTek. (Exhibits 2, 4, G, H, Q; James; Lewis.)

11. With encouragement from Mr. James, several employees filed complaints with the division about their failure to receive pay at the end of February 2024. The division commenced an investigation. Mr. James eventually arranged for the employees to receive their missing checks, in most cases during March 2024. (Exhibits 1, 4, 10; James; Lampereur.)

D. Ms. Castillo's Pay

12. Ms. Castillo began working for OldTek in January 2023, migrated to NewTek in February 2024, and remained there until May 2024. She was assigned to clean at multiple buildings, clocking in and out at one location using either a smartphone app or a fixed physical clock. Ms. Castillo's schedule consisted of 6.5 paid hours per day, i.e., 65 paid hours per pay period. (Exhibits G, W; James; Castillo.)

13. Starting in April 2023, Mr. James sent Ms. Castillo a stream of text messages urging her to agree to a romantic relationship. Translated from Spanish, Mr. James's messages

included the following: “Do you have a boyfriend? You are very beautiful.” “Can I get to know you outside of work?” “Do you want to be my Spanish girlfriend?” “I want to date you.” “You have a sexy body.” “I love sex. I’m pretty big and I love Latin women.” “Send me a sexy photo of you.” “When do you want me to take you for a night out?” “Can you come see me later tonight?” Although Ms. Castillo did not agree to date Mr. James, he continued to send these messages through March 2024. (Exhibits 8-9; Castillo.)⁴

14. The division alleges that Mr. James reacted to Ms. Castillo’s refusal to accept his advances by shortchanging her wages. According to the division, Ms. Castillo consistently worked 65 hours per pay period, but began in September 2023 to be paid for fewer hours than that. These allegations are supported by Ms. Castillo’s testimony and countered by Mr. James’s. Although the question is very close, I find that a preponderance of the evidence supports Mr. James’s account. The record includes limited payroll documentation. No entries in the documents show Mr. James to have modified any clock-in/clock-out times. Ms. Castillo’s clock-in/clock-out data is available for only one pay period, during which Mr. James left her hours untouched. During a certain other span, Mr. James did manually *enter* time for Ms. Castillo; but according to the payroll documents, Ms. Castillo failed to clock in and out on those days.⁵ Mr. James’s claim that an on-site manager reported Ms. Castillo’s hours to him is somewhat plausible; the division’s theory that Mr. James made arrangements for Ms. Castillo to *think* she was clocking in and out but for the system to ignore her entries is more farfetched. Also, during the months when Ms. Castillo was undisputedly paid in full, her hours were less

⁴ Mr. James’s treatment of Ms. Castillo is the subject of an ongoing proceeding before the Massachusetts Commission Against Discrimination.

⁵ The circumstances that might have led Ms. Castillo to stop clocking in and out are murky and disputed. Detailed findings on this topic would not affect the result of this case.

unvarying than the division's allegations might suggest.⁶ Her potential underpayments also were less consistent than a calculated shortchanging program might have looked like: for example, during February-March 2024, she was paid on three consecutive occasions for a full 65-hour schedule. (Exhibits 4, 5, 11; James; Castillo; Lampereur.)

15. On May 13, 2024, Ms. Castillo arrived at work to find that she was locked out of the timekeeping system. Another worker let her into the building. At some point during the day, a supervisor asked her to return her key. Ms. Castillo worked a partial day of approximately five hours. I find by a preponderance of the evidence that she had not resigned or been terminated before that day. She has not worked for NewTek since. (Exhibits 8, I; James; Castillo.)

16. Ms. Castillo received her final paycheck from NewTek at the end of May 2024. She was not paid for any work on May 13. As of the time of her separation from NewTek, Ms. Castillo had accrued approximately two weeks of PTO for her work at OldTek and NewTek combined. Her final check included no payout of PTO. (Exhibits 4, 5, I; Castillo.)

