



## WHISARD Compliance Action Report

### FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	6	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	15						\$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:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$333.20	Total Amount BWs Agreed:	\$333.20
Total Amount LDs Computed:	\$333.20	Total Amount LDs Agreed:	\$333.20

### Conclusions & Recommendations:

(b) (7)(E) failure to comply with the nursing mothers' provision of the FLSA as well as retaliatory action against Ent. cov. estab. ER failed to provide several EEs who were nursing mothers with sufficient break time to express breast milk (Sec. 7(r)(1)(A)) and adequate space to express breast milk (Sec. 7(r)(1)(B)). ER also violated Sec. 15(a)(3) prohibition against retaliation. (b) (7)(E) had (b) (7)(E) schedule reduced, which resulted in \$333.20 in BW and equal amt. in LD. (b) (7)(E)

WHI Signature: \_\_\_\_\_ Date: 11/03/2016

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Trade Name:</b>	Paula's Pancake House	<b>Case ID #:</b>	1776269
<b>Legal Name:</b>	Charles A. Greenwald	<b>Case File:</b>	2016-231-08354
<b>Address:</b>	1531 Mission Drive	<b>EIN:</b>	95-2899211
	Solvang, CA 93463		
<b>Employer:</b>	Charles A. Greenwald		
<b>Phone Number:</b>	805-688-2867		

## Fair Labor Standards Act (FLSA) - Narrative Report

**Reason for the Investigation:** This investigation was initiated by (b) (6), (b) (7)(C) (b) (6), (b) (7)(E) was denied (b) (6), (b) (7)(C) rights under Section 7(r) of the Act. (b) (6), (b) (7)(E) was denied sufficient time to express milk, inadequate space to express milk, and that the employer retaliated against (b) (6), (b) (7)(C) for asking for the space and time to express milk. (b) (6), (b) (7)(C) (b) (7)(E) was reassigned to a slower section of the restaurant where (b) (6), (b) (7)(C) was not able to earn as much tips and was subjected to negative comments about (b) (6), (b) (7)(C) choice to breastfeed (b) (6), (b) (7)(C) child.

### Coverage

**Enterprise Coverage:** the firm had an Annual Dollar Volume (ADV) that exceeded \$ 500,000.00 during the years of 2013, 2014, and 2015 and had two or more employees during the said period who handled goods that were moved in interstate commerce such as point-of-sale devices used in the restaurants. The ADV for those years was: 2013 - (b) (4), 2014 - (b) (4), and 2015 - (b) (4) (See C-1 Exhibit). Therefore, enterprise coverage under Section 3(s)(1)(A) was applied to 2014, 2015, and 2016.

**Period of Investigation:** The initial conference and site visits commenced on 04/13/2016 with Mr. Charles A. Greenwald (sole proprietor), Daniel Greenwald (manager and owner's son), Evelyn Gutierrez (Manager), and WHI (b) (6), (b) (7)(C) at the employer's establishment (See C-1 Exhibit). WHI (b) (6), (b) (7)(C) set the period of investigation from 04/25/2014 to 04/24/2016.

**Nature of Business:** Paula's Pancake House is a restaurant which serves breakfast and lunch to customers in the Solvang, CA area.

**Section 3(d) - Employer:** Mr. Charles A. Greenwald is the sole proprietor and the person in charge of the overall operation of the business. Moreover, Mr. Daniel J. Greenwald is the director of operations and has gradually taken over the overall operations of the business. For the purposes of this investigation, both Mr. Charles A. Greenwald and Mr. Daniel J. Greenwald were found to meet the

definition of an employer as defined in Section 3(d) of the Act.

**Business Structure:** Paula's Pancake House is a sole proprietorship. The sole proprietor, Mr. Charles A. Greenwald is the only owner.

