

FLSA NARRATIVE

COVERAGE: Subject firm is a retail limited service restaurant chain that serves customers and that is open to the general public. The subject firm is owned and operated by Hardee's Food Systems. The Executive Board members include Ex. 7(C), Ex. 6 CEO, Ex. 7(C), Ex. 6 President and Chief Legal Officer, Ex. 7(C), Ex. 6 CFO. For the purposes of this investigation Ex. 7(C), Ex. 6 is the 203(d) employer. Ex. 7(C), Ex. 6 is the General Manager, she handles the day to day operations, interviews, hire's, terminates and sets rates of pay. She is also in charge of scheduling the employees and keeping time and pay records. (See Exhibit C-6)

The annual dollar volume of the firm is as follows:

2011: Ex. 4
2012: Ex. 4
2013: Ex. 4

Section 203(s)(1)(A) enterprise coverage is applicable to the subject firm. There have been two Ex. 4 in all weeks of the investigation, for the entire Ex. 4 investigation period. The annual dollar volume does meet the required Ex. 4 to meet the enterprise coverage criteria. (See Exhibits C-1 through C-5)

INDIVIDUAL COVERAGE: Individual Coverage was applicable to the establishment. All employees use the cash register and have used credit or debit cards while assisting customers with their transactions and purchases. The subject firm credit cards are processed at VISANET merchant credit card processing company in San Francisco, California. All employees also handle and receive food products purchased from MBM Company that come to rest at this establishment. MBM is located at 1521 Redding Drive La Grange, Georgia. 30241

FMLA COVERAGE: The Family Medical Leave Act (FMLA) was not applicable to the subject firm as they did not employ Ex. 4 or more employees in Ex. 4 or more workweeks in the previous calendar year within a Ex. 4 miles radius. However, FMLA is applicable to Hardees Food Systems which employ more than Ex. 4 or more employees in Ex. 4 of more workweeks in the previous calendar year within a Ex. 4 mile

radius. (See Exhibits C-2)

Period of Investigation: July 30, 2011- July 29, 2013

MODO: Ex. 7(E)



EXEMPTIONS: Ex. 4 were claimed exempt from overtime at Hardees's.

Ex. 7(C), Ex. 6 - **District Manager:** Ex. 4 annual salary. He has weighted duties, he interviews hires fires, and trains and does all day to day operations. He supervises all Ex employees. He handles contractual decisions and orders the inventory for the store. Ex. 7(C), Ex. granted the exemption under regulation 541.1.

Ex. 7(C), Ex. 6 - **General Manager:** Ex. 4 annual salary Ex. 4 weekly. She supervises Ex employees' hires, fires, and trains and does day to day operations. She stocks the store, takes grievances does employee evaluations and orders all store equipment. Ex. 7(C), Ex. granted the exemption under regulation 541.1 (See Exhibit B-12 and C-2)

STATUS OF COMPLIANCE: This file was set up as a complaint.

Complaint Data: Ex. 7(C), Ex. 6, Ex. 7(D)



Ex. 7(C), Ex. 6, Ex. 7(D)

(See D-3 through D-6)

History: There is history on this establishment. **CID #117198 dated 1992.**

Conciliation was done. Violations found under Section 206 Minimum Wage due to Ex. EE. Back wage total \$51.00. (See Exhibit D-36, D37)

SECTION 206 Minimum Wage: There were Minimum wage violations. Ex. 4 that made \$ 7.25 minimum wage were subjected to the violation when they were deducted a fee for using their preloaded VISA card which reduced them below minimum wage \$7.25/hour.

Back wages due for Ex EE's \$2071.98 (See Exhibits A- 1 through AA-12).

Method of Computations:

Ex. 7(C), Ex. used took the sum of all fee's that employee's stated were deducted from their check when they used the Ex. 4 this number was divided by the number of fees. = \$2.10 average fee.

This amount will be used to multiply by the number of weeks each employee worked to determine the Back wage, Minimum wage amount. (See Exhibits A-1 through AA-12)

Ex) EE's DOH: 07/02/2014 Termination Date; 07/02/2014. = 66 weeks of work.

\$2.10 average fee (x) 66 weeks of work= \$138.60 MW/BW due.