E. Procedural History

17. In January 2025, the division issued four citations to Mr. James and OldTek (nos. 24-03-141078-001 through -004) and one citation to Mr. James and NewTek (no. 24-06-143071-001). Each citation identified the allegedly violated statutory provision but offered few other details. Mr. James and NewTek timely appealed. The division subsequently elaborated on its theories of fact and law in a prehearing memorandum and at the outset of the evidentiary hearing. (Exhibits 14, 15.)

⁶ The record includes payroll data from twelve pay periods in March-August 2023. That sample includes periods when Ms. Castillo's hour totals were 52, 60, and three times 69.

II. Analysis

The division is authorized to punish various violations of the wage and hours laws through civil citations. *See* G.L. c. 149, § 27C(b). To obtain relief on appeal, a petitioner bears the burden of “demonstrat[ing] by a preponderance of evidence that the citation . . . was erroneously issued.” *Id.* § 27C(b)(4).

The citations at issue here impose monetary penalties, restitution amounts, or both. The petitioners’ claims focus on the restitution amounts and on whether any violations of law occurred at all. The petitioners do not argue that the penalty amounts would be excessive even if the alleged violations occurred. *See* DALA Standing Order 23-001 ¶ 1. The sections that follow analyze the five citations in turn, reordered for convenience.

A. Citation 078-002

The labor laws classify workers as “employees” based on a well-known three-part test. Under that test, workers performing a service may be treated as non-employee contractors only if they are “free from control and direction in connection with the performance of the service,” *and* “the service is performed outside the usual course of the business of the employer,” *and* the workers are “customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.” G.L. c. 149, § 148B(a). A citation may be issued to whoever “fails to properly classify an individual as an employee . . . and in so doing fails to comply . . . with [enumerated statutes].” *Id.* § 148B(d).

The theory underlying citation 078-002 is that OldTek’s eight 1099 workers should have been classified as employees. The citation imposes a penalty of \$4,000 (without restitution). Although the record is thin with respect to the workers’ circumstances, Mr. James does not deny that they worked under OldTek’s control and within the usual course of the company’s business.

What Mr. James argues is that he should not be held liable for violations of law at OldTek, from which he was banished and which has always been owned by Tymara. The argument misunderstands the governing law. Section 148B(d) imposes liability on a corporate employer's "president," "treasurer," and any other "officer or agent having the management of the corporation or entity." While the set of liable individuals is not unlimited, it reaches anyone who has "assumed and accepted . . . significant management responsibilities . . . similar to those performed by a corporate president or treasurer, particularly in regard to the control of finances or payment of wage." *Segal v. Genitrix, LLC*, 478 Mass. 551, 559 (2017).

During most or all of OldTek's years in existence, Mr. James was the single individual who discharged the type of responsibilities outlined by *Segal*. He filed OldTek's corporate papers, managed the company's income, and directed its payments of wages and other expenditures. He was well within the universe of managers that § 148B intended to hold accountable.

The remaining question is whether the misclassification of OldTek's 1099 workers involved any failure "to comply. . . with [enumerated statutes]." § 148B(d). The answer is yes, although for reasons subtly different than those asserted by the division.⁷ One of the statutes on § 148B(d)'s list is G.L. c. 151, § 15. That provision requires employers and their agents to keep accurate records of employees' names, addresses, occupations, working hours, pay, and any "other information as the [director of the department of labor standards] or the attorney general in their discretion shall deem material and necessary." *Id.*

⁷ The division maintains that the misclassification was accompanied by a violation of G.L. c. 149, § 148C(m). *See infra* § II.B.

The Attorney General has promulgated a regulation requiring employers to “keep true and accurate records of the accrual and use of earned sick time.” 940 C.M.R. § 33.09(1). With respect to OldTek’s 1099 workers, Mr. James failed to adhere to this regulation: the ADP system did not track those individuals’ sick time, and Mr. James did not fill the gap using a separate spreadsheet, at least not on a precise and consistent basis. Citation 078-002 was therefore not erroneous.

B. Citation 078-003

Citation 078-003 alleges a violation of G.L. c. 149, § 148C(m). The general topic of § 148C is the right of employees to earn sick time. The citation imposes a penalty of \$2,000 (without restitution).

The specific directive at paragraph (m) of § 148C is: “The attorney general shall prescribe by regulation the employer’s obligation to make, keep, and preserve records pertaining to this section consistent with the requirements of [G.L. c. 151, § 15].” The plain language of this provision is perfectly clear. *See Electronic Data Syst. Corp. v. Attorney Gen.*, 454 Mass. 63, 69 (2009). The statute addresses its command to the Attorney General, obligating him or her to promulgate certain regulations. Standing alone, the statute does not impose any legal obligations on private parties. *See Sweet v. Sheahan*, 235 F.3d 80, 86-87 (2d Cir. 2000).

Employers today certainly are required to make, keep, and preserve true and accurate records of accrued sick time. But that is because the Attorney General has complied with § 148C(m) by enacting 940 C.M.R. § 33.09, discussed earlier. It is § 33.09 that now “prescribe[s] . . . the employer’s obligation [to record sick time],” § 148C(m), essentially by adding to the universe of “material and necessary” records that employers are required to maintain under G.L. c. 151, § 15.

For the reasons already discussed, Mr. James violated § 33.09 and § 15 by failing to keep accurate records of the sick time accrued by OldTek's 1099 workers. The potential snag is that the citation through which the division intended to punish Mr. James for this misconduct relied on the wrong statute (§ 148C(m)).

It is reasonably clear that technical inaccuracies appearing on a civil citation are not invariably fatal to the citation's validity. The law about criminal indictments that cite to the wrong statute is instructive by analogy. The courts have concluded that such errors disrupt an indictment's validity only if the errors caused the defendant to be "prejudicially misled." *United States v. Lipkis*, 770 F.2d 1447, 1452 (9th Cir. 1985). *See United States v. Chestnut*, 533 F.2d 40, 45 (2d Cir. 1976); *Bertoldo v. United States*, 145 F. Supp. 2d 111, 117 (D. Mass. 2001). *See also Commonwealth v. Saya*, 14 Mass. App. Ct. 509, 510 (1982); 41 Am. Jur. 2d *Indictments and Informations* § 108 (2025).

The error appearing on citation 078-003 did not prejudicially mislead Mr. James. In addition to naming § 148C(m) as the pertinent statute, the citation paraphrased the alleged misconduct as "failure to accurately track accrual and/or use of earned sick time." It may also be the case that some reasonable readers of the citation, upon consulting § 148C(m), would have inferred that the regulations demanded by the statute have since been enacted. Regardless, the decisive point is that Mr. James himself has not claimed to have been misdirected or confused by citation 078-003's error. Whatever aspects of the situation may have been at work, Mr. James was able to discern and understand the allegations against him. The citation was not reversibly erroneous.

C. Citation 078-001

A statute already discussed requires employers to keep accurate records of all employees' names, working hours, pay, and other information. G.L. c. 151, § 15. Citation 078-001 alleges that Mr. James violated this obligation. It imposes a penalty of \$1,000 (without restitution).

The citation rests in part on the theory that Mr. James caused OldTek to keep inaccurate records of Ms. Castillo's time. A preponderance of the evidence defeats that theory. But the division also asserts another basis for the citation: namely, that in January-February 2024, even as Mr. James was in the process of being banished from OldTek, he continued to employ the company's workforce, while failing to keep accurate records of their wages, hours, and other information.⁸

Mr. James does not deny that the employment records of OldTek's employees in January-February 2024 were nonexistent or incomplete. The defense he offers is that, by that time, he was no longer associated with OldTek.