**Branch Establishments and Business hours:** The company has a total of 3 branches. Their respective addresses and business are listed below (See C-6 Exhibits):

Paula's Pancake House (Headquarters)

1531 Mission Dr.  
Solvang, CA 93463  
Distance to The Belgian Café: 0.3 Miles  
Distance to the Burger Barn: 4.0 Miles

The Burger Barn (Paula's Old Town Burger Barn)

3621 Sagunto St.  
Santa Ynez, CA 93460  
Distance to The Belgian Café: 3.8 Miles  
Distance to Paula's Pancake House: 4.0 Miles

The Belgian Café

1671 Copenhagen Dr.  
Solvang, CA 93463  
Distance to Paula's Pancake House: 0.3 Miles  
Distance to The Burger Barn: 3.8 Miles

All of the branches were centrally managed by the owner Charles A. Greenwald and located within a 5-mile radius. Traffic does not seem to be an issue in moving from one location to the other. However, parking spaces can be scarce depending on the time of the day because it is a touristic area.

**MODO Information:** (b) (7)(E)

MODO instructions did not require any special handling of the cases.

**Workforce:** The firm currently employs (b) (4) employees among the 3 different locations. Paula's Pancake House employed (b) (4) employees.

**Payroll:** Workweek is defined as starting on Monday and ending on Sunday. Payroll is completed on a biweekly basis and the payday is on Fridays (C-1 and D-5 Exhibits). Profile pay period from 09/21/2015 to 10/04/2015 was also provided (D-5 Exhibits).

### **Exemptions**

The following exemptions were also tested:

29 CFR §541.100 (Executive Exemption): (b) (6), (b) (7)(C) was found to be exempt from the provision of Section 6 and 7 of the Act because (b) (6), (b) (7)(C) salary and duties met the requirements of the executive exemption. (b) (6), (b) (7)(C) gives input in the hiring process (B-5 Exhibit) and receives a salary that exceeds \$455.00 per week (D-7 Exhibits).

29 CFR §541.100 (Executive Exemption): (b) (6), (b) (7)(C) was also found to be exempt from the provisions of Section 6 and 7 of the Act because (b) (6), (b) (7)(C) salary and duties met the requirements of the executive exemption. According to (b) (6), (b) (7)(C) opinion on whether an employee is not performing well could have an impact in the owner's decision to fire the employees. (b) (6), (b) (7)(C) also recommends people (b) (6), (b) (7)(C) knows to positions at the company (B-6 Exhibit). (b) (6), (b) (7)(C) is also paid a salary that exceeds \$455.00 per week (D-7 Exhibits).

**Section 7(r)(3):** The employer could not claim that compliance with the provisions of Section 7(r) would impose undue hardship to the company. The undue hardship defense applies to any employer with fewer than 50 employees that can prove that compliance with Section 7(r) would cause “significant difficulty or expense.” For the purposes of determining the total number of employees, 75 Fed. Reg. 244, p. 80077 states that all work sites should be included and any individual employee must be counted, regardless of whether it is a full time or part time employee. The employer employs more than 50 employees among three different location (See Coverage Section above), and therefore does not meet the statutory requirement for the undue hardship defense.

No other exemptions were claimed, tested, or found to be applicable to the company.

### **Status of Compliance**

**Prior History:** The firm has no prior history with the Wage and Hour Division.

**Result of Investigation:** (b) (7)(E) during the investigation period. (b) (6), (b) (7)(C) and other nursing mothers were not allowed to take a reasonable break to express milk. The employer also failed to provide a functional space for the nursing mothers to express milk. Lastly, the employer also retaliated against the complainant after (b) (6), (b) (7)(C) asked the employer to allow (b) (6), (b) (7)(C)

time and space to express milk. Such retaliation created a hostile environment for all the nursing mothers, discouraging them from taking (b) (6), (b) (7)(C) breaks. The violations are explained in detail in the following sections:

**Section 6:** The investigation found that the company paid hourly rates in excess of \$7.25 to every employee. The company paid its employees based on the California State MW, which was consistently higher than \$7.25 per hour (D-5 Exhibits). The ER takes credit for meals provided to EEs. Although there was some evidence that the ER was pressuring EEs to stay in the meal deduction program (B-9 Exhibits), such deductions did not cause MW violations because EEs were paid hourly rates well above \$7.25 per hour.

**Section 7:** The investigation also concluded that the company generally computed and paid overtime at time-and-a-half rates for all hours worked beyond 40 in a workweek (D-5 Exhibits).

**Section 7(r)(1)(A):** This section of the FLSA states that “an employer shall provide a reasonable break time for employees to express breast milk for her nursing child for one year after the child's birth each time such employee has the need to express the milk.”

