



## WHISARD Compliance Action Report

### FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$612.12	\$612.12	\$612.12	\$612.12	

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

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$612.12	Total Amount BWs Agreed:	\$612.12
Total Amount LDs Computed:	\$612.12	Total Amount LDs Agreed:	\$612.12

### **Conclusions & Recommendations:**

3(s)(1)(B) ent. coverage & 50 + EEs; (b) (7)(E) ; FLSNM viol - sec.7(r) not provided w/space to express milk, left est. to go home to express milk, not paid for two paid breaks per policy, violation period 7/8/16 to 8/22/16, in compliance on 8/23/16 - appropriate space provided and paid breaks per policy. ER history in WHIS. MODO ID (b) . ER ATC/ATP. Pubs: FLSNM, FMLA, FS links provided

WHI Signature: \_\_\_\_\_ Date: 04/24/2017

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

**FLSA Nursing Mother Narrative**

Case Assignment Information: This investigation was initiated as (b) (7)(E) (b) (6), (b) (7)(C) [REDACTED]. This case was a limited investigation of the business under the Fair Labor Standards Act (FLSA), specific to (b) (6), (b) (7)(C) [REDACTED] under §7(r) of the FLSA, break time for nursing mothers. The case was investigated by Wage & Hour Investigator (WHI) (b) (6), (b) (7)(C) [REDACTED] of the Oklahoma City District Office, under the Fair Labor Standards Act of 1938, as amended.

**Scope and Period of Investigation**

A limited investigation was conducted for the time period July 8, 2016 to November 29, 2016.

**Coverage**

**Number of Employees (Exhibit)**

There were approximately (b) (4) [REDACTED] current EEs of the establishment at the time of the investigation; the enterprise, consisting of 12 establishments in Oklahoma City, OK, comprised of approximately (b) (4) [REDACTED] employees, as stipulated by the general manager, Drake Miller (Exhibit C-1).

**Annual Dollar Volume (ADV)**

ADV	2013	2014	2015
(Exhibits C-1)	(b) (4) [REDACTED]	[REDACTED]	[REDACTED] +

The above ADV amounts were stipulated by the general manager, Drake Miller, during the initial conference (IC).

**Interstate Commerce (Exhibit C-1)**

The enterprise is a retail jewelry store. For the period of investigation, the enterprise was covered under the FLSA §3(s)(1)(A). The ADV for the enterprise was over \$500,000 per year, there were more than two EEs, and all EEs handled goods produced and moved in interstate commerce. Employees handled jewelry products that were produced or manufactured outside of the state of Oklahoma, in Canada, Africa, and Russia (Exhibit C-1).

### **FLSA Coverage for Employer**

Enterprise Coverage: As shown above, the business exceeded \$500,000 in ADV for years 2013 to 2015; there are more than two employees employed by the business; and employees regularly handled goods from out of state as required by the FLSA §3(s)(1)(a), to consider a business under enterprise coverage (Exhibit C-1).

### **Employee Coverage under FLSA §7(r) – Break Time for Nursing Mothers**

The Patient Protection and Affordable Care Act amended section seven of the FLSA to require ERs to provide nursing mothers with a reasonable break time to express breast milk and a place, other than a bathroom, that may be used to express milk. The ERs must be covered by FLSA enterprise coverage or the EE must be individually covered. Additionally, the break time is only afforded to non-exempt EEs. Finally, the ER may claim an undue hardship exemption if the ER employs less than 50 EEs. The number of EEs is determined by counting EEs at all worksites, regardless of location or part-time status.

Employers covered under the FLSA, or employees that are individually covered under the FLSA, are also subject to the requirements under §7(r) of the FLSA:

An ER shall provide–

- (A) A reasonable break time for an EE to express breast milk for <sup>(b) (6)</sup> nursing child for one year after the child's birth each time such EE has need to express the milk; and
  - (B) A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an EE to express breast milk.
- (2) An ER shall not be required to compensate an EE receiving reasonable break time under paragraph (1) for any work time spent for such purpose.
- (3) An ER that employs less than 50 EEs shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the ER significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the ER's business.
- (4) Nothing in this subsection shall preempt a State law that provides greater protections to EEs than the protections provided for under this subsection.

Employee is covered under FLSA §7(r) - It has been determined that the ER is covered under enterprise coverage under the FLSA. The ER also has more than 50 EEs, which exempts the ER from claiming undue hardship as a small business. (b) (6), (b) (7)(C) is not exempt under the FLSA; therefore, the ER is subject to the requirements of FLSA §7(r).

**Business Structure (Exhibits C-1)**

This is a corporate owned store; Sterling Jewelers Inc., which is owned by Signet Jewelers Inc. Sterling Jewelers owns Kay's, Jared's, Zale's, and Gordon's franchise jewelry stores.

**Main Office District Office (MODO)**

A MODO for this employer existed under the jurisdiction of the Columbus, Ohio Area Office, MODO control (b) (7), this case file/location was associated with the MODO (Exhibit D-3).

**§3(d) Employer (ER)**

Drake Miller met the definition of the §3(d) employer. Drake Miller, as general manager, was involved in the daily operations of the business, had the ability to hire and hire EEs, gave instructions to EEs, and acted in the interest of the business (Exhibit C-1).

