

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

** 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:

Nursing Mothers Inv. Limited to (b) (6) Firm failed to provide adequate quarters and reasonable breaks for (b) (6) need to pump (b) (6) breast milk. FC held 8/6/2013 with Emillie Sonne, HR Dir via telecon. ER ATC

WHI Signature: _____ Date: 08/06/2013

Reviewed By: _____ Date: _____

Spa Partisan, Inc.
DBA Milk & Honey Spa
9722 Great Hills Trail Ste #145
Austin, TX 78755
(512)236-1115

Case File No. 2012-310-00479
WHSARD ID: 1658644
EIN : 20-1444890

NURSING MOTHERS NARRATIVE REPORT

Coverage:

Spa Partisans, Inc. is a nail hair and skin care salon. The firm is incorporated under the legal name of Spa Partisans, Inc DBA Milk and Honey. The firm has three establishment in addition to the corporate office. All locations are in the Austin area. The corporate office is located at 1601 E. Cesar Chavez Suite 104, Austin, TX 78701. The firm has a total of (b) (4) employees. This investigation was focused on the corporate office location. The firm is owned by Alissia Bayer (b) (4) and Shon Bayer (b) (4). The firm has been in business since January 2006. The handy reference guide was provided on the date of the initial conference.

Coverage under Section 203(s)(1)(A)(i)& (ii) of the FLSA was found for the entire period of this investigation. The firm confirmed that the annual Dollar Volume for the last three years is: (b) (4) for 2011; (b) (4) for 2010 and (b) (4) for 2009. The firm employees at least 2 employees who, handle, accept and process credit cards on a daily basis. (See Exht C1- B1-B-3)

Contact: Ms. Emilie Sonne, Human Resource Director, 1601 E. Cesar Chavez Suite 104, Austin, TX 78701.

History/MODO information: The San Antonio District Office is the MODO for this company. This is the employer's first investigation.

Period of investigation: 10/10/10 to 10/11/12.

Exemption:

This case was limited to Section 7(Patient Protection and Affordable Care Act) for (b) (6), (b) (7)(C) was paid on an hourly basis and no Section 7 exemptions are applicable to (b) (6) employment.

Status of Compliance:

(b) (7)(E) Data: (b) (6), (b) (7)(C) (b) (7)(E)

(b) (7)(E) was terminated as a result of requesting breaks to express breast milk during (b) (6), (b) (7)(E) workday. (b) (7)(E)

Section 6: Not explored since the investigation was limited to Patient Protection and Affordable Care Act.

Section 7: The firm failed to comply with Section 7 (Patient Protection and Affordable Care Act) by:

- 1) Providing reasonable break time: The firm did not allow the employee to take breaks as needed to express breast milk. The employee was allowed to continue working at this location with the condition that (b) (6), (b) (7)(C) sign an agreement not to take breaks. The employee could not make it without a break before (b) (6), (b) (7)(C) started leaking and had to take a break. (b) (6), (b) (7)(C) was written up by (b) (6), (b) (7)(C) supervisor when (b) (6), (b) (7)(C) was relieved by a therapist.
- 2) Providing a space for nursing mothers that was a place, other than a bathroom, shielded from view, and free from intrusion from coworkers and the public: The firm did not meet the space requirements, since the only space available for the employee was the bathroom. (b) (6), (b) (7)(C) was nursing at the hill country location. (b) (6), (b) (7)(C) moved to the Arboretum location in January, under the supervisor, (b) (6), (b) (7)(C). This is when the problem started.

(b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) immediate supervisor, (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) break need to express (b) (6), (b) (7)(C) breast milk when (b) (6), (b) (7)(C) started working at the Arboretum location. As early as February, (b) (6), (b) (7)(C) left the front desk unattended to go express (b) (6), (b) (7)(C) milk. Other times the therapists relieved her. (b) (6), (b) (7)(C) was not allowed to take a break since (b) (6), (b) (7)(C) was the only receptionist.

On or about the first week in March 2012, (b) (6), (b) (7)(C) notified Emilie Sonne, HR Director, that (b) (6), (b) (7)(C) had researched and found out that the law required employers to provide breaks to nursing mothers. (b) (6), (b) (7)(C) continued working without breaks. The employer allowed the employee to continue working with the condition that the employee agree, in writing, to work without breaks. On April 6, 2012, the employee signed the agreement to work without a break because she needed the job. This agreement indicates that employee could only take one break on Saturday. (See Exhibit E-30)

(b) (6), (b) (7)(C) was informed that (b) (6), (b) (7)(C) was terminated for violating company policy for allowing a stylist to cover for (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) expressed her milk. The employer also claimed that the employee was terminated for trading services with other therapists. The employer also claimed that the employee was not clocked out when the service was received.