75 Fed. Reg. 244 (December 21, 2010) also provided further guidance on the requirements of Section 7(r). Employer should consider many factors in determining what a reasonable break length and the frequency of the breaks to express milk. A nursing mother typically needs two to three breaks to express milk in an 8 hour shift (75 Fed. Reg. 244, p. 80075). Expressing milk typically takes 15 to 20 minutes (75 Fed. Reg. 244, p. 80075). However, these guidelines vary depending on the individual needs of the employee (75 Fed. Reg. 244, p. 80075).

The investigation (b) (7)(E) the employer failed to allowed the nursing mothers to take their pump breaks as frequently as they needed. There were five nursing mothers working at Paula's Pancake House and one nursing mother working at the Belgian Cafe within the investigation period. The specific circumstances to each nursing mother are explained as follows:

(b) (6), (b) (7)(C) has stated that (b) (6), (b) (7)(C) chose to express breast milk in the own car because (b) (6), (b) (7)(C) felt more comfortable in (b) (6), (b) (7)(C) car than in the restaurant's office (B-1 Exhibits). (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) did not take additional breaks to express breast milk because (b) (6), (b) (7)(C) is afraid to lose (b) (6), (b) (7)(C) shift (B-1 Exhibits). (b) (6), (b) (7)(C) only express milk during (b) (6), (b) (7)(C) 30-minute lunch breaks. (b) (6), (b) (7)(C) did not request any additional break to express milk. Other employees also corroborated the fact that (b) (6), (b) (7)(C) would not request the pump breaks in addition to (b) (6), (b) (7)(C) lunch break for fear of retaliation (B-8 and B-9 Exhibits). Because management created a hostile environment against the nursing mothers, it was found that the employer constructively denied pump breaks to (b) (6), (b) (7)(C) as frequently as (b) (6), (b) (7)(C) needed.

(b) (6), (b) (7)(C): Managers (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) discouraged (b) (6), (b) (7)(C) from exercising (b) (6), (b) (7)(C) right to pump breaks (B-2 Exhibits). The managers told (b) (6), (b) (7)(C) that “allowing breaks to pump breast milk in the office was a burden to the restaurant” (B-2 Exhibits). The managers also told (b) (6), (b) (7)(C) that employees should not come back to work unless they are not breast feeding anymore (B-2 Exhibits). During a meeting with Mr. Charles Greenwald, (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) was under the impression that pump breaks were an inconvenience to the managers (B-2 Exhibits). The managers later reprimanded (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) remarks to Mr. Greenwald about the inconvenience of the breaks (B-2 Exhibits). Such harassment was also corroborated by other nursing mothers (See B-8 and B-9 Exhibits). The manager's remarks were made within two weeks of returning from maternity leave. Such direct discouragement to take pump breaks is a constructive denial of break time to express breast milk. As a result of the constructive denial to take breaks to express milk, (b) (6), (b) (7)(C) decided to pump only during (b) (6), (b) (7)(C) lunch breaks and did not request additional pump breaks beyond (b) (6), (b) (7)(C) lunch break. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) would have made use of (b) (6), (b) (7)(C) rights if management had not created such hostile environment (B-2 Exhibits).

(b) (6), (b) (7)(C) worked at the Belgian Café location, and dealt with a different manager (b) (6), (b) (7)(C). Although (b) (6), (b) (7)(C) expressed breast milk every two hours during her maternity leave, (b) (6), (b) (7)(C) decided to reduce the frequency in which (b) (6), (b) (7)(C) expressed breast milk because (b) (6), (b) (7)(C) did not want to lose the opportunity to earn more tips (B-4 Exhibits). (b) (6), (b) (7)(C) was on unemployment insurance pay for such a long time, that (b) (6), (b) (7)(C) needed to earn more tips. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was not coerced in any way when making such decision (B-4 Exhibits). (b) (6), (b) (7)(C) also stated that Mr. Greenwald was supportive of (b) (6), (b) (7)(C) decision to express milk, and that (b) (6), (b) (7)(C) could take additional breaks if the restaurant was busy or if there were enough waitresses on the floor to cover all sections (B-4 Exhibits). (b) (6), (b) (7)(C) also allowed (b) (6), (b) (7)(C) to take additional 10 minutes on (b) (6), (b) (7)(C) lunch break if needed to express breast milk. A violation of section 7(r)(1)(A) (b) (7)(E) (b) (6), (b) (7)(C) in regards to (b) (6), (b) (7)(C) needs because (b) (6), (b) (7)(C) deliberately chose not to take additional breaks beyond (b) (6), (b) (7)(C) lunch break to express breast milk.

