

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Elevated Crust LLC, John Bartolomei, and
Danny Kay's Culinary Production, Inc.,**
Petitioners,

Docket No.: LB-25-0450

Dated: June 3, 2026

v.

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

Appearances:

For Petitioners: Ms. Patricia Bartolomei

For Respondent: Karina N. Valencia, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The record demonstrates no error in the civil citations issued to the petitioners for violations of the prompt-pay and earned-sick-time statutes, G.L. c. 149, §§ 148, 148C(d)(1). On a preponderance of the evidence, the petitioners did eventually pay their employees' wages, with the result that no restitution is owing from them.

DECISION

This is an appeal from five civil citations issued to the petitioners by respondent Office of the Attorney General, Fair Labor Division (division). I held an evidentiary hearing in April 2026, at which the witnesses were petitioner John Bartolomei and division investigator Huang Phan. At and after the hearing, I admitted exhibits marked P1-P2 and R1-R22, plus a supplemental affidavit from division investigator MaKenzie Carter.¹

¹ Exhibits R1-R22 were marked and listed in the division's prehearing memorandum. Exhibit P1 was identified by the petitioners at the hearing. Exhibit P2 is a collection of emails and letters filed by the petitioners after the hearing. The division argued stoutly that it was

Findings of Fact

I find the following facts.

1. During the period relevant to this appeal, petitioner Elevated Crust LLC (Wicked) did business as a Cotuit restaurant named Wicked Pizza; petitioner Danny Kay's Culinary Production, Inc. (Villaggio) did business as a Mashpee restaurant named Villagio; and Mr. Bartolomei owned and operated both businesses. (Bartolomei test.)

2. In late 2024, the division received a complaint alleging that the petitioners were not paying timely wages. The division collected employee data, bank records, timekeeping records, payroll records, and paid-time-off records from the petitioners. The division then audited the records. (Phan test.; exhibits R1-R8, R15.)

3. The audit revealed that on various occasions, Wicked and Villagio paid their employees more than "six days [after] the termination of the pay period during which the wages were earned." G.L. c. 149, § 148. The petitioners admit that this occurred. (Bartolomei test.; exhibit R15.)

4. The division identified several pay periods for which Wicked or Villagio produced payroll records but no corresponding proofs of payment in their bank records. Seven employees performed work during those periods, earning approximately \$21,000 in all. (Phan test.; exhibit 15.)

prejudiced by the petitioners' belated identification of exhibits P1-P2. On the other hand, there may have been a measure of merit to the petitioners' claim that they struggled to pinpoint the division's key calculations until soon before the hearing. In an effort to accommodate the parties' competing interests, I admitted the two late exhibits but also investigator Carter's uncrossed supplemental affidavit.

5. On a preponderance of the evidence, the petitioners ultimately paid the wages owing from them. All seven employees wrote emails or letters stating that they were paid. Mr. Bartolomei testified credibly to the same effect. Checks and wires identified belatedly by the petitioners corroborated the overwhelming majority of the pertinent payments, as the division concedes. Mr. Bartolomei testified that the remaining payments were made in cash; in all the circumstances, I credit that explanation. On balance, it is most likely that the petitioners made an incomplete production to the division, may have maintained incomplete pay records,² but paid their employees in full.³ (Bartolomei test.; exhibits P1, P2.)

6. The division analyzed payroll and timekeeping records from two overlapping periods to identify the hours worked by each of the petitioners' employees. The division then extrapolated the minimum amounts of earned sick time that each employee should have accrued under the statutory formula of "one hour of earned sick time for every thirty hours worked." G.L. c. 149, 148C(d)(1). In various instances, the balances stated in the petitioners' paid-time-off records were lower than the minimums calculated by the division.

Mr. Bartolomei testified credibly that he relied on payroll companies to compute the

² The division did not cite the petitioners for violations of their record-keeping or record-production obligations. 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).