Employee interviews support that company policy allowed trading services among all employee, including concierges. (See Exht B-4, B7, & B8) (b) (6), (b) (7)(C) provided copies of register records to support the company practice of trading services includes the concierge employees. (See Exhibit E1-E11)

The employee also provided copy of e-mail correspondence to support that (b) (6) was clocked out at 7:30PM when the service was received. (See Exht D-4)

Section 11 – Not explored due to the limited nature of this action.

Section 12 – No violation found.

DISPOSITION:

(b) (7)(E)

Spa Partisan, Inc.
DBA Milk & Honey Spa
LFN: 2012-310-00486
WCID: 1659277
EIN:20-1444890

9722 Great Hills Trail Ste# 145
Austin, YX 78755
(512)236-1115

FLSANM NARRATIVE

COVERAGE:

Nature of Business: The subject firm is one of three hair, nail, and skin care salons located in Austin, TX.

Organization of Business: Throughout the investigation the firm was operating as Spa Partisan, Inc. and DBA Mink and Honey. The firm was incorporated in January 2006 and employees a total of (b) (4) employees. FLSNM (b) (7)(E) was received in reference to the firm's corporate office located at 1601 E. Cesar Chavez Ste. 104 Austin, TX 78701.

Annual Dollar Volume (ADV): The Annual Dollar Volume for the subject firm for the previous three years is: (b) (4) (2011); (b) (4) (2010); and (b) (4) (2009).

Enterprise Coverage: Enterprise coverage under Sec. 3(s)1(A) of the FLSA applies for the entire investigative period. At least two or more employees process credit card payments made by customers.

Period of Investigation: The investigation period was from 10/10/2012 to 10/11/2012. This investigation was conducted by WHI (b) (6), (b) (7)(C) of the Austin TX Area Office and assigned on 4/2/2013 to (b) (6), (b) (7)(C) of the San Antonio District Office for Wage and Hour.

Reason for Investigation: This investigation (b) (7)(E) (b) (6), (b) (7)(C) worked at the establishment as a Receptionist. (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide (b) (6), (b) (7)(C) with reasonable break time or a space to express milk.

Employment Relationship Sec. 3(d) Ms. Emilie Sonne, Human Resources Director of the subject firm meet the definition under Section 3(d) of the FLSA of an employer in relation to the employee. It has been determined that an employer-employee relationship exists due to the performance the individual's supervision of employees and management of the business (see exhibit-C-1 &C-2).

MODO: The San Antonio District Office is the MODO for this firm. No special instructions apply.

EXEMPTIONS: This case was limited to Section 7 (Patient Protection and Affordable Care Act) for (b) (6), (b) (7)(C) was paid on an hourly basis and no Section 7 exemptions were applicable to her employment.

STATUS OF COMPLIANCE:

Investigative History:A search in WHISARD indicated the firm has had no prior FLSA investigations at this location.

(b) (7)(E) Information: This investigation (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide (b) (6), (b) (7)(C) with reasonable break time or a space to express milk and that disciplinary actions (including termination) were taken against (b) (6), (b) (7)(C) due to taking breaks as needed to express milk. (b) (7)(E)

Section 6:Not explored due to the limited nature of this action.

Section 7:Violations were found with Section 7 (Patient Protection and Affordable Care Act) due to:

- 3) Providing reasonable break time:

(b) (6), (b) (7)(C) (b) (7)(E) the employer “pressured” (b) (6), (b) (7)(C) to stay at the desk therefore (b) (6), (b) (7)(C) did not receive adequate break time to express. The employee was not allowed to take breaks before (b) (6), (b) (7)(C) started having complications. (b) (6), (b) (7)(C) was able to express at the Hill Country location, (b) (6), (b) (7)(C)

but when (b) (6), (b) (7)(C) moved to the Arboretum in January for personal convenience (b) (6), (b) (7)(C) was not relieved of (b) (6), (b) (7)(C) duties as needed to afford for the necessary breaks for nursing. (See Exhibit E-3(a)).

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was written up for taking breaks by (b) (6), (b) (7)(C) supervisor when (b) (6), (b) (7)(C) was relieved by therapists. This was not substantiated through employee interview statements and review of documentation provided by the employer.

- 4) Providing a space for nursing mothers that was a place, other than a bathroom, shielded from view, and free from intrusion from co-workers and the public: (b) (6), (b) (7)(C) (b) (7)(E) the firm allowed (b) (6), (b) (7)(C) to use the spa room to express only when not in use by a client otherwise it was necessary for (b) (6), (b) (7)(C) to use the restroom. The firm did not meet the space requirements since the only space available for the employee was the restroom. (See Exhibit E-10).