(b) (6), (b) (7)(C) was denied the breaks and contracted mastitis as a result to lack of pumping. Several attempts were made to clarify the exact dates of the infection and request additional evidence such as receipts and doctors notes (B-7 Exhibits). Although (b) (6), (b) (7)(C) did respond to some of WHI (b) (6), (b) (7)(C) contact attempts, (b) (6), (b) (7)(C) did not provide any evidence of the costs or responded to contact attempts (B-7 Exhibits). Nevertheless, (b) (6), (b) (7)(C) statement (b) (7)(E) the ER violated this requirement by failing to provide sufficient break time to express breast milk.

(b) (6), (b) (7)(C) Managers (b) (6), (b) (7)(C), and Daniel Greenwald also made



comments to discourage (b) (6), (b) (7)(C) from expressing breast milk at work (B-8 Exhibits). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) believes that the managers reassigned (b) (6), (b) (7)(C) to a later shift to prevent (b) (6), (b) (7)(C) from taking additional pump breaks beyond (b) (6), (b) (7)(C) lunch and regular break (B-8 Exhibits). It was found that the ER constructively denied sufficient time to express milk by creating a hostile environment against the nursing mothers, as well as purposely changing (b) (6), (b) (7)(C) schedule to prevent additional pump breaks.

(b) (6), (b) (7)(C): Managers (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) also discouraged (b) (6), (b) (7)(C) from exercising (b) (6), (b) (7)(C) right to pump breaks (B-8 and B-9 Exhibits). Managers made remarks implying that (b) (6), (b) (7)(C) should stop breastfeeding (B-8 and B-9 Exhibits). Moreover, managers “rolled their eyes” and made it clear to the nursing mothers that they were very irritated about the requests to take pump breaks (B-8 and B-9 Exhibits). (b) (6), (b) (7)(C) insinuated that (b) (6), (b) (7)(C) should only pump on (b) (6), (b) (7)(C) lunch breaks (B-9 Exhibits). Managers would also have (b) (6), (b) (7)(C) wait to take (b) (6), (b) (7)(C) additional break when the restaurant wasn't busy (B-9 Exhibits). Eventually, (b) (6), (b) (7)(C) gave up asking for additional pump breaks and started pumping only during (b) (6), (b) (7)(C) lunch breaks (B-9 Exhibits). The company violated the provisions of this section by constructively and directly denying (b) (6), (b) (7)(C) breaks in the frequency needed.

**Section 7(r)(1)(B):** This section of the FLSA states that “an employer shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk.”

75 Fed. Reg. 244 also provides further guidance on the space to express breast milk. An employer may be in compliance with the requirements by creating a space with partitions or curtains (75 Fed. Reg. 244, p. 80075). If a room is converted, any windows should be shielded from view (75 Fed. Reg. 244, p. 80076). The room must also contain a place for the nursing mother to sit and a flat surface other than the floor to place the pumping equipment (75 Fed. Reg. 244, p. 80076).

Paula's Pancake House and The Burger Barn had converted spaces that can be used as a place to express milk (D-2 and D-3 Exhibits). The Belgian Café does not have an available place for expressing breast milk at all.

The employer converted an office space at Paula's Pancake House in order to provide space for expressing milk to the nursing mothers. Although the converted space had blinds and a functioning lock at the initial visit (D-2 Exhibits), employees stated that blinds were installed before WHI (b) (6), (b) (7)(C) first visit (B-7, B-8, B-9 Exhibits). Although the space requirements do not require a lock in the door, the space must be free from intrusion from the public and others.