Uncompensated HW/MW: The uncompensated hours were calculated at \$7.25 (x) 18.15 (.23 was rounded to .15) = \$131.58 BW due (See Exhibit A-2)

Explanation of Fees

Fees were deducted when the employee tried taking their money out at ATM's, Gas stations, and grocery stores. Ex. 7(C), Ex. 6, Ex. 7(D)

(See Exhibit B-14)

During a phone conference with Hardee's Vice President of Payroll Ex. 7(C), Ex. 6 [REDACTED] had this to say about the Payroll practices of Hardee's using the Pre-paid Visa card.

The Vice President of Payroll Ex. 7(C), Ex. 6 stated that the "card is designed to incur *no fee's* and the employee's should receive 100% of their money." Ex. 7(C), Ex. 6 also said that "employees can go to a post office and receive a money order by using these cards, and make transactions at a merchant. However, all out of network ATM's that is not associated with the logo on the back of the card may be subjected to a fee. (The logo's on the back of the card are PLUS and INTERLINK) You can go into any Kangaroo Gas station and not be charged fees or any 95,000 ATM's across the country. Ex. 7(C), Ex. 6 stated that it is up to the employees to use the cards wisely and all employees are told this when they start working here. Lastly, Ex. 7(C), Ex. 4 states that the employee's like the cards because they don't have bank accounts. (See Exhibit C-15)

Uncompensated Hours Worked:

Ex. 7(C), Ex. 6, Ex. 7(D)

[REDACTED]

Ex. 7(C), Ex. 6, Ex. 7(D)

[REDACTED] Back wages for the uncompensated hours = \$131.58 BW due to Ex. 4 employee. (See Exhibit A-2)

Ex. 7(C), Ex. 6, Ex. 7(D)

(See Exhibit B-2)

Listed are the following discrepancy's for the card and the card holder agreement fees associated with the Prepaid Metabank Visa Card:

- EE's are not given a choice when they are hired at Hardee's to get the prepaid card, direct deposit or live check.
- EE's are told that they can go to any Kangaroo gas station , but they are going to wherever they want to retrieve their payroll check which is incurring fees.
- The fees associated with this card are reducing them below MW \$7.25.

Card Holder Agreement Associated Fees with the Metabank Visa Card: (See File 2 of 2 -Exhibit E-1(d) and fold-out flap on E-1(d))

- General Monthly Maintenance \$3.00 (Ex. 7(C), Ex. 6, on cannot substantiate if this fee is deducted from Hardee's or the Employee)
- Loading Funds Bank ACH transfer \$1.00
- Cash Withdrawal in the United States ATM \$1.95
- *ATM Balance Inquiry decline \$.95*
- *Bill Payment Online Electronic \$.25*
- *Online Bill Pay- Paper Check \$2.50*
- *Online Bill Pay- Check Cancellation \$7.95*

Ex. 7(C), Ex. 6 has stated that they have done any online payments. (See Exhibits B-1 through B-14)

- Additional Card or Card Replacement \$4.95
- Overnight Delivery of replacement card \$25.00 each time.

(See Exhibits A-0, A-1 through A- 20, AA-1 through AA-12, B-1 through B-14, D-1 through D-75, E-2, E-2(a), E-2(b). E-2(c))

SECTION 207 Overtime: There were no overtime violations. (See exhibits D-1 through D-75)

Section 211 Record keeping: There are no Record keeping violations (See exhibits D-1 through D-75)

Section 212 Child labor: There were no child labor violations.

Ex. 7(C), Ex. 6, Ex. 4 [REDACTED] was using the slicer to cut an onion. (See exhibit B-14) Ex. 7(C), Ex. 6 Shift Manager Ex. 7(C), Ex. 6 [REDACTED] (See exhibit B-4) stated that since Ex. 7(C), Ex. 6 [REDACTED] he was able to use the slicer to prep onions and tomatoes. Phone calls to this employee were never returned and Ex. 7(E) [REDACTED] was mailed to his home with no response. All other employees stated there were no minors using the slicer. (See exhibits B-1 through B-13)

FMLA: Ex. 7(C), Ex. [REDACTED] did the FMLA Policy review and found the following violations:

General Notice 825.300: Hardee's does not have the NOAA fight crew eligibility listed in the EE handbook.

