



DEPARTMENT OF LABOR
 BUREAU OF LABOR STANDARDS
 45 STATE HOUSE STATION
 AUGUSTA, MAINE
 04333-0045

LAURA A. FORTMAN
 COMMISSIONER

JANET T. MILLS
 GOVERNOR

WAGE & HOUR DIVISION

MICHAEL ROLAND
 DIRECTOR

August 9, 2021

Five Guys Burgers and Fries
 Attn: Neil Moody, District Manager
 274 Western Ave.
 Augusta, ME 04330

RE: Violations of 26 MRS, Inspection #451638
 Certified Mail: 7015 1520 0001 0962 9062

Dear Neil Moody,

When our Inspector, Richard Stephens, contacted your place of business on October 21, 2020 the following violations of Maine Labor Law were found:

26 MRS §621-A Timely and Full Payment of Wages requires that employees be paid in full, on an established day or date, at regular intervals made known to the employee. The intervals may not exceed 16 days and must include all wages earned to within 8 days of the payment date.

In this case, the employer failed to pay employees in full on 208 occasions between 12/03/2018 and 03/21/2021. The employer deducted short breaks from the following (36) employee's total hours worked on 208 occasions between 12/03/2018 and 03/21/2021. Rest periods of short duration, usually 20 minutes or less, are common in industry and are customarily paid for as working time. These short periods must be counted as hours worked.

<u>Name</u>	<u>Wages Owed</u>	<u>Name</u>	<u>Wages Owed</u>
[REDACTED]	\$6.56	[REDACTED]	\$6.10
[REDACTED]	\$1.51	[REDACTED]	\$10.14
[REDACTED]	\$16.36	[REDACTED]	\$12.08
[REDACTED]	\$21.56	[REDACTED]	\$10.27
[REDACTED]	\$26.62	[REDACTED]	\$3.96
[REDACTED]	\$34.43	[REDACTED]	\$0.98
[REDACTED]	\$22.91	[REDACTED]	\$57.14
[REDACTED]	\$11.64	[REDACTED]	\$22.93
[REDACTED]	\$3.31	[REDACTED]	\$9.90
[REDACTED]	\$10.78	[REDACTED]	\$7.88
[REDACTED]	\$3.68	[REDACTED]	\$39.00
[REDACTED]	\$23.07	[REDACTED]	\$2.70
[REDACTED]	\$7.19	[REDACTED]	\$18.80

██████████	\$0.24	██████████	\$8.85
██████████	\$1.98	██████████	\$0.23
██████████	\$62.13	██████████	\$9.13
██████████	\$20.35	██████████	\$4.04
██████████	\$6.10	██████████	\$305.98

Please send this office proof that these wages have been paid.

26 MRS §626-A PENALTIES Whoever violates any of the provisions of sections 621-A to 623 or section 626, 628, 629 or 629-B is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation. Each employee is counted as a separate violation, each pay cycle.

- 208 violations of §621-A

26 MRS §774 (1) Restricted Hours - Minors 16 & 17 years of Age A minor 16 years of age or older and under 18 years of age, enrolled in school, may not be employed as follows:

- More than 50 hours in any week when the minor’s school is not in session
- More than 24 hours in any week when the minor’s school is in session
- More than 10 hours in any day when the minor’s school is not in session
- More than 6 hours in any day when the minor’s school is in session, except that the minor may work up to 8 hours on the last scheduled day of the school week
- More than 6 consecutive days
- After 10:15 p.m. on a day preceding a day on which the minor’s school is in session or after 12 midnight on a day that does not precede such a school day or
- Before 7 a.m. on a day on which the minor’s school is in session or before 5 a.m. on any other day.

In this case, the employer allowed ██████████ to work more than 24 hours in each of the weeks ending 09/06/2020, 09/13/2020, 10/04/2020, and 10/18/2020.