The employer failed to provide reasonable breaks and adequate space to six employees. The specific



circumstances of the violations to each employee are explained below:

(b) (6), (b) (7)(C) has stated that (b) (6), (b) (7)(C) chose to express breast milk in the own car because (b) (6), (b) (7)(C) felt more comfortable in (b) (6), (b) (7)(C) car than in the restaurant's office (B-1 Exhibits). (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) did not want to lose (b) (6), (b) (7)(C) section or shift, so (b) (6), (b) (7)(C) does not take additional breaks to express breast milk (B-1 Exhibits). Other employees also corroborated the fact that (b) (6), (b) (7)(C) would not request the office space to pump for fear of retaliation (B-8 and B-9 Exhibits). Because management created a hostile environment against the nursing mothers, it was found that the employer constructively denied (b) (6), (b) (7)(C) the use of the office space for the purposes of expressing breast milk as required by the Act. The failure to allow the use of the office to express milk occurred in spite of the fact that the office space was readily available and easily convertible into an adequate space to express breast milk (D-2 Exhibits).

(b) (6), (b) (7)(C): Managers (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) discouraged (b) (6), (b) (7)(C) from using the available office space to pump breast milk (B-2 Exhibits). The managers told (b) (6), (b) (7)(C) that “allowing breaks to pump breast milk in the office was a burden to the restaurant” (B-2 Exhibits). The managers also told (b) (6), (b) (7)(C) that employees should not come back to work unless they are not breast feeding anymore (B-2 Exhibits). During a meeting with Mr. Charles Greenwald, (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) was under the impression that pump breaks were an inconvenience to the managers (B-2 Exhibits). The managers later reprimanded (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) remarks to Mr. Greenwald about the inconvenience of the breaks (B-2 Exhibits). Such harassment was also corroborated by other nursing mothers (See B-8 and B-9 Exhibits). The manager's remarks were made within two weeks of returning from maternity leave. Such direct discouragement to take pump breaks is a constructive denial of the use of the office space to express breast milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) would have taken made use of (b) (6), (b) (7)(C) rights if management had not created such hostile environment (B-2 Exhibits).

(b) (6), (b) (7)(C) did not have access to an adequate space to express milk at the Belgian Café. (b) (6), (b) (7)(C) expressed breast milk in the dry storage area of the restaurant (B-4 Exhibits). It is a walkway close to the wall (B-4 Exhibits). (b) (6), (b) (7)(C) would face the wall at the end of the walkway so that other employees would only see (b) (6), (b) (7)(C) back while (b) (6), (b) (7)(C) expressed milk (B-4 Exhibits). There could be ways in which the area could be blocked off, such as a curtain (B-4 Exhibits). There was no place to sit so (b) (6), (b) (7)(C) stood up the entire time (b) (6), (b) (7)(C) was expressing breast milk (B-4 Exhibits). Also, there was no place to rest the manual pump, so (b) (6), (b) (7)(C) held it the entire time (b) (6), (b) (7)(C) was expressing milk (B-4 Exhibits). Other employees would retrieve supplies from the dry storage area covering their eyes to give (b) (6), (b) (7)(C) some privacy (B-4 Exhibits). Thus, the employer failed to provide an adequate space for (b) (6), (b) (7)(C) to express breast milk as required by the Act.

(b) (6), (b) (7)(C) was denied adequate space to express breast milk (B-7 Exhibits). (b) (6), (b) (7)(C) requested the installation of blinds in the manager's office to shield the office from the public's view. The request was denied by (b) (6), (b) (7)(C) (B-7 Exhibits). Several attempts were made to clarify the exact dates of the infection and request additional evidence such as receipts and doctors notes (B-7 Exhibits). Although (b) (6), (b) (7)(C) did respond to some of WHI (b) (6), (b) (7)(C) contact attempts, (b) (6), (b) (7)(C) did not provide any evidence of the costs or responded to contact attempts (B-7 Exhibits). Nevertheless, (b) (6), (b) (7)(C) statement (b) (7)(E) that the employer violated this requirement by failing to provide adequate space to express breast milk.