In this particular context, it is not necessary to pinpoint the legal relationships among OldTek, Mr. James, and Tymara. A citation for failure to keep accurate employment records may be issued to any "employer or . . . officer or agent of a corporation." *Id.* § 19(3). Mr. James landed within this set of liable persons whether he was acting in January-February 2024 on behalf of OldTek (against Tymara's wishes), on behalf of the embryonic NewTek, or on his own

⁸ Consistent with the division's usual practices, citation 078-001 does not spell out either one of the theories that the division now ascribes to the citation. But in the circumstances of this particular case, including the parties' substantial pre-citation discussions, the petitioners do not claim to have been surprised by the appearance of either theory in the division's hearing evidence and arguments. *See generally Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 690-91 (2012); *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 377-78 (1985); *Board of Registration in Med. v. Lawrence*, No. RM-23-464, 2024 WL 4010771, at *1 n.2 (Div. Admin. Law App. July 3, 2024).

personal behalf. In any of those scenarios, the fact is that Mr. James was directing and controlling the workers' activities, paying their wages, and taking payment from the customers they served. He was either the employer or the employer's agent for purposes of the statutory obligation to accurately record employees' work. *See Donis v. American Waste Servs., LLC*, 95 Mass. App. Ct. 317, 328 n.14 (2019), *rev'd on other grounds*, 485 Mass. 257 (2020). Citation 078-001 was therefore not erroneous.

D. Citation 078-004

The two final citations allege failures to pay timely wages under G.L. c. 149, § 148. Citation 078-004 concentrates on the period of OldTek's operations. It imposes both a \$400 penalty and restitution of \$2,427 to Ms. Castillo.

The citation relies on two theories. The first is that Ms. Castillo was not paid wages for all of the hours she worked. A preponderance of the evidence defeats that theory. Contrast *Porcal v. Ciuffo*, No. 10-cv-40016, 2013 WL 3989668, at *3-4 (D. Mass. Aug. 1, 2013). As a result, the portion of citation 078-004 ordering restitution to Ms. Castillo is erroneous and must be vacated.

The citation's second theory returns to the twilight period of January-February 2024, when Mr. James was no longer authorized to operate OldTek but had not yet gotten NewTek up and running. Although the pertinent employees were paid for their work in that period, their last paycheck was late.

Mr. James's argument again focuses on his banishment from OldTek as of January 2024. It is again unnecessary to untangle the threads tying OldTek, NewTek, and their agents together. Section 148, like section 148B (governing misclassification), defines the responsible "employer" as including a company's president, treasurer, and "any officers or agents having the management of [the] corporation." In January-February 2024, whether he was acting for

OldTek, NewTek, or himself, Mr. James was either the pertinent workers' employer or a qualifying officer or agent. *See Segal*, 478 Mass. at 559. In any scenario, he was among the individuals obligated by § 148 to ensure that his workers received their payment on time. Because Mr. James violated that obligation, citation 078-004 was correct in part, and there is no basis to vacate or reduce the modest penalty it imposes.

E. Citation 071-001

The final citation alleges that both Mr. James and NewTek failed to pay Ms. Castillo the wages owed to her in connection with her work at NewTek. The citation imposes a penalty of \$350 and restitution to Ms. Castillo totaling \$1,875.

The amount of the restitution is the sum of three components. The first is \$615 in wages for hours that Ms. Castillo allegedly worked but was not paid for. A preponderance of the evidence defeats that allegation. Contrast *Porcal*, 2013 WL 3989668, at *3-4. This portion of the restitution ordered by the citation is therefore unsupported.

The second component of the restitution amount is \$90 in wages for Ms. Castillo's work on her last day of employment. Ms. Castillo worked five hours on that day. Her employment was not previously terminated. This portion of the citation must be upheld.

The final piece of the restitution imposed by the citation is \$1,170 in accrued PTO. The governing statute covers not only base wages but also "any holiday or vacation payments due . . . under an oral or written agreement." G.L. c. 149, § 148. The division apparently maintains that Ms. Castillo earned approximately 29 hours of PTO for her work at OldTek (equaling \$522) and approximately 36 hours for her work at NewTek (equaling \$648). The petitioners do not deny these details.

