

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1820491 Originating District: Wilkes Barre PA District Office
 Local Filing Number: 2017-349-00017 Investigating District: Wilkes Barre PA District Office
 WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
 Registration Date: 04/25/2017
 Assignment Date: 04/25/2017

Employer Information

Trade Name: Outback Steakhouse	Legal Name: OS Restaurant Services, LLC
Address: 1101 Woodland Rd.	EIN: 59-3549811
	County: Berks
store #3919 Berkshire Mall	NAICS Code: 722110
Wyomissing, PA19610	No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/03/2016	BNPI:
To: 04/30/2017	Reinvestigation: <input checked="" type="checkbox"/>
Investigation Type: (b) (7)(E)	Recurring Violation: <input type="checkbox"/>
Investigation Tool: Limited Investigation	Future Compliance Agreed: <input checked="" type="checkbox"/>
Compliance Status: Agree to Comply	Involved in AG: <input type="checkbox"/>

Recommended Action:

BWFS: <input type="checkbox"/>	RO/NO Review: <input type="checkbox"/>
CMP: <input type="checkbox"/>	Follow Up Investigation: <input type="checkbox"/>
Litigation: <input type="checkbox"/>	Other Action: <input type="checkbox"/>
Civil Action: <input type="checkbox"/>	Denial of Future Certificate: <input type="checkbox"/>
Criminal Action: <input type="checkbox"/>	BW Payment Deadline: <input type="checkbox"/>
Submit For Opinion: <input type="checkbox"/>	Trailer forms attached: <input type="checkbox"/>

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

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FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

33hrs. FLSA(3)(s)(1)(a), (b) (6), (b) (7)(C) (b) (7)(E) FLSNM not provided adequate lactation space shielded from view, intrusion from others & office space has cameras always recording while using space for lactation. (b) (7)(E) . Viols remedy with signs & cover camera. FC held by phone on 5/19/2017 w/JC Passaro, Labor/EE Analyst- Bloomin' Brands Corporate/Legal Dept loc Tampa, FL & WHI (b) (6), (b) (7)(C) Pubs: HRG, CL-101, FS#28, #44, #73, #77A & Fed Register Vol 75. Rec: Admin close.

WHI Signature: _____ Date: 06/30/2017

Reviewed By: _____ Date: _____

Case ID: 1820491

OS Restaurant Services, LLC
Dbas Outback Steakhouse
1101 Woodland Rd. Wyomissing, PA 19610

EIN# 59-3549811
(610) 376-9910

Corporate Office/Parent Company
Bloomin' Brands, Inc.
2202 N. West Shore Blvd. 5th Floor
Tampa, FL 33607
Phone: (813) 830-5172

**FLSNM NARRATIVE
COVERAGE**

The establishment is a full-service restaurant that specializes as a steakhouse and is part of a larger restaurant chain. The subject restaurant is located at 1101 Woodland Rd. Wyomissing, PA 19610 and the telephone number is (610) 376-9910. The ^{4-A} employees working at this location are employed and paid by OS Restaurant Services, LLC, which is a company that was incorporated in Florida on December 21, 2011. The investigation was limited to the Wyomissing, PA location and to one current employee under the Nursing Mothers portion of the FLSA. Exhibit C-1

OS Restaurant Services, LLC is owned by the parent company Bloomin' Brands, Inc. which was incorporated in Florida in the late 1980s and became a publicly traded company under the symbol "BLMN" in 2012. Bloomin' Brands currently employs an approximate 85,000 employees which includes all OS Restaurant Services employees and employees working at the estimated 1000 Outback Steakhouse locations nationwide. The Bloomin' Brands corporate office is located on the fifth floor at 2202 N. West Shore Blvd in Tampa, FL 33607. Bloomin' Brands has a number of Executive Officers (see Exhibits C-2 to C-3) that are invested and in control of the business. Exhibits C-1 to C-4