(b) (6), (b) (7)(C): Although managers allowed (b) (6), (b) (7)(C) to use the office space to express breast milk, the place was not in compliance with the requirements of the Act. The office space was not free from public view or intrusion from others while (b) (6), (b) (7)(C) was using the office to express breast milk. The owner, managers and other employees walked in the office space while (b) (6), (b) (7)(C) was expressing breast milk (B-8 Exhibits). The intrusions occurred despite the "private office in use" sign posted. The office also had a big window through which other employees could see the nursing mothers expressing milk (B-8 and B-9 Exhibits). The office space did not have any blinds (B-7, B-8, and B-9 Exhibits) and therefore was not shielded from view of other employees. The blinds were only installed a few days prior to WHI (b) (6), (b) (7)(C) initial visit to the employer's establishment (B-9 Exhibits). Managers also made (b) (6), (b) (7)(C) wait until they were done with the office. This forced (b) (6), (b) (7)(C) to use the bathroom in a neighboring restaurant in order to express (b) (6), (b) (7)(C) breast milk. This was a direct denial of access to the office space to express breast milk.

(b) (6), (b) (7)(C): Although managers initially allowed (b) (6), (b) (7)(C) to use the office to express breast milk, the negative comments and attitude from the managers created a hostile environment against the use of the office space to express breast milk (B-9 Exhibits). Managers made negative comments about pumping breast milk, and showed their irritation every time the office space was requested (B-9 Exhibits). (b) (6), (b) (7)(C) eventually caved into the hostile environment and decided to utilize (b) (6), (b) (7)(C) vehicle as a space to pump breast milk (B-9 Exhibits). The office also had a big window through which other employees could see the nursing mothers expressing milk (B-8 and B-9 Exhibits). The blinds were only installed a few days prior to WHI (b) (6), (b) (7)(C) initial visit to the employer's establishment (B-9 Exhibits). The office space did not have any blinds while (b) (6), (b) (7)(C) was using it to express milk (B-7, B-8, and B-9 Exhibits) and therefore was not shielded from view of other employees.

**Section 11:** Record keeping violations were not (b) (7)(E) in the investigation period.

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**Section 12:** Child labor was (b) (7)(E) in the investigative period at Paula's Pancake House. However, no violations (b) (7)(E). One 14-year-old was found to be employed on Saturdays, outside of school hours (C-1 Exhibit). Two employees over the age of 16 were also working at the company (C-1 Exhibit). All underage employees worked as busboys and did not work in the kitchen at all (C-1 Exhibit). Other employees also corroborated that fact the employees were only cleaning tables and bringing out drinks (B-8 Exhibits).

Child labor was also (b) (7)(E) on the Belgian Café. However, no violations (b) (7)(E). The minors were strictly employed as dishwashers and did not perform any of the hazardous occupation orders (HOs) (B-3 Exhibits).

**Section 15(a)(3):** Retaliation against the nursing mothers who were requesting break time to express milk as well as the office space to express milk was (b) (7)(E) in the investigation period. Per Section 15(a)(3), it is unlawful to “discriminate against any employee because such employee (b) (7)(E) . . . related to [the FLSA].” Field Operations Handbook 59v00(e)(5)(b) also states that “most courts have ruled that internal complaints to an employer are also protected.” Here, the nursing mothers were subjected to retaliatory action for requesting break time and adequate space to express breast milk as required by the Act. The specific circumstances of the violations to each employee are explained below:

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C): The employer's retaliatory actions against (b) (6), (b) (7)(C) also had a chilling effect on the other nursing mothers who were working for the employer. (b) (6), (b) (7)(C) (B-1 and B-9 Exhibits) and (b) (6), (b) (7)(C) (B-2 and B-9 Exhibits) were all fearful of retaliation for exercising their right to express milk during their shifts. Nevertheless, such retaliatory actions did not result in any economic damages (objectively verifiable monetary loss).

(b) (6), (b) (7)(C) was not subject to any retaliatory actions from management. The fact that (b) (6), (b) (7)(C) did not requested transfer to another branch or did not want to take additional breaks beyond (b) (6), (b) (7)(C) lunch break to express milk may have been seen favorable by the employer. Also, (b) (6), (b) (7)(C) the manager at the Belgian Café, was more supportive of the nursing mother and allowed (b) (6), (b) (7)(C) to take additional minutes during (b) (6), (b) (7)(C) lunch break to finish pumping breast milk (B-4 Exhibits). The fact that (b) (6), (b) (7)(C) did not insist on actually using an adequate space as well as additional pump breaks may explain different treatment in comparison to (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) change in work site did not have negative impact on (b) (6), (b) (7)(C) employment with the firm. However, (b) (6), (b) (7)(C) transfer to Paula's Pancake House from The Belgian Cafe may have been triggered by the fact that (b) (6), (b) (7)(C) was adamant about using the office as an

