

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

ISSM Protective Services, Inc. and
Simon Shenker,

Petitioners,

Docket No.: LB-22-0167

v.

Office of the Attorney General,
Fair Labor Division,

Respondent.

Appearance for Petitioners:

Simon Shenker, *pro se*
ISSM Protective Services, Inc.
1376 Lakewood Road
Toms River, NJ 08755

Appearance for Respondent:

Kate Watkins, Esq.
Assistant Attorney General
Office of the Attorney General
Fair Labor Division
1 Ashburton Place, 18th Floor
Boston, MA 02108

Administrative Magistrate:

John G. Wheatley

SUMMARY OF DECISION

The citation issued to the petitioners by the Office of the Attorney General, Fair Labor Division, is affirmed. Although it is unfortunate that the petitioners acquired a business that had poor recordkeeping, the Wage Act imposes strict liability and required payment of wages to the

subject employee within seven days after the end of the pay period (i.e., payment by July 24, 2021). The petitioners did not make timely payment of that week's wages to the employee because they sent her paycheck to an incorrect address, which constituted an unintentional violation of G. L. c. 149, § 148. The civil penalty assessed for that violation, in the amount of \$250.00, was reasonable, and the Fair Labor Division considered appropriate and relevant factors in setting the value of that penalty.

DECISION

The petitioners, ISSM Protective Services, Inc. and Simon Shenker, appealed a citation issued by the Fair Labor Division of the Attorney General's Office alleging that the petitioners had failed to make timely payment of wages to an employee in the amount of \$222.75. The citation called for restitution to the affected employee, which the employer had previously paid in full, and imposed a civil penalty of \$250.00 for the untimely payment of wages.

I held an evidentiary hearing on October 25, 2022, using the Webex videoconferencing platform, which was recorded. I admitted five documents into evidence during the hearing (Exhibits 1-5). I have further included in evidence the petitioners' appeal letter to DALA, marked as Exhibit 6. The Fair Labor Division called its investigator, Matija Zizanovic, to testify at the hearing, and Mr. Shenker testified on his own behalf. The parties elected not to file post-hearing memoranda, but each party made a brief closing statement at the end of the hearing.

I kept the administrative record open for a period after the hearing for the parties to submit certain email correspondence from the employee that was referenced during the hearing as well as evidence indicating when the employee was paid the wages at issue. The respondent submitted email correspondence as Exhibits 7 and 8 and subsequently filed an affidavit from Mr. Zizanovic (which I marked as Exhibit 9); those exhibits are also admitted into evidence. On November 18, 2022, I closed the administrative record.

FINDINGS OF FACT

The facts in this matter are not in significant dispute. Based on the testimony at the hearing¹ and the documents admitted into evidence, I make the following findings of fact:

1. On or about July 4, 2021, ISSM Protective Services, Inc. (ISSM) acquired a private security services business, Archer Security, based in Leominster, Massachusetts. (Shenker Testimony; Ex. 4.)
2. Mr. Shenker is the president and chief executive officer of ISSM.² (Exs. 4, 6.)
3. After purchasing Archer Security, Mr. Shenker discovered that the company had very poor recordkeeping, including poorly maintained employment records. (Shenker Testimony; Ex. 4.)
4. Due to the inadequate records, ISSM sent all Archer Security employees new tax forms to complete and asked them how they would like to receive payment of wages. (Shenker Testimony.)
5. The employee at issue in this case, Brianne Lambert, did not complete and submit the new tax form to ISSM or provide the company the requested payroll information. (Shenker Testimony; Ex. 4.)
6. On July 21, 2021, ISSM issued a paycheck to Ms. Lambert (made payable to “Brie Brie”) for the period of July 4-July 17, 2021, but mailed the check to an incorrect address. The check was sent to 13676 Lakewood Rd., Lakewood, MA 02250, which appears to be a derivative of ISSM’s own address (i.e., 1376 Lakewood Rd.) but in a Massachusetts town and using an

¹ I found both Mr. Shenker and Mr. Zizanovic to be sincere and credible witnesses.

² ISSM’s certificate of registration filed with the Secretary of the Commonwealth reports that Mr. Shenker is the sole officer and director of the corporation.

invalid zip code. As a result of the faulty address, the U.S. Postal Service returned the check to ISSM with the notation: "RETURNED FOR BETTER ADDRESS." (Exs. 2, 3.)

7. During the pay period in question, Ms. Lambert worked for ISSM on three days (July 12, 13, and 14), for a total of 16.5 hours, for which she earned wages of \$222.75. (Exs. 2, 7.)
8. On August 23, 2021, Ms. Lambert sent an email to ISSM seeking compensation for her work on July 12, 13, and 14. (Ex. 7.)
9. On August 30, 2021, ISSM issued a new paycheck to Ms. Lambert and notified her that it was available for her to pick up at the company's Leominster office. (Shenker Testimony; Ex. 4.)
10. In September 2021, the Fair Labor Division received a complaint from Ms. Lambert reporting that ISSM had not paid her for 16.5 hours of work performed on July 12-14. (Zizanovic Testimony.)
11. On January 13, 2022, Mr. Zizanovic provided Mr. Shenker with Ms. Lambert's current address and requested that he mail her paycheck there. (Ex. 9.)
12. On January 31, 2022, Ms. Lambert confirmed to Mr. Zizanovic that she had received and cashed the payroll check from ISSM. (Ex. 9.)
13. Mr. Zizanovic recommended that the Fair Labor Division issue a citation to the petitioners for failure to make timely payment of wages to Ms. Lambert. Although he did not set the amount of the civil penalty, Mr. Zizanovic's recommendation included his evaluation of relevant factors, including the number of affected employees (i.e., one), the absence of any prior violations of Massachusetts labor laws, the monetary amount at issue (\$222.75), and the absence of any intent by the petitioners to pay wages untimely or to violate the law. (Zizanovic Testimony.)

14. On April 6, 2022, the Fair Labor Division issued a citation to the petitioners alleging that they failed to make timely payment of wages to Ms. Lambert. The citation called for restitution of \$222.75 to Ms. Lambert, but acknowledged that the petitioners had previously paid this amount directly to her. In addition, the citation imposed a civil penalty of \$250.00 for the alleged violation, indicating it was “without specific intent” by the petitioners. (Ex. 5; Zizanovic Testimony.)

15. Due to a delay with the mail, the petitioners did not receive the citation until April 25, 2022. On April 28, 2022, the petitioners filed an appeal with the Division of Administrative Law Appeals. (Ex. 6.)

RULINGS OF LAW

The purpose of the Massachusetts Wage Act is “to protect employees and their right to wages by requiring employers to pay employees their wages in a timely fashion.” *Parker v. EnerNOC, Inc.*, 484 Mass. 128, 132 (2020) (citations and internal quotation marks omitted). The Act “‘impose[s] strict liability on employers,’ who must ‘suffer the consequences of violating the statute regardless of intent.’” *Reuter v. Methuen*, 489 Mass. 465, 468-469 (2022), quoting *Dixon v. Malden*, 464 Mass. 446, 452 (2013). In the case of an employee who worked for a period of less than five days in a calendar week, the employer must pay the employee weekly or bi-weekly wages earned “within seven days after the termination of such period.” G. L. c. 149, § 148. The liability for timely payment of wages of a corporate employer extends to the “president and treasurer of [the] corporation and any officers or agents having the management of such corporation.” *Id.*

The pay period at issue terminated on July 17, 2021. The petitioners were therefore required to pay Ms. Lambert her wages earned during that period no later than July 24, 2021

(i.e., seven days after the termination of the pay period). Her check was mailed to an invalid address, however, and she did not receive a replacement check until months later, in January 2022. ISSM had issued a prior replacement check at the end of August 2021 for Ms. Lambert to pick up at its Leominster office. Assuming that is sufficient to constitute “payment,” it was also made beyond the seven-day period required for payment of wages under the statute.³ The petitioners, therefore, did not pay Ms. Lambert the wages she earned during that pay period within the time required by the Wage Act, under G. L. c. 149, § 148.

The petitioners paid Ms. Lambert the wages she was due, which leaves the civil penalty as the sole remaining issue. The Attorney General has the authority to assess civil penalties under G. L. c. 149, § 27C, for violation of Wage Act. The maximum civil penalty that may be assessed a first-time violator who acted without specific intent is \$7,500.00. G. L. c. 149, § 27C(b)(2). In determining the amount of the civil penalty, the Attorney General must “take into consideration previous violations . . . by the employer, the intent by such employer to violate [chapter 149 or chapter 151], the number of employees affected by the present violation or violations, the monetary extent of the alleged violations, and the total monetary amount of the public contract or payroll involved.” *Id.*

The Fair Labor Division was authorized to assess a civil penalty for the petitioners’ failure to make timely payment of wages to Ms. Lambert. Its investigator, Mr. Zizanovic, took into consideration appropriate and relevant statutory factors in his evaluation, in accordance with G. L. c. 149, § 27C(b)(2), including the number of affected employees (i.e., one), the absence of any prior violations of Massachusetts labor laws, the monetary amount at issue (\$222.75), and

³ It was not unreasonable for the company to tell Ms. Lambert to pick up her check at its office, particularly where she had not provided the new owners with a valid home address.

the absence of any intent by the petitioners to pay wages untimely or to violate the law. The \$250.00 penalty assessed appears reasonable for the violation at issue, and the petitioners did not present evidence that would indicate that this minimal penalty was excessive.⁴ There was no error in assessing this penalty.

CONCLUSION AND ORDER

For the foregoing reasons, the citation issued by the Fair Labor Division—numbered 21-08-26229-001—is affirmed. The petitioners are hereby ordered to pay the civil penalty assessed in that citation, in the amount of \$250.00.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate

JUN 06 2023

⁴ There was a technical violation of the statute by a company that appears to have made good faith efforts to pay its employee. Still, the company did not pay Ms. Lambert timely, and though Ms. Lambert had not responded to the company's reasonable request that she tell the company the manner in which she wanted to be paid or provide her current address, the company's initial effort to mail her a check failed to complete payment because the company (or its payroll vendor) misaddressed the envelope. Once the company learned of the error, it informed Ms. Lambert that she could pick up her payroll check at the company's office. Thus, Ms. Lambert could have received her pay within six weeks, but this was beyond the time the statute sets for payment of wages.