DISPOSTION: The initial conference was held at the establishment on July 29, 2013 with District Manager Ex. 7(C), Ex. 6 [REDACTED]. The handy reference guide was given at this time.

The final conference was held on August 19, 2014 at the Pell City Hardee's with District Manager Ex. [REDACTED], Human Resource manager Ex. 7(C), Ex. 6 [REDACTED] Ex. 7(C), Ex. 6 [REDACTED]

(This location was chosen because the old District Manager Ex. 7(C), Ex. 6 [REDACTED] has retired September 2013 while the WHD investigation was still going on. The new district manager is Ex. 7(C), Ex. 6 [REDACTED] who is in charge of the Oxford Hardee's but is in training at the Pell City Hardee's)

The following topics were discussed: Enterprise and Individual Coverage, Exemptions, FMLA, Recordkeeping, Minimum Wage, Hours Worked, Overtime and Child Labor.

Coverage: Ex. 7(C), Ex. 6 [REDACTED] the reason that WHD has the authority to investigate and enforce the FLSA is because all of Hardee's employees are covered under Enterprise coverage. They have Ex. 4 [REDACTED]

Ex. 4 full time employees, that handle or move good in interstate commerce and they have more than the required ADV of Ex. 4. Next Ex. 7(C), Ex. stated that Individual Coverage is also applicable to all employees that are cashiers. The cashiers use the credit card machine which produces commerce in the form of an electronic receipt that is electronically submitted across state lines, and the food products are shipped across state lines from MBM in Georgia.

Next Ex. 7(C), Ex. talked about Exemptions there were no misclassified exemptions all District Managers and General Managers were exempt under 541.102 management exemption with weighted duties and the salary requirements of \$455.00 a week. FMLA was discussed. Ex. 7(C), Ex. stated that Hardee's uses employer forms to give EE's that are eligible for FMLA and that they just had a DOL investigation in Georgia who stated that they were in compliance. Ex. 7(C), Ex. stated to ensure that their EE handbook has the current FMLA information and Ex. 7(C), Ex. gave them some FMLA posters that were current (even though they had the posters posted in the establishment). Next Ex. 7(C), Ex. talked about Recordkeeping. Hardee's was in compliance with record keeping for payroll and time records.

Minimum Wage was discussed: Ex. 7(C), Ex. stated that Wage and Hour's position was that the pre-loaded VISA cards that Hardee's uses for their employee's pay roll incurs fees when EE's are trying to get their money off. Ex. 7(C), Ex. also stated that the employee's do not have an option of taking the Visa card or using another method such as direct deposit to receive their check. District Manager Ex. 7(C) stated. That new employee do not have a choice of getting the first check on the VISA card but after that they can change to a direct deposit check. Ex. 7(C), Ex. 6 also gave Ex. 7(C), Ex. a new applicant VISA check card/with the pamphlet attached stating the employees know which ATM's to go to that won't charge them. Ex. 7(C), Ex. showed Ex. 7(C), Ex. 6 that the pamphlet states that there are fees that can be charged if EE's use the out of network ATM for cash withdrawal, balance fees etc... Human Resource Manager Ex. 7(C), Ex. 6 stated that he needed to call his supervisor in California Ex. 7(C) who is over the payroll because they do not understand how this is a Minimum Wage issue when Burger King, Sonic and McDonalds do the same thing. Ex. 7(C), Ex. stated that any time a low wage worker making \$7.25 is being deducted a fee from their payroll it is reducing them below the federal minimum wage. Ex. 7(C), Ex. 6 stated that they get a \$1.00 reimbursement once a month if the use the card at a post office and incur a fee. Ex. 7(C), Ex. stated when the last time someone came back for reimbursement is, and Ex. 7(C), Ex. 6 stated the employees normally do not, but it is an option.