<b>Exemptions</b>
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Not Applicable – FLSA §7(i) – Employment by retail or service establishment

The employer was a retail jewelry store and offered commissions on sales for retail staff, and for (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) monthly sales. Although (b) (6), (b) (7)(C) was compensated at least one and a half times the minimum wage amount, as required under §7(i)(1), the commission amount was less than half of her total compensation, as required under §7(i)(2); therefore, (b) (6), (b) (7)(C) was not found to be exempt under the FLSA §7(i) retail establishment exemption (Exhibit B-1, and A-2 and A-3).

**Status of Compliance**

**History**

<b>CASE ID</b>	<b>ER Trade Name</b>	<b>Case Status</b>	<b>Investigation Tool</b>	<b>Date Registered</b>	<b>Registration Act</b>	<b>ER City</b>	<b>ER State</b>
1053626	Sterling Jewelers	Concluded	(b) (7)(E)	12/30/1999	FLSA	Akron	OH
1053895	Kay Jewelers	Concluded	(b) (7)(E)	01/04/2000	FLSA	Antioch	TN
1054172	Kay Jewelers	Concluded	Full Investigation	01/05/2000	FLSA	West Nyack	NY
1060103	Kay Jewelers	Concluded	(b) (7)(E)	02/08/2000	FLSA	New Port Richey	FL
1149907	Sterling Jewelers	Concluded	(b) (7)(E)	06/15/2001	FLSA	National City	CA
1426320	Sterling Jewelers	Concluded	Limited Investigation	11/17/2005	FLSA	Akron	OH
1429696	KAY JEWELERS	Concluded	Limited Investigation	12/22/2005	FMLA	Jensen Beach	FL
1461308	Kay Jewelers	Concluded	Full Investigation	11/02/2006	FLSA	Bensalem	PA
1515204	Jared Galleria Of Jewelry	Concluded	(b) (7)(E)	05/19/2008	FLSA	Boca Raton	FL
1551071	Sterling Jewelers, Incorporated	Concluded	Limited Investigation	07/01/2009	FMLA	Overland Park	KS
1560987	Kay Jewelers	Concluded	(b) (7)(E)	10/13/2009	FLSA	Biloxi	MS
1658468	Kay Jewelers	Concluded	Limited Investigation	06/04/2012	FMLA	Bay Shore	NY
1768160	Kay Jewelers	Concluded	(b) (7)(E)	08/10/2015	FLSA	West Nyack	NY

**Reason for Investigation**

This investigation was initiated as (b) (7)(E) (b) (6), (b) (7)(C) This case was a limited investigation of the business under the Fair Labor Standards Act (FLSA), specific to (b) (6), (b) (7)(C) under §7(r) of the FLSA, break time for nursing mothers.

**(b) (7)(E) Information**

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

(b) (7)(E)

(b) (7)(E) (Exhibit D-). (b) (6), (b) (7)(C) of the ER, and began working for the ER (b) (6), (b) (7)(C) was approved for and utilized Family Medical Leave Act (FMLA) leave from April 2016 to July 2016 for the birth of (b) (6), (b) (7)(C) baby. No violations were found pertaining to FMLA.

(b) (6), (b) (7)(C) informed the corporate human resources department in Akron, OH of (b) (6), (b) (7)(C) need to express breast milk while at work and would need accommodations to do so. (b) (6), (b) (7)(C) following FMLA approved leave, (b) (6), (b) (7)(C) was not provided with a functional space to express milk. Due to the lack of space, (b) (6), (b) (7)(C) left the work site, drove to (b) (6), (b) (7)(C) home to express milk, then drove back to the establishment two to three times per day from July 8, 2016 to August 22, 2016 (Exhibit A-2, A-3 and B-1).

The ER provided all EEs with two-15 minute paid breaks per shift, for which no EEs clocked in or out; all EEs were also given one-30 minute unpaid meal period per shift. (b) (6), (b) (7)(C) used one-15 minute paid break to drive home to express milk; however, (b) (6), (b) (7)(C) was required to clock in and out for all breaks when leaving the premises and was not retroactively compensated the 15 minute paid break time for which (b) (6), (b) (7)(C) was using to express milk. (b) (6), (b) (7)(C) was then not compensated for the 15 minute breaks unlike (b) (6), (b) (7)(C) coworkers that were compensated for two-15 minute breaks per day. (b) (6), (b) (7)(C) chose to use (b) (6), (b) (7)(C) lunch break to express milk, which was typically 30 minutes of unpaid break time; however, (b) (6), (b) (7)(C) extended (b) (6), (b) (7)(C) lunch break to approximately one hour in order to eat lunch and express milk at (b) (6), (b) (7)(C) home due to lack of accommodation at the establishment; (b) (6), (b) (7)(C) was clocked in and out during this time (Exhibit A-2, A-3 and B-1).

