WHISARD Compliance Action Report

U.S. Department of Labor
Wage and Hour Division

Case ID: 1616587
Originating District: Indianapolis IN District Office
Local Filing Number: 2011-204-07191
Investigating District: Indianapolis IN District Office
WHMIS Case Number: 
Lead Investigator: 

Registration Date: 04/20/2011
Assignment Date: 04/20/2011

Employer Information
Trade Name: Sunglass Hut #2033
Legal Name: Luxottica Retail No. America, Inc.
Address: 2035 Southlake Mall
EIN: 31-1339854
County: Lake
NAICS Code: 453999
No. Of Employees: 

Merrillville, IN 46410

Investigation Information
Period Investigated From: 05/02/2009
To: 05/01/2011
BNPI:
Reinvestigation: 
Recurring Violation: 
Future Compliance Agreed: 
Involved in AG: 

Investigation Type: (b) (7)(C)
Investigation Tool: Limited Investigation
Compliance Status: Agree to Comply

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

CL

Violation / Compliance Status | Violations | EEs ATPRWs Computed | BWs Agreed | LDs Computed | LDs Agreed | CMPs*
--- | --- | --- | --- | --- | --- | ---
No Violation found for this act / Compliance (no violations found) | | | | | | 

CL Totals: 0 0 $0.00 $0.00 $0.00 $0.00

Date: 02/14/2017 11:53:25 AM
Case ID: 1616587
## FLSA

<table>
<thead>
<tr>
<th>Violation / Compliance Status</th>
<th>Violations</th>
<th>EEs ATPBW Computed</th>
<th>BWs Agreed</th>
<th>LDs Computed</th>
<th>LDs Agreed</th>
<th>CMPs*</th>
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<tbody>
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**FLSA Totals:**

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<th>Violations</th>
<th>EEs ATPBW</th>
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<th>CMPs</th>
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## FLSNM

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**FLSNM Totals:**

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<th>CMPs</th>
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**Total Violations Under FLSNM:**

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<th>Violations</th>
<th>EEs ATPBW</th>
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## FMLA

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<th>EEs ATPBW Computed</th>
<th>BWs Agreed</th>
<th>LDs Computed</th>
<th>LDs Agreed</th>
<th>CMPs*</th>
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</thead>
<tbody>
<tr>
<td>No Violation found for this act / Compliance (no violations found)</td>
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**FMLA Totals:**

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<th>CMPs</th>
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<tbody>
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</table>
WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

<table>
<thead>
<tr>
<th>Unduplicated Employees Found:</th>
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<th>Unduplicated Employees Agreed:</th>
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<tbody>
<tr>
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<td>Total Amount BWs Agreed:</td>
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</tr>
<tr>
<td>Total Amount LDs Computed:</td>
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<td>Total Amount LDs Agreed:</td>
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</table>

Conclusions & Recommendations:

48.5 hrs FC Dana Garvin - Senior Paralegal. FLSA coverage FLSNM and 3(e)(1)(A)(ii). ADV approximated $0.00. Two FLSNM violations. ATG - Possible FLSA "salary" basis problem was referred to MODO for further action at their discretion.

Pubs - FS 73, 778

WHI Signature: ___________________________ Date: 01/09/2012

Reviewed By: ___________________________ Date: _______________
Case ID: 1616587
Sunglass Hut #2033
2035 Southlake Mall
Merrillville, IN 46410
EIN:31-1339854

Home office: Luxottica Retail North America, Inc.
4000 Luxottica Place
Attn: Tax Department
Mason, Ohio 45040
513-765-4000

Contact: Dana Garvin, Senior Paralegal
513-765-6368

History: None

MODO: US Dept of Labor
Wage and Hour Division
200 North High St., Room 646
Columbus, OH 43215-2475
614-469-5415
FAX 614-469-5428
Main Manager: Donald Harrison

COVERAGE:
Enterprise consists of several brand name products such as Lenscrafters and Sunglass Hut that have been absorbed by the international parent company - Luxottica U.S. Holding Corp (Mason, OH). Annual
sales for 2010 were in access of [redacted]; 2009 = [redacted]; 2008 = [redacted]. All employees handled merchandise that moved in commerce and were covered on an enterprise basis under Section 3(s)(1)(A)(ii) for the entire investigative period. The period of investigation is from 04/18/2009 to 04/16/2011. The investigation was limited to FLSNM.

EXEMPTIONS:
Managers of the separate location were considered salaried nonexempt by the company. All eligible were paid overtime at the fluctuating workweek. Time records were kept; time was accurate. The primary duty of all the managers was customer service. I asked all to explain the fluctuating work week - some got it right - some got it wrong. I examined pay records to make a determination – there is very little overtime on the payroll records.

A further examination of time records showed that [redacted] was paid $560/week and overtime based on ½ time. It appeared however that she was not paid a guaranteed salary as short weeks were paid at an hourly rate. Also, no adjustments were made for bonuses and commissions added to the gross for that work week. I brought this to the attention of Dawn Garvin (Paralegal) during the final conference. She said that she was aware of the requirements of the law. I explained that commissions attached to the gross also became part of the regular rate. She said that she no longer had the file in reach and asked for time to reply. I discussed this with ADD Shierling who advised to explain the salary requirements and commission adjustments for salaried nonexempt employees. Tell the company that DOL would assist if the company decided to do a self audit.

STATUS OF COMPLIANCE:

Section 6 – Payroll records and interview showed no violations for the investigation period.

Section 7 – Payroll records and interview showed possible violations concern payroll procedures as applied to salaried nonexempt employees in overtime weeks. No back wages were computed on the limited instigation. The company was notified of the possible violations.

FLSNM Violations:
Failed to grant adequate time for a nursing mother to expel milk.
Failed to provide adequate space for a nursing mother to expel milk. — photos of public and private lounges located in the Mall for all employees at the Mall.

Section 12 - No evidence of Child Labor

The main Sunglass Hut store was on the bottom floor — The other store was in Macy's lady's department. The company also has two of its sister companies at the same location — aka - Lenscrafters and Luxottica (both employ 20 sales people that sometimes interchange employees with the other locations that may be short staffed for that work week.

clocked in between 9am and 9:30am daily and worked until 5:00pm; reported time on a clock; was paid for all hours worked with a salary based on 14.23/hr for 40 hours and ½ that rate ($7.12/hr) for hours worked more than 40 in a work week; 2010 records showed $560.00 for 40 hours = $14/hr. She called it a fluctuating workweek; she was not able to understand the system of pay. She added that when she worked less than 40 hours she was paid at $14.23/hr.

Most of the time when she worked less than 40 hours she was paid with PTO time — the company was very generous with PTO time — if she did not have enough, she could borrow from vacation time. She was considered a nonexempt salaried employee. She claimed to have knowledge that there is a class action suit in Illinois as a result with this method of paying overtime.

When she returned from maternity leave on Oct 22, 2010, expressing milk was not an issue as the store was staffed with enough people to relieve her. would express milk in a back room bathroom, which had a lock. This bathroom was only for employees. It would take 25-30 minutes (paid time) once per shift to express milk.

Due to nature of business being retail, and was the only employee on duty, she was not given breaks or lunch periods where she could express milk, unless another employee was in store. The lack of availability to express milk became an issue beginning in first week of January 2011 due to fact that no available staff members to relieve her. She contacted her boss (Jami Markov) concerning the issue beginning Feb 2011. Her request for relief was denied. See B-4.

DISPOSITION:
A conference was held with Dana Garvin (company Paralegal representative) at the establishment in Merrillville - and by telephone on 1-4-2012 as advised by ADD Shierling. FLSA nursing mothers requirements as contained in FS#73 were discussed in detail. Ms. Garvin argued that baths rooms in the Mall were very clean and the private bathrooms for the employees were more like meeting areas.

FLSNM violations - I explained that the bathrooms have to be private with a separate room assigned for nursing purposes which is able to be locked and kept separate from the stalls. A separate sink must be available for sanitary reasons and the fact that most – if not all – the bathrooms in the Mall are used by the public – even those designated for Mall employees are not sanitary enough for nursing mothers.

I emphasized:
1. Location: "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 milk".
2. Time: Reasonable break time for an employee to express milk for her nursing child's birth each time such employee has a need to express milk.

Investigation showed that the employer made no accommodations to allow time to express milk - especially during the last three weeks after Dawn Wisch brought it to their attention (after which she quit).

FLSA possible violations - I noticed on some payroll records for (b)(7)(C) that she was paid less than the agreed salary in weeks when she worked less than 40 hours. I discussed the consequences of not paying a regular salary for all hours worked as it applied to salaried nonexempt employees as outlined in 778.114 through 778.121. Garvin replied that all (b)(7) was paid a salary of $560/wk regularly with a raise at the end of 2010. She agreed to send supporting evidence.

Recommendation #1: (b)(5)
(b)(6), (b)(7)(C) asked:
She does not want to be reinstated. She simply wants to educate the employer and receive approved unemployment. She filed for unemployment, which was denied.

Recommendation #2: (b) (5)

Recommendation #3 - (b) (5)

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

1/9/2012

Pubs. FS #73, 778