

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1703153 Originating District: Wilkes Barre PA District Office
Local Filing Number: 2013-349-06868 Investigating District: Wilkes Barre PA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/05/2013
Assignment Date: 08/05/2013

Employer Information

Trade Name: Wawa Legal Name: Wawa Inc.
Address: 741 East Broad Street EIN: 21-0515330
County: Lehigh
NAICS Code: 447110
Bethlehem, PA18018 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/04/2011 BNPI:
To: 11/03/2013 Reinvestigation:
Investigation Type: (b) (7)(E) Recurring Violation:
Investigation Tool: Full Investigation Future Compliance Agreed:
Compliance Status: Agree 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: 12/21/2013
Submit For Opinion: Trailer forms attached:

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:	1	1	\$4,930.25	\$4,930.25	\$0.00	\$0.00	

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

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$4,930.25	Total Amount BWs Agreed:	\$4,930.25
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

53 hrs - FLSNM - Investigation initiated by (b) (6), (b) (7)(C) EE (b) (7)(E) not given adequate break time or space to express. Viol (b) (7)(E) EE not given adequate break time to express and was terminated. FC 11/7/13 cont. to 11/21/13 w/ Edward Yost, Esquire atty. for ER. ER agreed to pay BW of \$4930.25 by 12/21/13, to reinstate EE & to future compliance. EE notified 11/19/13. Pubs: HRG, FS#44, 73 FAQs for Break Time for Nursing Mothers and WH 1330. Rec. Close file (b) (7)(E)

WHI Signature: _____ Date: 12/30/2013

Reviewed By: _____ Date: _____

Case ID: 1703153

Wawa Incorporated
260 W Baltimore Pk EIN# 21-0515330
Wawa, PA 19063 610-358-8000

FLSANM NARRATIVE**COVERAGE:**

The establishment is a Pennsylvania corporation with its headquarters at 260 W Baltimore Pike, Wawa, PA 19063. The main office telephone number is 610-358-8000. This investigation was of the Wawa store located at 741 East Broad Street, Bethlehem, PA 18018. The store's phone number is 610-758-9472. The corporate attorney is Edward Yost, Esquire located at the headquarters and was this WHI's primary contact.

The establishment is a gas station/convenience store and is covered under 3(s)(1)(C) of the FLSA. The SIP is 11/04/2011 through 11/03/2013. Wawa Incorporated employs approximately ^{4-A; Trade/comme} employees in NJ, PA, DE, MD, VA and FLA. The Bethlehem store employs approximately ^{4-A; Tr} employees. See Exhibit C.

Whisard contained no prior FLSNM history for this firm.

The MODO for Wawa Inc. is the Philadelphia District Office. The contact is ^{7-C; Personal privacy} with a telephone number of ^{7-C; Personal privacy}. MODO instructions are to contact MODO immediately if extensive violations are discovered, if extend beyond assigned location or appear to be corporate wide in scope.

EXEMPTIONS:

No exemptions were claimed or are applicable.

STATUS OF COMPLIANCE:

The limited investigation was initiated by a former hourly, non-exempt employee who gave birth on 05/03/2013. The former employee alleged she was not provided reasonable break time or adequate lactation space to express. Exhibits WH-3 and B-1. The allegation was substantiated in part.

Findings

Reasonable Break Time: The FLSA requires an employer to provide employees with "a reasonable break time to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express milk." The employee interview was used to determine that the employee needed to express every four hours during her 6/7 am to 2/3 pm shift. The employee needed to express at 8 am and again at 12 noon. The employee was permitted to express at 8 am but was told that she could not express at 12 noon. Rather the employee was told that she would need to either express from 11 am to 11:30 am, to change her work schedule to end before 12 noon or to start after 12 noon or to take a one hour break at 12 noon and work later to make up the time. The employee was unable to immediately change her work schedule as she did not have child care at other times. When the employee informed her employer that she needed to express at 12 noon, she was terminated. The employer listed the reason for her termination as insubordination. Employee interviews support the employee's statement. By not allowing the employee to express as necessary at 12 noon, the employer violated the reasonable break time provision. Exhibits B-1 thru B-5.

Adequate Lactation Space: The FLSA requires that the lactation space be "free from intrusion from coworkers and the public." The employee interview, on-site visit and photographs were used to determine that the lactation space appeared to be adequate as required by the FLSA. The employee stated that during the time she did express, one employee entered the room and 2 employees opened the door. A site visit revealed that although the door to the lactation space did not lock a sign was placed on the door and the store manager was informing all employees to not enter the room when the sign was in place. It appeared that once all employees were informed of the rules, then no one would open the door or enter the room while it was in use as a lactation space. Thus, an adequate lactation space violation was not substantiated. Exhibits WH-3, B-1 and D-3.

Section 6: The complainant interview failed to substantiate any Section 6 violations. See Exhibit B-1.

Section 7: The complainant interview failed to substantiate any Section 7 violations. See Exhibit B-1.

Section 11: The complainant interview failed to substantiate any Section 11 violations. See Exhibit B-1.

No one under 18 years of age was employed during the investigation period. Therefore, no Child Labor violations were found. See Exhibit B-1.

DISPOSITION:

On November 7, 2013, a final conference was held. Present were Edward Yost, Esquire, representing Wawa, and 7-C; Personal privacy WHI. The investigation and violation were discussed. Mr. Yost stated that Wawa has a FLSNM policy that complies with the regulation. Mr. Yost stated that he needed additional time to discuss the violation with his employer. The final conference was continued. On November 21, 2013, the final conference continued and Edward Yost agreed to reinstate the employee to her previous position but at a different location and agreed to pay back wages in the amount of \$4,930.25 by December 21, 2013. Mr. Yost also agreed to future compliance.

7-C; Personal privacy was notified of the outcome on November 19, 2013.

The following publications were provided: HRG, Fact Sheet #44, Fact Sheet #73, Frequently Asked Questions – Break Time for Nursing Mothers and WH 1330.

RECOMMENDATION

The file should be closed upon verification of back wage payment and reinstatement.

7-C; Personal privacy WHI

Date: