

WHISARD Compliance Action Report

** 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:

Firm is a medical staffing company in Grand Rapids, MI. FLSA Enterprise coverage applies and FLSA NM coverage applies. Firm has (b) (4) EEs at this location. FLSANM provisions violated as EE was not provided with reasonable break time for purposes of expressing milk. ER ATC by extending break times and permitting EE to take breaks as needed. ER also ATC by training shift managers on nursing mothers provisions per FS 73. ER ATC. (b) (4) contacted on 11/10/16. No history exists. Recommend admin close.

WHI Signature: _____ Date: 11/10/2016

Reviewed By: _____ Date: _____

Select Medical Case ID: 1803664

FLSA Narrative

Select Specialty Hospital
300 North Avenue -6th Floor-
Battle Creek, MI 49017
Phone: (269) 964.9075
Fax: (269) 964.4566

Brenda Teegardin
300 North Avenue -6th Floor-
Battle Creek, MI 49017
Phone: (269) 964.9075
Fax: (269) 964.4566
Bteegardin@selectmedical.com

FEIN: 75-2962822

Case ID: 1803664
Local Filing: 2017-191-00568

CASE ASSIGNMENT INFORMATION

This limited FLSA – Nursing Mothers (NM) investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) At that (b) (7)(E) violations of the FLSA nursing mothers provisions as the firm did not allow a reasonable amount of time for purposes of expression (b) (6), (b) (7)(E) (b) (7)(E) the firm violated the FLSA nursing mothers provisions as (b) (6), (E) was required to walk from the 6th floor to the 4th floor of the hospital to express in the lactation room. Furthermore she explained that the firm had a policy that only allowed employees to express during their normal break times [See Case Assignment Information and Exhibit B-1].

Investigation History

Select Medical Case ID: 1803664

No investigative history exists

Investigation Period: 11/10/2014 – 11/09/2016 [See Exhibit C-0].

Mapping: Select Medical operates 11 locations in Michigan and 93 long term acute care centers in 42 states: Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin. Of these, the headquarters is located at: 47140 Gettysburg Rd. Mechanicsburg, PA 17055. Addresses of all Michigan locations is found below:

[See Exhibits C-0, C-1, C-3, and C-4].

Select Specialty Hospital - Flint, Inc.

401 South Ballenger Highway

Flint, MI 48532-3638

Genesee County

Great Lakes Specialty Hospital - Hackley, LLC

d/b/a Select Specialty Hospital - Muskegon

1700 Clinton Street, 2 South, 2nd and 3rd Floors

Muskegon, MI 49442-5502

Muskegon County

Select Specialty Hospital - Macomb County, Inc.

215 North Avenue, Suite 200
Mount Clemens, MI 48043-1716
Macomb County

Select Specialty Hospital - Ann Arbor, Inc.

5301 East Huron River Drive, 7th Floor
Ypsilanti, MI 48197-1051
Washtenaw County

**Great Lakes Specialty Hospital- Oak, LLC
d/b/a Select Specialty Hospital - Grand Rapids**

200 SE Jefferson Street, 5th Floor
Grand Rapids, MI 49503-4502
Kent County

****Admin Space Address**

310 Lafayette SE, Suite 302
Grand Rapids, MI 49503-4502

Select Specialty Hospital - Pontiac, Inc.

44405 Woodward Avenue, 8th Floor
Pontiac, MI 48341-1601
Oakland County

<p>Select Specialty - Downriver, LLC d/b/a Select Specialty Hospital - Wyandotte, LLC 2333 Biddle Avenue, 8th Floor Wyandotte, MI 48192-4668 Wayne County</p>
<p>Select Specialty Hospital - Northwest Detroit, Inc. 6071 West Outer Drive, 7th Floor Detroit, MI 48235-2624 Wayne County</p>
<p>Select Specialty Hospital - Saginaw, Inc. 1447 North Harrison Street, 7th and 8th Floors Saginaw, MI 48602-4727 Saginaw County</p>
<p>Select Specialty Hospital - Kalamazoo, Inc. d/b/a Select Specialty Hospital - Battle Creek 300 North Avenue, Units 6100A Hall and 6200B Hall Battle Creek, MI 49017-3307 Calhoun County</p>
<p>Select Specialty Hospital - Grosse Pointe, Inc. 22101 Moross Road Detroit, MI 48236-2148 Wayne County</p>