With respect to the PTO accrued at NewTek, the dispute is easily decided. The petitioners argue only that Ms. Castillo was not entitled to a payout of accrued PTO because she

was a “probationary” employee during her first six months of work. The argument is unsupported by any pertinent law or facts. No statute identified by the parties excludes probationary or newly hired employees from the right to accrue PTO. *See, e.g.*, G.L. c. 149, § 148C(b), (d), (k). And no record evidence shows NewTek to have agreed with its employees on probationary periods.

Turning to the PTO earned by Ms. Castillo for her work at OldTek, it is easy to determine Mr. James’s personal liability. Throughout Ms. Castillo’s time at OldTek, Mr. James was an “officer[] or agent[] having the management of [the] corporation.” G.L. c. 149, § 148. *See Segal*, 478 Mass. at 559. He is statutorily responsible for paying Ms. Castillo the PTO she earned at OldTek regardless of any post-OldTek events.

What remains to be decided is whether NewTek as a separate corporate entity is also responsible for the PTO that Ms. Castillo earned at OldTek. The division says yes on the theory that NewTek is a “successor” to OldTek and responsible as such based on “successor liability.” *See Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 556-59 (2008). This issue has not been comprehensively litigated, and its consequences are unlikely to be significant given Mr. James’s personal liability. This is not the time for a treatise on successor liability.

But on the facts and the law as they are presented here, the better conclusion is that NewTek does *not* count as a successor responsible for OldTek’s obligations. It is true that the two companies have much in common: their operations, managements, employees, and customers have been close to identical. Nevertheless, the various theories of successor liability all require more: they all hinge on some form of a cooperative or contractual effort by the older and newer corporations to eliminate the older corporation’s debts. *See Milliken*, 451 Mass. at

556; *Smith v. Kelley*, 484 Mass. 111, 120-21 (2020); *Cargill, Inc. v. Beaver Coal & Oil Co.*, 424 Mass. 356, 361 (1997).

In the current case, since NewTek's inception, the interests of its owner (Mr. James) have been adverse to the interests of OldTek's owner (Tymara). The two companies entered into no explicit or implicit cooperative arrangements. NewTek established its relationships with OldTek's customers and employees without OldTek's blessing or consent. The misalignment of the two companies' ultimate interests weighs heavily against a view of NewTek as a new incarnation of OldTek with responsibility for its debts. *See Crowther v. Asadoorian*, 104 Mass. App. Ct. 1125 (2024) (unpublished memorandum opinion); *Bielagus v. EMRE of New Hampshire Corp.*, 826 A.2d 559, 569 (N.H. 2003); *Welco Indus., Inc. v. Applied Cos.*, 617 N.E.2d 1129, 1134-35 (Ohio 1993); *WRK Rarities, LLC v. United States*, 165 F. Supp. 3d 631, 637-38 (N.D. Ohio 2016). NewTek's liability in restitution toward Ms. Castillo thus does not include the amounts she earned as an OldTek employee.

III. Order

In view of the foregoing, it is ORDERED as follows:

1. Citation 078-001, for failure to keep true and accurate records, is AFFIRMED. Mr. James is liable under this citation for a penalty of \$1,000.
2. Citation 078-002, for misclassification of employees as independent contractors, is AFFIRMED. Mr. James is liable under this citation for a penalty of \$4,000.
3. Citation 078-003, for failure to keep true and accurate records of accrued sick leave, is AFFIRMED. Mr. James is liable under this citation for a penalty of \$2,000.
4. Citation 078-004, for failure to pay timely wages, is AFFIRMED in part and VACATED in part. Mr. James is liable under this citation for a penalty of \$400 (without restitution).

5. Citation 071-001, for failure to pay timely wages, is AFFIRMED in part and VACATED in part. Mr. James is liable under this citation for a penalty of \$350 and for \$1,260 in restitution to Ms. Castillo. NewTek is separately liable for the \$350 penalty and for \$738 of the restitution.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate