

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1842120 Originating District: Grand Rapids MI District Office
 Local Filing Number: 2018-191-00969 Investigating District: Grand Rapids MI District Office
 WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
 Registration Date: 12/27/2017
 Assignment Date: 02/13/2018

Employer Information

| | |
|----------------------------------|-------------------------------|
| Trade Name: McDonalds of Allegan | Legal Name: Milargo Six, Inc. |
| Address: 889 Marshall St. | EIN: 85-0437543 |
| | County: Allegan |
| | NAICS Code: 722211 |
| Allegan, MI49010 | No. Of Employees: (b) (4) |

Investigation Information

| | |
|--|---|
| Period Investigated From: 06/15/2017 | BNPI: |
| To: 02/13/2018 | Reinvestigation: <input type="checkbox"/> |
| Investigation Type: (b) (7)(E) | Recurring Violation: <input type="checkbox"/> |
| Investigation Tool: Full Investigation | Future Compliance Agreed: <input checked="" type="checkbox"/> |
| Compliance Status: Agree to Comply | Involved in AG: <input type="checkbox"/> |

Recommended Action:

| | |
|--|--|
| BWFS: <input type="checkbox"/> | RO/NO Review: <input type="checkbox"/> |
| CMP: <input type="checkbox"/> | Follow Up Investigation: <input type="checkbox"/> |
| Litigation: <input type="checkbox"/> | Other Action: <input type="checkbox"/> |
| Civil Action: <input type="checkbox"/> | Denial of Future Certificate: <input type="checkbox"/> |
| Criminal Action: <input type="checkbox"/> | BW Payment Deadline: <input type="checkbox"/> |
| Submit For Opinion: <input type="checkbox"/> | Trailer forms attached: <input type="checkbox"/> |

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 | |

| | | | |
|------------------------------|---|--|--------|
| Total Violations Under FLSA: | 1 | | \$0.00 |
|------------------------------|---|--|--------|

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 | |
| Total Violations Under FLSNM: | | 2 | | | | | \$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 | |
| Total Violations Under FMLA: | | 4 | | | | | \$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:

203s1a and FMLA- covered McDonalds Franchise part of enterprise of 10 locations. viol - insufficient break room&time provided for nursing mother, RK viol for failure to pay short breaks and FMLA policy violations. FC w/ ER/Dir of Ops, Jim Walendzik 2/13/18 at est in which he ATC with all in the future. no bws found due

WHI Signature: _____ Date: 03/07/2018

Reviewed By: _____ Date: _____

Narrative Report
Fair Labor Standards Act

Case ID: 1842120
Local Case: 2018-191-00969

Milagro Six Inc.
D/b/a McDonald's of Allegan
889 Marshall St., Allegan, MI 49010
PH: [\(269\) 673-6112](tel:2696736112)
FEIN: 85-0437543

Jim Walendzik, Director of Operations
312 Douglas Ave, Holland, MI 49423
T: 616-546-8794 / C: 616-560-3218
Jwalendzik.milagrosix@gmail.com

Tony and Virginia Castillo, (b) (4) ownership each
312 Douglas Ave, Holland, MI 49423 (Headquarters POC)

Case Assignment Information: This case was assigned (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) violations of the nursing mother's provisions because the nursing room provided to (b) (6) had a large window, had a security camera that other employees had access to, and did not have a lock thus other employees and managers would walk in while (b) (6) was nursing. There was also evidence from employee interviews and from (b) (6), (b) (7)(C) confirming harassment from managers because (b) (6) was nursing at work. (b) (7)(E) however could not remedy the situation for (b) (6), (b) (7)(C) because (b) (6) child turned one (b) (6) prior to the investigation. It was assigned under the Fair Labor Standards Act (FLSA).

Investigation History: No previous history found.

Investigation Type: A full investigation under the FLSA

Period of Investigation: Covering the period from 02/14/2016 to 02/13/2018.

MODO: This firm consists of ten locations. The headquarters location, where records are maintained is at 312

Douglas Ave., Holland, MI. Milagro Six Inc. also has 3 McDonald's locations in Holland, MI, 3 in Wyoming, 1 in Grand Rapids, 2 in Kalamazoo, and subject location in Allegan, for a total of ten businesses. The Grand Rapids, MI DO is the MODO responsible for this geographic region. (b) (7)(E)

[D-1].

COVERAGE

This firm is a single enterprise with ten total locations, which share common control for the common business purpose of running McDonalds franchises. The enterprise shares the common ownership and control of Tony Castillo (50% ownership each with his wife, Virginia Castillo) who is ultimately responsible for overseeing daily operations. Mr. Castillo is in each of his stores one to two days per week to ensure the policies and procedures he has set are being followed. Mr. Castillo signs all paychecks electronically via their payroll system, Alliance. Mr. Castillo and his Director of Operations, Jim Walendzik, set all policies and procedures for the ten locations, including making the company handbook, establishing FMLA polices, wage, leave and general staffing policies. Milagro Six, Inc. has been acquiring McDonald's locations as a franchisee since 1995. The subject location in Allegan, Michigan was purchased on 06/15/17, prior to that it was a corporate held location. This establishment employs (b) (4) employees to work as crew members and shift supervisors. Milagro Six employs approximately (b) (4) employees enterprise wide, including administrative staff and regional managers based out of the corporate office in Holland, Michigan [Exhibits B-1 through B-7 and C-1].

All employees of the enterprise were covered under 203(s)(1)(a) of the FLSA. The establishment grossed in excess of (b) (4) from the acquisition of the location on 6/15/2017 to 2/13/2018. Jim Walendzik stipulated coverage, stating in the initial conference that the enterprise grossed approximately (b) (4) per year in 2015, 2016 and 2017. The subject location was estimated by Mr. Walendzik to gross approximately (b) (4) since it had been opened (06/15/2017 to January 2018) [C-1].

Employees of the firm handle goods in interstate commerce such as Coca-Cola out of Georgia, Heinz out of Pennsylvania, as well supplies from K-Chemicals out of Tennessee [Exhibits B-1 through B-7 and C-1].

203(d) Employer: The owner, Tony Castillo, Director of Operations, Jim Walendzik, and Area Manager, Kathy Tenbrink, are responsible employers as defined in Section 203(d) of the FLSA. They run the enterprise on a daily basis. They set policies and procedures and have ultimate say in the work that employees do [Exhibits B-1 through

B-7 and C-1].

EXEMPTIONS

213(a)(1): This exemption was found to be applicable to General Manager, (b) (6), (b) (7)(C) was paid a salary of (b) (6), (b) (7)(C) per year. (b) (6), (b) (7)(C) was responsible for hiring, firing, promoting and carrying out policies of the local branch. (b) (6), (b) (7)(C) was the only person from the local branch for whom an exemption was claimed or found applicable. All other employees were paid hourly at the establishment [See A-0, employee statements at B-1 through B-7, and IC notes at Exhibit C-1].

STATUS OF COMPLIANCE

Section 206: No violations were cited. The investigation revealed that all employees were paid at least (b) (4) per hour for all hours worked. Mr. Walenzik stated in the initial conference that the firm's policy was to only compensate for breaks of 20 minutes or fewer, thus breaks of 21 minutes or more were unpaid. A review of the records revealed that breaks of 21-29 minutes were very rare and did not cause a minimum wage violation of greater than \$20 for any single employee. The firm requires uniforms which they provide, three shirts, two pair of pants one hat and one name tag per year. A couple of employees stated they were given the option to purchase jackets from but it was not required and did not cause a minimum wage violation for any employees [Exhibits A-0 and B-1 through B-7].

Section 207: No violations were cited. Overtime was rare at this branch establishment. When it was worked employees were paid at time and a half the regular rate of pay for all hours worked over 40 hours in a work week [Exhibits A-0 and B-1 through B-7].

Section 207r: A tour of the establishment, employee interviews, and employer admissions all revealed violations of nursing mother's provision. The firm failed to provide a secure room, free from view with a locking mechanism. The firm further failed to provide sufficient break time for the mother to express milk as the area manager would interrupt the time and demand that (b) (6), (b) (7)(C) return to work prior to finish expressing. The room provided for nursing mothers had a large window that exposed the entirety of room, as well as a surveillance camera monitoring. (b) (6), (b) (7)(C) stated this was the room they had designated for the nursing mother. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had problems with area management walking in and yelling at (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was expressing milk, this statement was also corroborated with employee interviews. When (b) (6), (b) (7)(C) asked the employer why there was a camera installed in the designated room (b) (6), (b) (7)(C) was not given a reason. Employee interviews also stated (b) (6), (b) (7)(C) would then use (b) (6), (b) (7)(C) vehicle and the Public bathroom to express milk in an attempt to have more privacy [See (b) (7)(E) notes, statements at Exhibits B-1 through B-7, C-1 and photograph at D-2].

Section 211: Violations were cited. The investigation disclosed that Milagro Six, Inc. did not pay for breaks of 21 to 29 minutes in duration [See records at A-0 and ER admissions at C-1].

Section 212: No violations were cited. The firm was found to employ minors aged 16 and 17 to run the cash register, clean and do some food preparation. The restaurant did not have a meat slicer, dough mixer, or compactor. They were not found to have employed minors in violation of any hazardous occupations [Exhibits B-1 through B-7 and C-1].

DISPOSITION

On 02/114/2018 WHI held a final conference at the establishment. WHI (b) (6), (b) (7)(C) represented the Department and the Director of Operations, Jim Walendzik, Area Manager, Kathy Tenbrink, represented the firm. WHI started by explaining enterprise concept for multiple locations under common control for a common business purpose, coverage and exemptions under the Act. WHI reviewed the exemptions found at 541, including those allowed for executive and administrative staff. Mr. Walendzik stated that he understood that the firm consisted of a single enterprise and was covered. Mr. Walendzik stated that he understood the requirements for the exemptions and did not intend to claim exemptions for staff who did not meet the duties requirements in the future. Specifically, he stated that he would continue to only claim the exemption for the general managers at each store. WHI went on to review the provisions highlighted in Sections 206, 207, 211 and 212. WHI reviewed 29 CFR parts 516,785, 778 and CL 101. Mr. Walendzik stated that he understood and would comply with all provisions in the future.

WHI (b) (6), (b) (7)(C) then addressed the specific violations identified in the investigation. (b) (6), (b) (7)(C) informed Mr. Walendzik that the firm needed to make changes to the break room provided to nursing mothers for all locations in the enterprise. Specifically, for the Allegan, Michigan location WHI requested that the firm cover the windows, disconnect the security camera, make a do not disturb sign for the door and install a locking mechanism by which outside parties cannot enter the room while in use. Mr. Walendzik stated that he understood and would comply with these provisions in the future, making changes across all ten Milagro Six locations. The employer agreed to make the existing room comply with the Nursing Mothers provision. [See employer communications at D-3 and D-4].

WHI informed the employer of WHD policy stating that all breaks under 30 minutes are compensable. Mr. Walendzik stated that he understood and would immediately change the point of sale system to count and compensate for breaks of 1 to 29 minutes in duration across all ten locations [See employer communications at D-3 and D-4].

Publications: The following publications were reviewed in detail and provided to the employer on 02/13/2018: 29

CFR parts 516,785, 541, 778 and CL 101 HRG and Fact Sheets 13, 17A, 17G, 21, 22, 23, 28D, 44, and 77A

(b) (7)(E)

Further correspondence should be sent to: Jim Walendzik, Director of Operations at 312 Douglas Ave, Holland, MI 49423 via telephone T: 616-546-8794 / C: 616-560-3218 or email: Jwalendzik.milagrosix@gmail.com

(b) (6), (b) (7)(C), Wage Hour Investigator
Grand Rapids District Office
March 7, 2018

Narrative Report
Family Medical Leave Act

Case ID: 1842120
Local Case: 2018-191-00969

Milagro Six Inc.
d/b/a McDonald's of Allegan
889 Marshall St., Allegan, MI 49010
PH: [\(269\) 673-6112](tel:2696736112)
FEIN: 85-0437543

Jim Walendzik, Director of Operations
312 Douglas Ave, Holland, MI 49423
T: 616-546-8794 / C: 616-560-3218
Jwalendzik.milagrosix@gmail.com

Tony and Virginia Castillo, 50% ownership each
312 Douglas Ave, Holland, MI 49423 (Headquarters POC)

Case Assignment Information: This case was assigned **(b) (7)(E)** **(b) (6), (b) (7)(C)** **(b) (7)(E)** violations of the nursing mother's provisions because the nursing room provided to **(b) (6), (b) (7)(C)** had a large window, had a security camera that other employees had access to, and did not have a lock thus other employees and managers would walk in while **(b) (6), (b) (7)(C)** was nursing. There was also evidence from employee interviews

and from (b) (6), (b) (7)(C) confirming harassment from managers because (b) (6), (b) (7)(E) was nursing at work. (b) (7)(E) however could not remedy the situation for (b) (6), (b) (7)(C) because (b) (6), (b) (7)(E) child turned one (b) (6) prior to the investigation. It was assigned under the Fair Labor Standards Act (FLSA) but a separate investigation under the FMLA was performed.

Investigation History: No previous history found.

Investigation Type: FMLA

Period of Investigation: Covering the period from 02/14/2016 to 02/13/2018.

MODO: This firm consists of ten locations. The headquarters location, where records are maintained is at 312 Douglas Ave., Holland, MI. Milagro Six Inc. also has 3 McDonald's locations in Holland, MI, 3 in Wyoming, 1 in Grand Rapids, 2 in Kalamazoo, and subject location in Allegan, for a total of ten businesses. The Grand Rapids, MI DO is the MODO responsible for this geographic region. (b) (7)(E)

D-1].

Successor-in-interest: Milagro Six continued the same business operations when taking over McCopco (McDonalds Corporate). They use the same facility and equipment as McDonalds Corporate used. They maintained a continuity of the work force with the same jobs and working conditions, supervisory personnel and production methods. They use the exact same vendors and supplies that McDonalds Corporate used at that location and sell the exact same products. McDonalds Corporate still provides guidance on how the store operates such as labor practices and setting the hours [Exhibits B-1 through B-7 and C-1].

ER Coverage (Reg. 825.104): Milagro Six, Inc. is a covered ER per 29 CFR 825.104, as it employs approximately (b) (4) workers for every work week of the current and preceding calendar year and is regularly engaged in commerce. Further, the firm was deemed to have eligible employees even though Milagro Six, Inc. has only been operating this location since June 2017 based on 29 CFR Part 825.107, Successor-in-Interest coverage factors [Exhibit C-1].

EE Eligibility (Reg. 825.110): This investigation did not address any specific employee but a review revealed that the firm has eligible employees per successor-in-interest factors [Exhibits B-1 through B-7 and C-1].

Qualifying Condition (Reg. 825.113): This investigation did not address any specific employee but a review revealed that the firm had eligible employees with potentially qualifying conditions [Exhibits B-1 through B-7 and C-1].

EE Notification (Reg. 825.303) This investigation did not address any specific employee but a review revealed that the firm employed only a verbal notification policy. The firm did not have any written or communicated FMLA policies. The Director of Operations, Area manager and multiple employees explained that if one needed medical leave for self or family they would informally tell their supervisor and that time was always granted without issue or penalty [Exhibits B-1 through B-7 and C-1].

STATUS OF COMPLIANCE

Policy Review: Violations were cited. The firm did not have any written or communicated FMLA policy. The Director of Operations, Area manager and multiple employees explained that if any staff member needed medical leave for self or family they would informally tell their supervisor and that time was always granted without issue or penalty [Exhibits B-1 through B-7 and C-1].

Protection for EEs (Discrimination/Denial of Leave) (Reg. 825.220): No violations were cited. Employee interviews revealed that the firm granted leave to any employees in need without question, requiring a certification or doctor's note. The investigation revealed that employees returned to their same position, status and pay without any lapse in benefits or other form of interference. The investigation did not reveal that leave was denied for any employees regardless of their FMLA qualifications [Exhibits B-1 through B-7 and C-1].

General Notice (Reg. 825.300(a)): No violation was disclosed. Milagro Six, Inc. posts the general notice in the break room of each of its facilities [Exhibit C].

General Notice (Reg. 825.300(a)(3)): Violations cited. Milagro Six, Inc. stipulated that they had FMLA eligible employees. However, they failed to provide this notice to each eligible employee [Exhibits B-1 through B-7 and C-1].

Eligibility Notice (Reg. 825.300(b)): Violation cited. Employer admissions and employee statements revealed that the firm did not have a practice of issuing eligibility notices (or any FMLA-related notices) to employees in violation of this Section [Exhibits B-1 through B-7 and C-1].

Rights and Responsibilities Notice (Reg. 825.300(c)): Violation cited. Employer admissions and employee statements revealed that the firm did not have a practice of issuing eligibility notices (or any FMLA-related notices) to employees in violation of this Section [Exhibits B-1 through B-7 and C-1].

Designation Notice (Reg. 825.300(d)): Violation cited. Employer admissions and employee statements revealed that the firm did not have a practice of issuing eligibility notices (or any FMLA-related notices) to employees in violation of this Section [Exhibits B-1 through B-7 and C-1].

DISPOSITION OF FINDINGS

Resolution: On 02/13/2018 the Director of Operations, Jim Walendzik agreed to come into compliance with FMLA provisions. Specifically, he stated that Milagro Six, Inc. would make and distribute an FMLA policy to all employees. He stated that the firm would make and distribute where applicable the General Notices per Reg.'s 825.300(a), and 825.300(a)(3), the Eligibility Notice per Reg. 825.300(b), the Rights and Responsibilities Notice per Reg. 825.300(c), and the Designation Notice per Reg. 825.300(d). He stated that the firm would begin to request certifications for potentially FMLA-qualifying leave as a method of tracking use and the firms' responsibilities. He stated that the firm would continue to grant leave for any medical need without question or penalty as has been their policy since Milagro Six was organized [See Exhibits C-1, D-3 and D-4].

Publications Addressed and then mailed following the final conference: Regulation Part 825; WH-380-E; WH-380-F; WH-381; WH-382; WH-384; WH-385; Fact Sheet #28; and Fact Sheet #28 A and #28 D

Recommendation: close upon submission

(b) (6), (b) (7)(C), Wage Hour Investigator
Grand Rapids District Office
March 7, 2018