adequate space to express milk (B-4 and B-8 Exhibits). [REDACTED] was subjected to more retaliatory action due to [REDACTED] persistence in standing up for [REDACTED] right to pump breaks (B-8 Exhibits). The employer, Mr. Charles Greenwald, conceded that he reassigned [REDACTED] to the counter section and that he moved [REDACTED] to a later shift. He gave the following reasons for the change (C-2 Exhibits):

[REDACTED] “was very late one day citing to domestic problems with the baby and use of [REDACTED] boyfriend's car”

[REDACTED] boyfriend would visit the restaurant with the baby

[REDACTED] would take 3 to 4 breaks per shift

Reassignment to the counter section, a slower section, was to minimize impact on customer service during [REDACTED] pump breaks.

Reassignment to a later shift was to help [REDACTED] to arrive on time. Moreover, there are more waitresses working in the later shift and it is easier to find another waitress to cover during [REDACTED] pump breaks.

[REDACTED] was a “slower waitress”

However, interview statements contradicted the employer's statement regarding [REDACTED] reassignment to the counter section as well as a later shift

- [REDACTED] was only late on one occasion. [REDACTED] time records show that [REDACTED] was rather punctual (B-8 and D-4 Exhibits)
- [REDACTED] boyfriend only brought the child to the restaurant to visit only once. [REDACTED] stopped the practice once management asked [REDACTED] not to bring the child to work again (B-8 Exhibits)
- [REDACTED] stated that [REDACTED] only took a maximum of two breaks per shift. One of the pump breaks was taken concurrently with the lunch break (B-8 Exhibits)

It is common knowledge among the waitresses that the counter section is the slowest, and, therefore, does not provide the same opportunity to earn tips as the other sections (B-2, B-8, and B-9 Exhibits). [REDACTED] former hostess manager also stated that [REDACTED] suspected that [REDACTED] reassignment to the counter section was retaliatory (B-2 Exhibits). [REDACTED] was rather punctual according to [REDACTED] records (D-4 Exhibits). [REDACTED] was a good waitress according to a former hostess manager (B-2 Exhibit).

Records show that [REDACTED] was punctual and that the other nursing mother's interview statements (B-1, B-2, B-7, B-8, and B-9 Exhibits) corroborate a retaliatory act by the employer rather than a reasonable accommodation. Furthermore, [REDACTED] statement and time records show that [REDACTED] average hours worked was lower after [REDACTED] reassignment in comparison to before [REDACTED] reassignment (A-1, B-8, and D-4 Exhibits). Section 15(b) states that “any employer who violates the provisions of section 15(a)(3) of this title shall be liable for such legal or equitable relief.” Because the investigation

concluded that an equitable relief was necessary, it was computed in the following manner:

**(b) (7)(E)**

[REDACTED]

[REDACTED]

Total lost wages (equitable relief) to 1 employee: 333.20 (A-1 Exhibits for complete computation sheet)

**(b) (6), (b) (7)(C)** Although **(b) (6), (b) (7)(C)** statement substantiate that the employee left due to the hostile environment, it is unclear whether **(b) (6), (b) (7)(C)** found a new job or had any economic damages. Several attempts were made to contact **(b) (6), (b) (7)(C)**. Although **(b) (6), (b) (7)(C)** responded to some of the contacts, she ultimately failed to respond and provide the evidence necessary to compute any equitable relief (B-7 Exhibits).