In addition, the employer allowed ██████████ work more than the maximum allowable hours per day on 09/09/2020, 09/10/2020, 09/16/2020, 09/17/2020, 09/30/2020, 10/01/2020, 10/02/2020, 10/03/2020, 10/08/2020, 10/15/2020, 10/29/2020 and 11/18/2020, 03/09/2021, and 03/10/2021. (18 total violations)

26 MRS §774 (2) Restricted Hours - Minors Under 16 years of Age A minor under 16 years of age may not be employed as follows:

- More than 40 hours in any given week when school is not in session
- More than 18 hours in any week when school is in session
- More than 8 hours in any day when school is not in session
- More than 3 hours in any day when school is in session
- More than 6 consecutive days; or
- Between the hours of 7 p.m. and 7 a.m. except during summer vacation, when that minor may not work between the hours of 9 p.m. and 7 a.m.

In this case, the employer allowed ██████████ to work more than the maximum allowable hours per day on 09/10/2020, 09/11/2020, 09/15/2020, 09/29/2020, 10/02/2020, 10/06/2020,

10/08/2020, 10/09/2020, 10/10/2020, 10/19/2020, 10/20/2020, 10/23/2020, 11/08/2020, 11/20/2020, 12/03/2020 and 12/04/2020.

In addition, the employer allowed [REDACTED] to work between the hours of 7 p.m. and 7 a.m. on 09/03/2020, 09/10/2020, 09/11/2020, 10/09/2020, 10/10/2020, 10/11/2020, 10/12/2020, 10/16/2020, 10/18/2020, 10/19/2020, 10/20/2020, 10/23/2020, 10/24/2020 and 11/08/2020. (30 total violations)

26 MRS §781 PENALTIES An employer who employs, permits or suffers any minor to be employed or to work in violation of this article or Title 20-A, section 5054 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

- A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than \$250 nor more than \$5,000
- B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture or penalty of not less than \$500 nor more than \$5,000; or
- C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a penalty of not less than \$2,000 nor more than \$10,000.

- 18 violations of §774 (1)
- 30 violations of §774 (2)

The total penalty for the above violation(s) is \$32,800.00.

Make checks payable to the “Treasurer, State of Maine”

The violations identified above will become a final order within fifteen (15) business days from the day it was received unless you request a penalty discussion or file an appeal (see employer options) within the specified time frame listed above.

Employer options (within 15 business days):

If you intend to correct all violations identified and wish to work with the Wage & Hour Division to possibly reduce the penalty amount, you may request a “Penalty Discussion”. This discussion will pertain only to the penalty(s) and not the violation(s). All proposed penalties will be stayed until after the penalty discussion.

Or

You may file a formal appeal of any violation or penalty within fifteen (15) days of receipt of this citation. Please be specific as to what violation(s) or penalty you wish to appeal. If a request for a formal appeal is received, the Director will set a time and date for a “hearing”. The Director will serve as the hearing officer or may assign the appeal to the Administrative Hearings Division within the Department of Labor. The hearing will be at the headquarters of the Bureau or at a place mutually agreeable to the parties. All proposed penalties will be stayed until after the formal appeal is heard.

As the employer, you must respond in writing to the Director of the Bureau, at the address above, within fifteen (15) business days of receipt of this report stating what option you intend to choose. If no response is received within that time frame you accept all citations and any

penalties assessed. The citation will become a final order and payment will be due at that time, made payable to **“Treasurer, State of Maine”** and mailed to the address at the top of this citation.

We strongly recommend that any correspondence be sent by certified mail. Failure to correct violations may result in additional penalties for each violation that is not corrected.

If you have questions regarding this citation, you may contact the Bureau of Labor Standards, Wage & Hour Division at (207) 623-7900.

Dates to remember:

Respond in writing, to the Director of the Bureau within fifteen (15) business days of receipt of this citation indicating what option you choose.

Respectfully,



Scott Cotnoir, Director
Wage and Hour Division
Inspection # 451638