

WHISARD Compliance Action Report

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

Unduplicated Employees Found: 1	Unduplicated Employees Agreed: 1
Total Amount BWs Computed: \$600.00	Total Amount BWs Agreed: \$600.00
Total Amount LDs Computed: \$0.00	Total Amount LDs Agreed: \$0.00

Conclusions & Recommendations:

39.75 hrs. EC as ER made \$500,000+ ADV last 3 yrs. (b) (7)(E) . No violations found Sec 206, 207 & 212 Viol found Sec 211 ER failed to keep and maintain accurate records as per reg 516.2. Violations found Section 207 (r)(1)(A)(B) Insufficient Break ER ATC & ATP total compensation of 600.00. No LDs applied. ECA signed by ER. Pubs provided to Mr. Martin Gunaca, owner: 516,778,785,578,579,580,541,CL101, EPPA, FMLA&FLSA posters, FSS#73

WHI Signature: _____ Date: 06/08/2018

Reviewed By: _____ Date: _____

IHOP Case ID: 1842254

1943 HOP, LLC

Case ID: 1842254

DBA: IHOP

File No.: 2018-225-12819

1611 Old Morrilton HWY

EIN: 52-2375388

Conway, AR 72032

NARRATIVE REPORT – FLSA

Point of Contact

Ms. Teresa Davis

Human Resources Director

Mr. Ricardo Aguilera

Executive Vice-President

21620 HWY 10

Little Rock, AR 72223

Phone: (501) 367-8113

Email: Teresa@goldencakesinc.com

COVERAGE

Enterprise Coverage

Section 203(s)(1)(A) of the Act has been established on an enterprise basis during the entire investigative period as the firm's Annual Dollar Volume is over \$500,000 for each of the past three years.

There are at least two employees at this location that perform work each workweek with goods which have been moved in interstate commerce. The employees are handling food products and cleaning items such as avocado, grapes, lettuce laundry bags, towels and air fresheners while performing duties required by the employer purchased from KT Produce in Lowell, AR and Cintas Corporation in Conway, AR. Therefore, all employees are covered for the entire investigative period. (See exhibits C-8, C-9)

Individual Coverage

Individual coverage was found applicable for server employees through the limited investigative period. The employees regularly and customarily processed credit card transactions from customers on a regular and recurring basis. (See exhibits B-0 to B-9)

The Annual Dollar Volume (ADV) provided by the firm is as follows: (See exhibits C-1)

2015	(b) (4)
2016	(b) (4)
2016	(b) (4)

Workforce:

At the time of the initial conference the firm had approximately (b) (4) employees, and approximately (b) (4) enterprise employees. The restaurant operates with the following AM/PM employees: (b) (4) servers, (b) (4) cooks, (b) (4) hosts and (b) (4) dishwashers. (See exhibits A-0-1 to A-0-109, B-1 to B-9, D-39 to D-66)

Period of Investigation:

The limited investigative period is from 10/31/2017 to 01/18/2018.

Nature of Business

The subject firm is a full service restaurant that operates 24 hours 7 days a week. (See exhibit C-3)

Business Structure

The firm was incorporated in the State of Arkansas on September 9, 2002. Martin Gunaca is the President and (b) (4) owner. In addition to the subject of this investigation Mr. Gunaca owns eight (8) other locations and Golden Cakes, Inc. (See exhibit C-2)

Section 203(r)

The enterprise has approximately (b) (4) employees and all locations are managed and operated under the umbrella of Golden Cakes, Inc. Mr. Martin Gunaca is (b) (4) owner and President of the following locations (See exhibit C-2):