Human Resource Manager Ex. 7(C), Ex. 6 stated that he understands Wage and Hour's position but doesn't

feel that paying the back wages will be beneficial because they have 500 hundred stores and this would mean changing the payroll practices of the company. Ex. 7(C), then asked to speak to Ex. 7(C), Ex. and Ex. 7(C), Ex. because Hardee's position on using the pay cards would have to be discussed with the corporate office in Anaheim, California. Ex. 7(C), Ex. 6 the numbers to ADD Ex. 7(C), Ex. 6

Overtime was discussed: Ex. 7(C), Ex. stated they were in compliance, and there were no violations. Child Labor was discussed, Ex. 7(C), Ex. stated there was no violation, and Ex. 7(C), Ex. 6 stated that Hardee's always keeps a list of the employees who are unable to use certain machines hanging on the machine that says not Ex yrs old. (Ex. 7(C), Ex. 6, Ex. 7(E)) Lastly, Hours Worked was discussed and Ex. 7(C), Ex. stated that although the complaint was not substantiated to make sure that all employees clocked in and had their daily hours combined if they are ever asked to work at another store. Ex. 7(C), Ex. 6 stated that there are enough employee's at all of their stores not to have anybody traveling. The only person that travels from store to store to help is the District Manager.

Human Resource Manager Ex. 7(C), Ex. 6 *did not agree to comply, and did not agree to pay.*

Payroll Specialist Ex. 7(C), Ex. - *would like to Appeal WHD decision for Back wages.*

No other laws were violated.

C- Ex. 7(C), Ex. 6, Ex. 7(D)

CMP's

CMP's were discussed and the employer was advised on the effects civil money penalties could have if any violations were found then they could be assessed for repeat and will full violations under section 206 minimum wage and section 207 overtime of the Fair Labor Standards Act.

Publications: HRG, FLSA amended, Fact Sheet #28(d), 44, 77 Regulations 516,541, 778,

785, CL-101

Recommendation: Ex. 7(E) Ex. 7(C), Ex. 6
[Redacted]

C
)
,
Please send all correspondence to:
x
.
6

Hardee's
Attn: Ex. 7(C), Ex. 6 - District Manager
700 Quintard Drive
Oxford, Al. 36203

August 21, 2014
Ex. 7(C), Ex. 6

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: **1697184** Originating District: **Birmingham AL District Office**
Local Filing Number: **2013-125-10566** Investigating District: **Birmingham AL District Office**
WHMIS Case Number: Lead Investigator: **Ex. 7(C), Ex. 6**
Registration Date: **06/08/2013**
Assignment Date: **07/22/2013**

Employer Information

Trade Name: **Hardee's** Legal Name: **Hardee's Food System**
Address: **700 Quintard Drive** EIN: **56-0732584**
County: **Calhoun**
NAICS Code: **722211**
Oxford, AL 36203 No. Of Employees: **E**

Investigation Information

Period Investigated From: **07/03/2012** BNPI:
To: **07/02/2014** Reinvestigation:
Investigation Type: **Ex. 7(E)** Recurring Violation:
Investigation Tool: **Full Investigation** Future Compliance Agreed:
Compliance Status: **Refuse to Comply** Involved in AG:

Recommended Action:

BWFS: RO/NO Review:
CMP: Follow Up Investigation:
Litigation: Other Action:
Civil Action: Denial of Future Certificate:
Criminal Action: BW Payment Deadline: **09/05/2014**
Submit For Opinion: Trailer forms attached:

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to pay Minimum Wage / Refuse to Comply	20	E	\$2,071.98	\$0.00	\$0.00	\$0.00	
Failure to keep accurate records / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSA Totals:	20	E	\$2,071.98	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSA:		21					\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	E	Unduplicated Employees Agreed:	E
Total Amount BWs Computed:	\$2,071.98	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

149.50 Hrs. Enterprise Coverage 3(s)(1)(a) Complaint. Ex. 7(C), Ex. 6, Ex. 7(D)
 provided the Ex. last time and payroll. MW violations for using the Pay card incurred fees that reduced EE's that made \$7.25. Ex. 7(C), Ex. 6
 ER Ex. 7(C), Ex. 6
 RTC, RTP -BW \$2,071.98. ER wants to speak to Ex. 7(C)
 is writing an appeal to the Back Wages. 7(C)

WHISARD Compliance Action Report

WHI Signature: _____ Date: 08/21/2014

Reviewed By: _____ Date: _____