(b) (6), (b) (7)(C) states that (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) immediate supervisor, (b) (6), (b) (7)(C), in early February 2012 verbally of (b) (6), (b) (7)(C) need to express milk and informed Emilie Sonne, HR Director in March of 2012. (See Exhibit B-3).

4/6/2012 (b) (6), (b) (7)(C) signed an agreement with (b) (6), (b) (7)(C) employer outlining (b) (6), (b) (7)(C) work hours and implementing set breaks for nursing. The agreement indicated (b) (6), (b) (7)(C) would only take breaks daily. Work on Sunday indicated a 7 hours shift with no break. (b) (6), (b) (7)(C) states that (b) (6), (b) (7)(C) signed the agreement in order to maintain employment. (See Exhibit E-8(e)).

Section 11: Not explored due to the limited nature of this action.

Section 12: Not explored due to the limited nature of this action.

Section 15(a)(3): Explored in case #1658664. (b) (6), (b) (7)(C) (b) (7)(E) was told (b) (6), (b) (7)(C) was terminated in May of 2012 for violating a company policy for trading services with other therapists. Based on Employer data (b) (6), (b) (7)(C) had scheduled (b) (6), (b) (7)(C) for a manicure/pedicure blocking out the co-worker's schedule in which (b) (6), (b) (7)(C) may have received further business. Through a review of time records it was found that (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) was still clocked in and considered working while receiving the service. The employer provided sales documentation showing (b) (6), (b) (7)(C) did not pay for the product portion as required until 5/2/2013 after being approached by management. (b) (6), (b) (7)(C) was terminated on 05/04/2013 (See exhibit D-9).

DISPOSITION: A final conference was held with on 8/6/2013 with Emilie Sonne, Human Resources Manager for the subject firm, via teleconference. Wage and Hour was represented by WHI (b) (6), (b) (7)(C). During this conference, employer was told that enterprise coverage under Sec. 3(s)1(A)ii of the FLSA applies for the entire investigative period for the company for the following reasons: At least two employees handle goods that have traveled through interstate commerce including but not limited to cosmetic products and the use of credit/debit card machines.

WHI (b) (6), (b) (7)(C) explained the requirements under The Patient Protection and Affordable Care Act (“Affordable Care Act”) Sec 7 FLSA Nursing Mothers. (b) (7)(E)

WHI (b) (6), (b) (7)(C) reminded the employer that the company must continue to cooperating with any employees needs for the purpose of expressing breast milk within the requirements of the act.

Coverage: under the FLSA was discussed with the employer. The employer was told that enterprise coverage under Sec. 3(s)1(A)ii of the FLSA applies for the entire investigative period for the company for the following reasons: At least two employees handle goods that have traveled through interstate commerce including but not limited to cosmetic products and the use of credit/debit card machines.

Exemptions: Possible exemptions from The Patient Protection and Affordable Care Act (“Affordable Care Act”) Sec 7 FLSA Nursing Mothers were discussed with Ms. Sonne.

Minimum wage: No violations found.

Overtime: No violations found.

Nursing Mothers: The firm failed to provide a space for nursing mothers other than a bathroom, shielded from view, and free from intrusion from co-workers and the public. Through a tour of the establishment and employee interview statements it was found that (b) (6), (b) (7)(C) was required to use the spa room to

express only when not in use by a client otherwise it was necessary for her to use the restroom . The firm did not meet the space requirements since the only space available for the employee was the restroom.

Record Keeping: No violations found.

Child Labor: No violations found.

Corrective Action Taken/Future Compliance: Ms. Emilie Sonne agreed on behalf of the firm to maintain compliance on 8/6/2013. The employer stated she will stay in compliance by doing taking the following actions:

Providing adequate time and location for breaks as required under the Patient Protection and Affordable Care Act (“Affordable Care Act”) Sec 7 FLSA Nursing Mothers. (See Exhibit E-1).

(b) (6), (b) (7)(C) notification: WHI **(b) (6), (b) (7)(C)** had attempted to contact **(b) (6), (b) (7)(C)** via telephone on 8/6/2013 informing her of the investigation outcome.

Publications provided: The Handy Reference Guide to the Fair Labor Standards Act (SBREFA), Fact Sheet #44, Fact Sheet #73, and DOL website were provided to the employer at the initial conference held on 2/25/2013.

Recommendations/CMPs: **(b) (7)(E)**
(b) (6), (b) (7)(C) I recommend this investigation be closed administratively with no further action.

(b) (6), (b) (7)(C)
Wage & Hour Investigator
8/6/2013