- 436 HOP, LLC 101 N. University Dr. Little Rock, A R72205
- 1933 HOP, LTD 4225 Warden Rd North Little Rock, AR 72116
- 1944 HOP, LLC 11601 Hermitage Rd Little Rock, AR 72211
- 3067 HOP, LLC 3153 W. Wedington Fayetteville, AR 72704
- 3090 HOP, LLC 3513 E. Race Searcy, AR 72143
- 3121 HOP, LLC 17821 I-30 Benton, AR 72015
- 3260 HOP, LLC 306 W. Commerce St. Benton, AR 72022
- 3318 HOP, LLC 11501 Maumelle Blvd North Little Rock, AR 72113
- Golden Cakes, Inc. 21620 HWY 10 Ste. 200A North Little Rock, AR 72113

Section 203(d) Employer:

Mr. Martin D. Gunaca and Ms. Teresa Davis are the employers as defined in Section 3(d) of the Act. Mr. Gunaca maintains (b) (4) ownership of the enterprise and makes all personnel, financial and administrative decisions concerning this location of the firm. During the investigation, the primary point of contact was Director of Human Resources Ms. Teresa Davis. Ms. Davis makes independent decisions regarding the hiring, firing and changes in status of all personnel. She oversees the human resources and payroll functions for all employees and is responsible for ensuring compliance with state and federal workplace regulations. (See exhibit C-2)

Section 216(b):

Per information received from Ms. Teresa Davis at the time of the initial conference, the subject firm did not have knowledge of any private right action under Section 216(b) of the FLSA during the period of investigation. (See exhibit C-3)

MODO

The headquarters of the firm is located at 21620 HWY 10 Little Rock, AR 72223, which is within the operation area of the Little Rock District Office. The firm operates 8 other restaurants in North Little Rock, Benton, Fayetteville and Searcy. Therefore, Little Rock District Office is the MODO. MODO ID (b) (7)(E)

(See exhibit D-1 to D-5)

Mapping:

The payroll and management of the firm is controlled through Golden Cakes, Inc. The majority of their goods are purchased locally from KT Produce in Lowell, AR and Cintas Corporation in Conway, AR. In addition to the subject of this investigation Golden Cakes manages and operates 8 other locations in the cities of Fayetteville, Little Rock, Benton, North Little Rock and Searcy.

The employer needs to keep and maintain different licenses and permits to operate the restaurant. Some of the licenses are required by the City of Little Rock such as Business License, Mixed Drinks Permit and Alcoholic Beverage Permit, and the Retail Food Establishment Permit from Arkansas State Board of Health. (See exhibits C-8 to C-11)

EXEMPTIONS: Section 213(a)(1) Applicable:

541.101 Executive Exemption – was found applicable to Mr. Martin D. Gunaca. He has (b) (4) ownership of the firm and is engaged in the daily operation of the business. Mr. Gunaca is responsible for all the company operations and for the day to day decisions of the firm. (See exhibit C-2).

541.100 Executive Exemption – was found applicable to (b) (6), (b) (7)(C) guaranteed weekly salary is (b) (6), (b) (7)(C) primary duty is management. (b) (6), (b) (7)(C) supervises around 10 employees. (b) (6), (b) (7)(C) has the authority to hire, fire and train employees, and is in charge of the employees' schedule. (See Exhibit C-5)

No other exemptions were tested for this establishment.

STATUS OF COMPLIANCE

Reason for Investigation:

This limited investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to allow reasonable amount of break time to express milk as frequently as needed by the nursing mother, and did not provide a place that was shielded from view and free from intrusion from coworkers to express her breast milk. (b) (6), (b) (7)(C) (b) (7)(E)

(b) (7)(E) . (See Exhibits B-1 to B-9)

Prior History:

There is a prior (b) (7)(E) on WHISARD Case ID: 05/16/2001. (b) (7)(E) violation is employer failed to pay minimum wage. No other information is provided.