All employees are covered on an enterprise basis under section 3(s)(1)(a) of the FLSA. Bloomin' Brands ADV was in the \$ ^{4-A; Trade/commerc'l info} dollar range for the past three years, which was provided verbally to WHI by corporate representative Mr. JC Passaro, a Labor/Employee Relations Analyst in the Legal Department. Employees are also engaged in interstate commerce for numerous reasons such as using/ordering restaurant supplies, sending documents and payroll to the corporate office out of state, and processing customer's credit card payments. Mr. Passaro from the corporate legal department was WHI's primary contact after he called/requested on 5/10/2017 that all communication and aspects of the investigation be with him directly. The limited investigation SIP is 8/03/2016 (employee's child DOB) to 4/30/2017. Exhibits C-1 to C-2

Section 3(d) Employer: During the investigation the WHI's primary contact was with Bloomin' Brands corporate representative, Mr. JC Passaro. However, Mr. Scott Knoebel the General Manager/Partner of the Wyomissing, PA establishment was present at the initial visit and is the 3(d) employer as defined by the Act. Mr. Knoebel is responsible for hiring/firing employees, setting employees' pay rates, setting schedules, and conducting daily business operations and decisions.

Prior History: The employer has been investigated previously, though did not find any prior investigations in Whisard under the FLSNM. A couple of the most recent prior case histories are listed below:

Case ID #1782566: 73.75hrs. 3(s)(1)(a) enterprise covg. C alleged non pymnt of OT as mgr would clock EE out early. Complaint was substantiated. Section 7 & 11 violations were noted. 2 EEs found due \$4103.35. FC held with Corp Office in FL (Mr. Passaro & Ms. Jolly) on 10/25/16. ER ATC & ATP BW due by 5/19/17. Sent ER WH58s. Recommend admin closing once POP rcvd. Regs: 516, 541, 785, 778, HRG

Case # 1788409: 26.50hrs. Cov. 3(s)(1)(A) Grossed \$3,382,361.08. Anonymous Complaint. MODO located in Tampa, FL. No violation found. No CL or FMLA found. Please close administratively

MODO: The Tampa Florida District Office is the MODO. The MODO was contacted on 5/01/2017 and the MODO responded to handle locally and to let the Tampa DO know if needed anything from them. Exhibit D-1

EXEMPTIONS

No exemptions were claimed or found applicable.

STATUS OF COMPLIANCE

The limited investigation was initiated by ^{4-A; Trade/commerc'l info} a current employee alleging she was not provided an adequate lactation space that was shielded from view of others nor free from intrusion. Additionally, ^{7-C: Personal privacy} alleged there were cameras always on and recording inside the Manager's office she was using for a lactation space. She stated/alleged that she repeatedly asked the General Manager if the cameras could be turned off or covered, though she was told the cameras had to be on 24/7 for security purposes. She relayed the Manager's office is located in the kitchen area and only office/room available in that restaurant environment and where purses/personal items, first aid kit and the computer were located so at times either Managers/other employees would go into the office while she was using the office for lactation. On 4/28/2017, ^{7-C: Personal privacy} signed the WHD authorization giving permission to use both her name verbally and written. Exhibit B-1

During the initial WHI onsite visit and speaking with the General Manager, all of the ^{7-E; Enforcement technique} were substantiated. At the onsite visit, the WHI took photographs and documented the Manager's office was inside the kitchen area and a large window in the office door was not covered and the inside of the office was visible to other employees, not shielded from view. The WHI took photos documenting there is a camera in the office ceiling and a monitor inside the office with displays from the camera, as well as the kitchen area has a display screen showing displays by the camera. While inside the Manager's office, WHI noticed/documentated the office door could not be locked from the inside, displaying the office was not free from intrusion. The office door locked only from the outside and the only personnel who had keys to the office were the three managers. Therefore, when ^{7-C: Personal privacy} needed to use the office for lactation she had to ask a manager for a key to access, so the managers would know when she was utilizing the office. Also, during the visit did note that the Manager's office was the only office area/space available in the restaurant. Exhibits D-2 to D-5

Section 6: Minimum Wage- ^{7-C: Personal privacy} interview or employer information did not reveal any minimum wage violations. Exhibits B-1 and C-1

Section 7: Overtime- ^{7-C: Personal privacy} interview or employer information did not reveal any overtime violations. Exhibits B-1 and C-1

Section 11: Recordkeeping- ^{7-C: Personal privacy} interview or employer information did not reveal any recordkeeping violations. Exhibits B-1 and C-1

Section 12: Child Labor- No child labor violations were found, no one under 18 years of age was employed during the investigation period.

DISPOSITION

On May 19, 2017 a final conference was held by phone with Mr. JC Passaro, corporate representative working as a Labor/Employment Analyst in Bloomin' Brands Legal Department and WHI Iannelli. The final conference was by phone due to Mr. Passaro's request all communication regarding the investigation be directly with him and corporate located in Tampa, FL. Mr. Passaro was informed about the investigation process, as well as discussed the investigation was limited in scope to the FLSNM. The

regulations pertaining to the FLSNM and information WHI previously sent discuss in further detail when informing Mr. Passaro of the violations.

Mr. Passaro was informed of the FLSNM violation that the space/office provided for lactation was not shielded from view and not free from intrusion from others. Mr. Passaro provided the reason that Mr. Knoebel/General Manager of the subject location did not understand or have the extent of knowledge required to make some better choices regarding the nursing mother's policy. He relayed that Mr. Knoebel told him that the employee asked to use the Manager's office and stated he did not realize the burden was on the employer to ensure was shielded from view or camera being covered.

Mr. Passaro said the FLSNM Regulations were discussed in great detail with Mr. Knoebel and the other two managers working at the location. Mr. Passaro also had the managers relay the plans for correcting the violations and requested that photos be sent to him that he then forward to the WHI as documentation. The plan for remedying the window in the office door visible to others is a large sign was made that covers the entire window in the door and in large writing says "Do Not Enter". Mr. Knoebel and Mr. Passaro assured that no Managers or employees would enter the office while the sign "do not enter" was on the door. He also relayed the plan to put a curtain up at the window in the office door when needed as well. The camera in the ceiling they found if covered the camera portion with duct tape that it did cover/black out the view of the camera. The managers sent Mr. Passaro photos of the duct tape covering the camera and how it conceals, and said they would continue to put duct tape over the camera temporarily for amount of time and whenever the employee needed the office for lactation.

Also, Mr. Passaro relayed to the WHI all of the managers at the Wyomissing, PA location were trained/reinforced of all the nursing mother's specific regulations currently for this employee and any employees in the future. WHI asked Mr. Passaro if Bloomin' Brands had a set policy nationwide regarding nursing mother's requirements and their restaurants since is a difficult environment with not a whole lot of options. He stated they do not have a nationwide policy currently, though is something he feels is necessary to implement in the future. In the meantime, Mr. Passaro said the corporate office is sending information on the nursing mother regulations to all General Managers/locations, as well as put the information on the Bloomin' Brands internal website. On behalf of Bloomin' Brands corporate and the General Manager/Managers at the Wyomissing, PA location, Mr. Passaro agreed to future compliance with the FLSNM Regulations.

7-C: Personal privacy was notified of the results of the investigation on 5/22/2017. 7-C: Personal privacy relayed during this notification the employer was complying and she is able to start working more days a week as she wanted.

FMLA

No policy review conducted due to limited investigation.

The following publications were provided to employer: HRG, WH-1330, FS #28, #44, #73, #77A and Federal Register/Vol. 75 dated December 21, 2010.

RECOMMENDATION

Recommend to close administratively.

7-C: Personal privacy WHI 6/28/2017