³ Investigator Carter opines in her supplemental affidavit that the petitioners continue to owe approximately \$4,000 in restitution. The opinion bears little weight: the affidavit does not provide detailed calculations, does not identify the allegedly unpaid employees, does not say whether they were among the employees that investigator Carder interviewed after the hearing, and specifically does not say whether any employees orally recanted their written statements to the effect that they received their wages.

employees' paid time off, intending to obey the law; but the petitioners have identified no specific errors in the division's arithmetic. (Bartolomei test.; exhibit R15.)⁴

7. The division issued five citations to the petitioners, who timely appealed.⁵ Each citation named all three petitioners as employer-recipients. At the hearing, the division clarified that four of the citations intended to make allegations only against Mr. Bartolomei and one corporate petitioner (as particularized below). I deemed the citations amended accordingly. (Exhibit R13; administrative record.)

Analysis

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

Two of the five citations to the petitioners involve the earned-sick-time statute. As indicated earlier, the statute requires employers to give each employee "a minimum of one hour of earned sick time for every thirty hours worked." G.L. c. 149, 148C(d)(1). Citation number 001 imposes a \$2,500 penalty on Wicked and Mr. Bartolomei for violating the law during 2024-2025. Citation number 003 imposes a \$10,000 penalty on Villagio and Mr. Bartolomei for violating the law during 2024.⁶ The petitioners have not identified or proven

⁴ The division alleges that the petitioners violated the earned-sick-time law in other ways, too. An examination of the additional allegations would have no practical consequences.

⁵ I denied an untimeliness-based motion to dismiss soon after the appeal was filed.

⁶ Villagio and Mr. Bartolomei were cited in 2021 for a violation of the same statute. (Exhibit R12.)

any specific errors in the citations. They have developed no challenge to the penalty amounts selected by the division. *See generally* [DALA Standing Order 23-001](#) ¶ 1.⁷

Two other citations allege violations of the statute requiring wages to be paid “within six days of the termination of the pay period during which the wages were earned.” G.L. c. 149, § 148. Citation number 002 imposes a \$9,500 penalty on Wicked and Mr. Bartolomei for violations occurring during July-October 2024. Citation number 005 imposes a \$15,000 penalty on Villagio and Mr. Bartolomei for violations occurring during June-July of the same year. The petitioners admit that the violations occurred. They again present no challenge to the specific penalty amounts.

The final citation, number 004, alleges that the three petitioners still owe a total of approximately \$21,000 to seven specified employees for wages earned in January-March 2025. As discussed earlier, a preponderance of the evidence contradicts this allegation. The restitution element of the citation is therefore erroneous.

Citation number 004 also assesses a penalty of \$13,000. The proper disposition of this penalty involves sticky questions. Before the evidentiary hearing, the petitioners articulated the claim that they “have already paid the restitution to the employees.” As it turns out, they paid the pertinent sums, or nearly all of them, even before the division issued citation number 004. The facts established at the hearing thus differ materially from those on which the division relied when it issued its citation. *See* Standing Order 23-001 ¶ 2. On the other

⁷ A scheduling order referred the petitioners to Standing Order 23-001 and instructed them to state “the bases for their challenges to the penalty amounts” in a prehearing memorandum.

hand, it may be that some penalty remains appropriate, because certain of the wages addressed by the citation were paid late.⁸ In the circumstances presented, the division is best situated to determine the penalty amount, if any, that the updated facts warrant. The penalty element of the citation will therefore return to the division “for penalty modification.”

Standing Order 23-001 ¶ 6.

Conclusion and Order

Citations number 001, number 002, number 003, and number 005 are AFFIRMED. The restitution element of citation number 004 is VACATED, and the balance of the citation is REMANDED to the division for a modification of the penalty amount.

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Division of Administrative Law Appeals

⁸ The citation describes the violation from which it arises as “failure to make *timely* payment of wages” (emphasis added). The time period addressed by the citation (January-March 2025) postdated the periods covered by citations number 002 and number 005.