Section 206 – Minimum Wage:

A review of records and employee interviews revealed no violation of this section in this limited

investigation. (See exhibits A-0-1 to A-0-109)

Section 207 – Overtime:

A review of records and employee interviews revealed no violations of this section in this limited investigation. (b) (6), (b) (7)(C) was paid time and a half of (b) (6), (b) (7)(C) regular rate of pay for all hours worked over 40 in a workweek. (See exhibits A-0-1 to A-0-109)

Section 207(r):

Violations of this section were found. Employees who are not exempt from Section 7 are entitled to breaks and space to express milk. (b) (6), (b) (7)(C) gave birth to a child (b) (6), (b) (7)(C). The employee was covered by the protections provided for under Section 207(r) of the Fair Labor Standards Act. (See Exhibits B-8)

Insufficient Break Time 7(r)(1)(A):

From the time (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) was not able to take breaks to express milk as needed. (b) (6), (b) (7)(C) informed the Manager that (b) (6), (b) (7)(C) would need 15 minutes, once every 2 hours, to express milk. For the period from 12/12/2017 to 01/01/2018 the (b) (6), (b) (7)(C) had two opportunities to express milk. On 01/01/2018 (b) (6), (b) (7)(C) requested (b) (6), (b) (7)(C) break to express milk and manager (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was unable to help (b) (6), (b) (7)(C). The storage was full of boxes and (b) (6), (b) (7)(C) did not have the room available to expressing milk. (b) (6), (b) (7)(C) spent the majority of (b) (6), (b) (7)(C) time working (b) (6), (b) (7)(C) section as a server alone and (b) (6), (b) (7)(C) was told that there was no coverage from co-workers to provide (b) (6), (b) (7)(C) an opportunity to take a break, especially during the weekends. This resulted in (b) (6), (b) (7)(C) decision to stop expressing breast milk, entirely. There is no evidence to substantiate that management made an effort to accommodate (b) (6), (b) (7)(C) breaks as needed. (See exhibits B-1 to B-9)

Insufficient Space Time 7(r)(1)(B):

From the time (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) was never provided a space in which to express milk that was shielded from view and free from intrusion by co-workers. (b) (6), (b) (7)(C) was required to express milk in the dry storage in where a rack of bread was used

as a barrier; however the area was accessible to all employees not giving (b) (6), (b) (7)(C) the required privacy. As information revealed from two interviewers (b) (6), (b) (7)(C) had been intruded on while expressing milk on two occasions by other employees.

WHI inspected the space and found it did not meet the privacy requirements under section 7(r). The area is frequented by cooks and servers since it holds goods used in the kitchen to prepare food and items such as salt, pepper and napkins used by servers to refill tables. (See exhibits B-1 to B-9)

Undue hardship under 7(r)(3) – was found not applicable. The employer has 50 or more employees within a 75 mile radius and the employer did not demonstrate that complying with the FLSA 7(r) would cause “significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business”. (See exhibits A-0-1 to A-0-109)

Back Wages:

(b) (7)(E) [Redacted]

(b) (6), (b) (7)(C) decided to stop expressing milk on 01/01/2018. An infant takes an average of 24-30 ounces every 24 hours. One formula powder can of 21.1 oz. makes a total of 151 fl. oz. The infant takes an average of 168 fl. oz. per week.

(b) (7)(E) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (7)(E)

From the second month forward (b) (6), (b) (7)(C) was provided by (b) (6), (b) (7)(C) a total of 16 cans and formula was changed from Enfamil to Similac. The employee's (b) (6), (b) (7)(C) was using 18 cans per month. An average price has been analyzed for a total of 2 cans per month in a 5 months period.

Similac Infant 30.8 oz.

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E) \$331.67 (Estimated cost for 6 months)

(b) (7)(E)

Retaliation 15(a)(3):

A telephone call was held with (b) (6), (b) (7)(C) on May 10, 2018. (b) (6), (b) (7)(C) informed that is not working anymore with the employer. Based on (b) (6), (b) (7)(C) statement (b) (6), (b) (7)(C) left of (b) (6), (b) (7)(C) own will and there is no indication of possible retaliation by the employer.