FLSA COVERAGE

Background

Select Medical is one of the nation's largest providers of specialized hospital, rehabilitative, and outpatient care personnel and employs approximately (b) (4) people on an annual basis. The Battle Creek location alone employs (b) (4) employees and operates out of Bronson Hospital. Mr. David S. Chernow serves as the president and is supported by 9 vice presidents and (b) (4) additional employees who serve as

secretaries and vice presidents. Ms. Brenda Teegardin serves as the HR coordinator for the Battle Creek location and was the central point of contact. Payroll is processed on a weekly basis [See Exhibits C-0 – C-5 and E-1].

Enterprise Coverage - 203(s)(1)(b)

The firm is covered by the FLSA as it is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution [See Exhibits B-1, C-0, C-3, C-5, D-2, E-1, and E-2].

FLSA Nursing Mothers Coverage

FLSA nursing mothers provisions were applicable as the firm employs over 50 workers at the Battle Creek location. In fact, the site employs approximately (b) (4) health care professionals [See Exhibits B-1, C-0 – C-5, and D-8].

Section 203(d) – Employer

Mr. David S. Chernow is the employer as defined by the Act as he supervises operations at all operations, dictates work to be performed, has ability to hire and fire employees, and sets company policies and is recognized as the head of the organization [See Exhibit C-0 and C-2]

MODO Instructions

Select Medical operates 11 locations in Michigan and 93 long term acute care centers in 42 states: Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin. Of these, the headquarters is located at: 47140 Gettysburg Rd. Mechanicsburg, PA 17055. The Northern New Jersey DO is responsible for this geographic region. (b) (7)(E)

[See Exhibit D-0].

FMLA COVERAGE

FMLA coverage applies as the firm did not employed 50 or more employees in all workweeks of the investigative period [See Exhibits B-1, C-0, C-1, D-8, and E-1].

EXEMPTIONS

No exemptions were claimed or found to be applicable during the period of investigation

STATUS OF COMPLIANCE

FLSA – Nursing Mothers

(b) (6), (b) (7)(C) (b) (7)(E) violations of the nursing mother's provisions as the firm (b) (7)(E)

- Failed to provide a space for purposes of lactation on the 6th floor of the hospital
 - Failed to provide a reasonable break time to express milk
- [See Case Assignment Information].

(b) (7)(E)

Failure to provide a space for purposes of lactation - (b) (7)(E)

Although (b) (6), (b) (7)(C) (b) (7)(E) the firm failed to provide an adequate space for lactation, (b) (7)(E). On-site inspection of the facilities revealed that a dedicated lactation room was provided on the 4th floor of the hospital. The room met all necessary criteria as it was a dedicated functional space used for expressing breast milk. The space was found to be shielded from view and free from any intrusion from co-workers and the public. Furthermore, (b) (7)(E), a lactation room provided on the 4th floor of the hospital would meet this requirement as the Act does not have specific distance criteria [See Case Assignment Information and Exhibits B-1, C-0, C-1, D-4 – D-6 and E-0].

Failure to Provide Reasonable Break Time – Substantiated

This violation was cited as the firm did not provide reasonable break time to express milk. This was revealed as the firm had an informal policy that only allowed nursing mothers to express during their two regularly scheduled 15 min breaks and/or the 30 min unpaid lunch. These women were not allowed to exceed the aforementioned timeframes when expressing milk nor were they permitted to take additional breaks to express throughout their shifts. A time study was conducted and revealed that traveling from the 6th floor to the lactation room on the 4th floor took about 4 – 5 minutes (one way / 10 min round trip), thus employees were only given approximately 5 minutes to express during their 15 min breaks (or 20 min during their lunch break) [See Case Assignment Information and Exhibits B-1, C-1, C-5, and D-4].

