

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

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The Monson Thrift Store and Community  
Outreach Center & Mary Hull,

Petitioners,

v.

Docket No. LB-24-0640

Office of the Attorney General,  
Fair Labor Division,

Respondent.

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**ORDER OF DISMISSAL**

The respondent, Office of the Attorney General, Fair Labor Division, moves to dismiss this appeal on the ground that the Division of Administrative Law Appeals (DALA) lacks jurisdiction. As grounds therefore, the Fair Labor Division contends that the petitioners failed to file their appeal within the time prescribed by G. L. c. 149, § 27C(b)(4). The petitioners did not file a written opposition to the Fair Labor Division's motion or submit any countervailing evidence regarding the timeliness of their appeal. After review, I conclude that the petitioners' notice of appeal was not timely filed, and this appeal is therefore dismissed for lack of jurisdiction.

### BACKGROUND

On October 1, 2024, the Fair Labor Division issued the petitioners a citation for a civil penalty based on an asserted failure to furnish payroll records. The citation advised the petitioners that they may appeal the citation to DALA by filing a notice of appeal within ten days. On October 24, 2024, the petitioners filed their appeal with DALA.

### DISCUSSION

The Fair Labor Division cited the petitioners for failure to furnish payroll records, in violation of G. L. c. 151, § 19(3). To challenge this citation, the petitioners must file "a notice of appeal with the attorney general and the division of administrative law appeals within ten days of the receipt of the citation[.]" G. L. c. 149, § 27C(b)(4).

The Fair Labor Division mailed the citation to the petitioners on October 1, 2024. Absent evidence to the contrary, the petitioners are deemed to have received the citation three days later, on October 4, 2024. See 801 Code Mass. Regs. § 1.01(4)(c). To be timely, the petitioners would need to have filed their appeal no later than October 15, 2024.<sup>1</sup> The petitioners filed their appeal on October 24, 2024, as evidenced

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<sup>1</sup> Ten days after receipt of the citation falls on Columbus Day, October 14, 2024, which extends the deadline to the following business day. See 801 Code Mass. Regs. § 1.01(4)(d).

by the postmark, which is nine days after the appeal deadline. In consequence, DALA does not have jurisdiction to hear this appeal. See *Flynn v. Contributory Retirement Appeal Bd.*, 17 Mass. App. Ct. 668, 669 (1984) (noting that timely filing of an administrative appeal is a jurisdictional requirement). See, e.g., *Mr. Home, Inc. v. Attorney General*, No. LB-24-0511 (Div. of Admin. L. App. Oct. 8, 2024) (dismissing appeal of citations issued by the Fair Labor Division for failure to file by the statutory deadline); *Specker v. Attorney General*, No. LB-10-816 (Div. of Admin. L. App. Sept. 19, 2011) (same); *Whitsey v. Attorney General*, No. LB-11-104, -105 (Div. of Admin. L. App. June 10, 2011) (same); *DeOliveira v. Attorney General*, No. LB-08-396 (Div. of Admin. L. App. Aug. 28, 2009) (same).

#### CONCLUSION

For the foregoing reasons, the Fair Labor Division's motion to dismiss is granted, and this appeal is hereby dismissed for lack of jurisdiction. Under G. L. c. 30A, § 14(1), any appeal of this decision must be brought in the Superior Court within thirty (30) days.

Division of Administrative Law Appeals

*/s/ John G. Wheatley*

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John G. Wheatley  
Administrative Magistrate