Section 211 – Recordkeeping:

A record keeping violation resulted due to records provided did not show time of the day as required under CFR 516.2(a)(5). (See exhibits A-0-1 to A-0-109)

Section 12 – Child Labor:

No child labor violations were found for the employer. The employer has one employee under the age of 18. However, the employee's occupation is hostess. According to the employee's interviews the minor did not perform hazardous occupations. (See Exhibit B-1 to B-9)

FMLA

The subject establishment employs more than 50 employees in 20 workweeks in the preceding or calendar year. Therefore the FMLA is applicable. (See exhibits D-22 to D-38)

DISPOSITION

On June 8, 2018, Wage Hour Investigator (WHI) (b) (6), (b) (7)(C) held a final conference at the main office of the firm 21620 HWY 10 Little Rock, AR 72223, representing the firm was Mr. Martin Gunaca, owner and President, Sandy Streett, Vice-President of Personnel and Teresa Davis, Human Resources Director.

This WHI explained enterprise coverage, period of investigation and the applicability of Fair Labor Standard Act: Exemptions, Sections 206, 207, 211 and 212.

WHI, (b) (6), (b) (7)(C) explained that according to CFR Title 29, part 516.2 the firm is required to accurately record time of the day each workweek for all employees subject to the overtime and minimum wage provisions of the FLSA.

WHI (b) (6), (b) (7)(C) discussed the provisions under Section 7(r)(1)(A)(B) and how they are applicable in this limited investigation.

Mr. Gunaca stated that they never denied the employee to take breaks and that (b) (6), (b) (7)(C) did not

inform to the managers that she was uncomfortable in the storage room. WHI, (b) (6), (b) (7)(C) explained in detail that based on Sections 7(r)(1)(A)(B) the employer is required to provide adequate space completely shielded from view and free from intrusion. He was explained that the interviews revealed that either, adequate space and reasonable breaks were not given to the employee. WHI, (b) (6), (b) (7)(C) explained to the employer that a bread rack was not sufficient and the employees were able to enter the room while the employee was expressing milk. Ms. Davis and Mr. Gunaca explained that they were told a different story from the managers but that they are agreed to comply in the future and to pay the amount of \$600.00 to (b) (6), (b) (7)(C) to cover the damages. Mr. Streett explained that the reason of the violations was due to miscommunication between the employee and the managers and they did not know about the situation since they were told something different. Mr. Gunaca informed that they are taking this issue seriously and as a remedy they will be displaying posters with Fact Sheet 73 in the break room in each of the locations as well they will be preparing training materials and providing the training to all of the managers and assistant managers for all of their locations as recommended in the Enhancement Compliance Agreement. Ms. Davis informed that as soon as they complete the trainings she will be providing a certified letter on or before September 1, 2018.

Retaliation and Liquidated Damages:

During the initial conference, this WHI discussed with Ms. Teresa Davis and Mr. Ricardo Aguilera that retaliation is prohibited and explained that in the event of violations of minimum wage and overtime, liquidated damages will apply in equal amount of back wages due. During the final conference, this WHI discussed with Mr. Gunaca, Ms. Davis and Ms. Streett that retaliation is prohibited.

Civil Money Penalties:

This WHI discussed with Ms. Teresa Davis and Mr. Ricardo Aguilera during the initial conference that current and future violations of the FLSA could result in the assessment of Civil Money Penalties.

Recommendation:

(b) (7)(E) administratively closed
(b) (7)(E)

(b) (6), (b) (7)(C) Notification:

On June 8, 2018 this WHI ^{(b) (6), (b) (7)(C)} contacted (b) (6), (b) (7)(C) and informed about the results of the case.

Publications Provided:

Handy Reference Guide (HRG), Fact Sheet #44 and Fact Sheet 77A were provided via email. On January 18, 2018, during the initial conference, WHI Carmen E. Reyes provided to Ms. Teresa Davis and Mr. Ricardo Aguilera the following publications: Fact Sheets # 73, 29 CFR 516, 541, 578, 579, 580, 785, 778, 825, CL 101, FLSA, EPPA & FMLA posters.

(b) (6), (b) (7)(C)

Wage Hour Investigator

06/08//2018