Note

It should be noted that (b) (6), (b) (7)(C) child was born on January 8, 2016, thus (b) (6), (b) (7)(C) one year period would expire on January 8, 2017 [See Exhibit B-1].

DISPOSITION

WHI (b) (6), (b) (7)(C) conducted the final conference with Ms. Brenda Teegardin, HR, on 11/10/2016. This meeting took place via phone [See Exhibit C-5]. It should be noted that a preliminary FC was conducted on site on 11/09/2016. At said conference the WHI reviewed FLSA coverage and provisions as they applied to the firm, noting that in order to comply with the FLSA a firm must:

1. Pay all non-exempt employees at least the minimum wage
2. Pay all non-exempt employees at least T-1/2 for hours worked in excess of forty in a workweek
3. Keep and maintain records as required by part 516
4. Comply with all applicable Child Labor regulations

The investigator explained Section 203(s)(1)(A) and 203(s)(1)(B) coverage of the employer as it pertained to the firm, while explaining that all employees were covered under the FLSA for the entire investigative period [See Exhibit C-5]. (b) (6), (b) (7)(C) also explained that the FLSA nursing mothers provisions extended to the firm as they employed (b) (4) health care professionals at the Battle Creek /Bronson Hospital location [See

Exhibit C-5].

All nursing mother's provisions were discussed with the employer. During this conversation it was noted that the floor on the 4th floor was sufficient to meet the criteria established by the Act [See Exhibit C-5].

The violation that was cited for failure to provide a reasonable break time was also discussed with the employer at the initial and final conferences. During the discussion it was explained that the firm needed to provide employees with reasonable time to express milk [See Exhibit C-5]. WHI (b) (6), (b) (7)(C) explained that in order to do this, the firm should not restrict time used for expression of milk to only the regularly scheduled break times. Elaborating, (b) (6), (b) (7)(C) stated that nursing mothers should be permitted to take breaks as needed to express. (b) (6), (b) (7)(C) noted that these additional breaks need not be compensated but granted for a period up to one year after the birth of a child. The employer recognized the violation and ATC by:

Educating all charge nurses (managers) of the nursing mother's provisions and distributing Fact Sheet 73 to all lead nurse or managerial personnel. (immediate implementation)

Extending the duration of the break time to allow for full expression of milk. (immediate implementation)

Allowing all nursing mothers to take breaks as needed for purposes of expressing milk. (immediate implementation)

Allowing employees to leave their work phones at the desk so as to not be called to work or interrupted during said time periods. (immediate implementation)

[See Exhibit C-5]

After this discussion the employer committed to compliance.

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

On 11/10/2016 WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) and informed (b) (6), (b) (7)(C) of the results of the investigation. At that time (b) (6), (b) (7)(C) was told that the employer agreed to comply by:

Educating all charge nurses (managers) of the nursing mother's provisions and distributing Fact Sheet #73 to all lead nurse or managerial personnel

Extending the duration of the break time to allow for full expression of milk (immediate implementation)

implementation)

Allowing all nursing mothers to take breaks as needed for purposes of expressing milk (immediate implementation)

Allowing employees to leave their work phones at the desk so as to not be called to work or interrupted during said time periods (immediate implementation)

(b) (6), (b) (7)(C) noted that she was very satisfied with the results of the investigation and thanked the WHD for conducting the investigation.

Publications discussed and given to employer: The Handy Reference Guide to the Fair Labor Standards Act (HRG – WH 1282), FS 28, FS 44, FS 77-A, FS 73 [See Exhibits D-1 and C-5].

(b) (7)(E)

[REDACTED]

[REDACTED]

Recommendation: WHI (b) (6), (b) (7)(C) recommends that this case be administratively closed

Correspondence

All future correspondence regarding FLSA compliance by Select Medical should be sent to Brenda Teegardin at 300 North Avenue -6th Floor- Battle Creek, MI 49017. She can also be reached via phone at (269) 964.9075, via fax at (269) 964.4566, or via email at Bteegardin@selectmedical.com.

Select Medical Case ID: 1803664

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

Wage and Hour Investigator

11/10/2016