**(b) (6), (b) (7)(C)** was also the subject of retaliatory action. After **(b) (6), (b) (7)(C)** decided to avoid the hassle of using the office space in the restaurant, **(b) (6), (b) (7)(C)** decided to pump in **(b) (6), (b) (7)(C)** own car (B-9 Exhibit). **(b) (6), (b) (7)(C)** was parking **(b) (6), (b) (7)(C)** car in the parking lot located in the back of the restaurant, where it was more private than the street to express milk (B-9 Exhibit). **(b) (6), (b) (7)(C)** directly told **(b) (6), (b) (7)(C)** not to park in the rear parking lot because it was only for the managers and openers (B-9 Exhibit). Due to such retaliatory action, **(b) (6), (b) (7)(C)** was forced to express milk in **(b) (6), (b) (7)(C)** car, parked in a public area, and under a much hotter temperature (B-9 Exhibit). **(b) (6), (b) (7)(C)** situation only changed when the restaurant next door allowed **(b) (6), (b) (7)(C)** to use the bathroom to express milk (B-9 Exhibit). **(b) (6), (b) (7)(C)** later noticed that non-manager and non-openers were parking in the rear parking lot while **(b) (6), (b) (7)(C)** was expressly prohibited from doing the same (B-9 Exhibit).

### **Disposition**

A final conference was held at the ER's establishment on 11/01/2016 with Mr. Daniel J. Greenwald (Director of Operations), WHI (b) (6), (b) (7)(C), and WHI (b) (6), (b) (7)(C). Coverage was reiterated and Mr. Greenwald acknowledged the WHD's authority to investigate the company.

WHI (b) (6), (b) (7)(C) explained the findings in detail, and made the ER aware that the company was: (1) failing to provide sufficient break time for nursing mothers to express breast milk, (2) failing to provide adequate space to nursing mothers to express milk, and (3) retaliating against EEs who were trying to exercise their rights under the FLSA.

Mr. Greenwald stated that he was not aware that his managers were failing to comply with the provisions of Section 7(r) of the FLSA. He stated that the employees never communicated the problems to him. WHI (b) (6), (b) (7)(C) explained that the retaliation may have caused a chilling effect, which prevented employees from addressing the issue directly with Mr. Greenwald.

WHI (b) (6), (b) (7)(C) also explained that there was some evidence of intimidation of EEs in regards to the meal deduction program. Although it did not lead to a BW liability, WHI advised Mr. Greenwald that he should allow his EEs to freely choose whether they want to participate in the program or not. WHI (b) (6), (b) (7)(C) also advised Mr. Greenwald that State and Local laws may also be applicable to his business.

Ultimately, Mr. Greenwald agreed to comply with the provisions of Section 7(r) of the FLSA by refraining from retaliating against the EEs, by allowing sufficient break time and adequate space for nursing mothers to express milk, and by providing more training to his management staff. Mr. Greenwald also agreed to an Enhanced Compliance Agreement with the U.S. Department of Labor (D-8 Exhibits), which outlines the plan of compliance in detail.

**Payment Agreement:** Mr. Daniel Greenwald argued that the change of schedule did not negatively impact (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) actually got more hours in some of the weeks. He also argued that his business has some fluctuation and requires reduction in schedule depending on the season. WHI (b) (6), (b) (7)(C) explained that the evidence shows that the reductions in schedule occurred immediately after (b) (6), (b) (7)(C) had issues with management. The pay periods showed that (b) (6), (b) (7)(C) had a steady schedule prior to the retaliatory actions, and clearly had an overall reduction in schedule. Mr. Greenwald ultimately agreed to pay backwages and liquidated damages as computed in one lump sum payment. Mr. Greenwald also agreed to pay the amount directly to the employee. He also agreed to pay the amount by 11/30/2016. WH-58 will not be used.

(b) (6), (b) (7)(C) was informed about the conclusion of the investigation on 11/03/2016 over a phone call. (b) (6), (b) (7)(C) understood that the violations were (b) (7)(E). (b) (6), (b) (7)(C) also understood that (b) (6), (b) (7)(C) was due backwages and liquidated damages and that the employer would make payments directly to (b) (6), (b) (7)(C). WHI (b) (6), (b) (7)(C) further informed (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) protections against

retaliation.

(b) (7)(E)

[Redacted]

Lastly, it is recommended that the case be closed administratively (b) (7)(E)

**Publications provided:** Handy Reference Guide, Fair Labor Standards Act, 29 CFR §778 (OT Compensation), §516 (Records to be kept by employers), §785 (Hours Worked), WH-1330 (Child Labor Bulletin), Federal Registrar Vol. 75, No. 244 p. 80073, and Factsheets 28A, 44, and 77A were provide for future reference.

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

November 03, 2016