A room was made available to (b) (6), (b) (7)(C) for the purposes of expressing milk on August 23, 2016. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) believed that the space provided to (b) (6), (b) (7)(C) was inadequate because (b) (6), (b) (7)(C) did not believe it to be a private and functioning space for the purposes of expressing milk. Nevertheless, from August 23, 2016 to September 4, 2016 (b) (6), (b) (7)(C) was required to clock in and out while expressing milk on site. (b) (6), (b) (7)(C) used (b) (6), (b) (7)(C) compensated break time in order to express milk; however, (b) (6), (b) (7)(C) was deducted the break time because the ER required (b) (6), (b) (7)(C) clock in and out for the breaks. (b) (6), (b) (7)(C) was not retroactively compensated for the two-15 minute breaks for which all other EEs of the establishment were paid (Exhibit A-2, A-3 and B-1).

From September 5, 2016 to present, (b) (6), (b) (7)(C) was not required to clock in and out for (b) (6), (b) (7)(C) breaks in order to express milk, (b) (6), (b) (7)(C) was compensated for (b) (6), (b) (7)(C) short breaks similar to all other EEs of the ER. (b) (6), (b) (7)(C) continued to also use (b) (6), (b) (7)(C) 30 minute unpaid meal period to express milk (Exhibit B-1). The space provided to (b) (6), (b) (7)(C) by the ER to express milk remained the same, see pictures in Exhibit D-5.

### **§7(r) – Break Time for Nursing Mothers**

As stated above, the ER is covered under the FLSA §3(s)(1)(a), enterprise coverage, and has more than 50 EEs working for the enterprise; additionally, (b) (6), (b) (7)(C) is not exempt under the FLSA, and is covered under the FLSA §7(r), break time for nursing mothers.

#### Employee Schedule and Breaks:

According to (b) (6), (b) (7)(C) interview statement, (b) (6), (b) (7)(C) worked five (5) days per week. (b) (6), (b) (7)(C) had every Tuesday off and (b) (6), (b) (7)(C) additional day off alternated bi-weekly between Thursday and Sunday. (b) (6), (b) (7)(C) typically worked 9:00am to 5:00pm; however, on occasion (b) (6), (b) (7)(C) worked from 1:00pm to 9:00pm. Every day (b) (6), (b) (7)(C) worked, (b) (6), (b) (7)(C) received one-30 minute meal period for which (b) (6), (b) (7)(C) clocked in and out. (b) (6), (b) (7)(C) daily hours were typically 7.5 hours x 5 days per week = 37.5 hours per week. (b) (6), (b) (7)(C) took a breaks to express milk at approximately 11:30am, 2:00pm (lunch break), and 4:00pm. When working the evening shift, from 1:00pm to 9:00pm, (b) (6), (b) (7)(C) took breaks at approximately 3:00pm, 5:30pm, and 7:30pm. (b) (6), (b) (7)(C) stated that due to (b) (6), (b) (7)(C) leaving work to express milk at (b) (6), (b) (7)(C) home, as well as not being compensated the paid short breaks; (b) (6), (b) (7)(C) worked less than (b) (6), (b) (7)(C) typical schedule of hours.

#### Violations found:

- From July 8, 2016 to August 22, 2016, the ER was found in violation of §7(r) of the FLSA for not providing a private and functioning space for (b) (6), (b) (7)(C) to express milk on-site of the business. This caused (b) (6), (b) (7)(C) to leave the establishment approximately two times during (b) (6), (b) (7)(C) work day to express milk at (b) (6), (b) (7)(C) home. (b) (6), (b) (7)(C) stated that it took (b) (6), (b) (7)(C) approximately 15-20 minutes to solely express milk. One time per day, (b) (6), (b) (7)(C) used (b) (6), (b) (7)(C) provided break time (one of the two-15 minute paid breaks) to drive to (b) (6), (b) (7)(C) home to express milk; however, (b) (6), (b) (7)(C) clocked in and out for these breaks and the ER did not retroactively compensate (b) (6), (b) (7)(C) for the short breaks for which (b) (6), (b) (7)(C) was taking and not compensated. Further, (b) (6), (b) (7)(C) was traveling on



average 15-20 minutes one-way (3 miles), 30 minutes roundtrip (6 miles), from leaving the establishment to arriving at (b) (6), (b) (7)(C) home in order to express milk approximately times per day. (b) (6), (b) (7)(C) took an extended lunch, of approximately one hour, to eat (b) (6), (b) (7)(C) lunch and express milk at (b) (6), (b) (7)(C) home due to lack of accommodation at the establishment; therefore, the typical 30 minute lunch period (b) (6), (b) (7)(C) took was not found to be compensable time. However, the one-15 minute break for which (b) (6), (b) (7)(C) was not compensated was found to be compensable time per the ER's policy and practice at that establishment with all EEs. The travel time for (b) (6), (b) (7)(C) unpaid meal period was also found to be compensable time due to the lack of accommodation for (b) (6), (b) (7)(C) to express milk at the establishment, which required (b) (6), (b) (7)(C) to leave the premises in order to express milk.

- On August 23, 2016, the ER provided (b) (6), (b) (7)(C) with a space at the establishment to express milk; the space provided to (b) (6), (b) (7)(C) for such purpose was found to be adequate and functional. The space was not a bathroom, nor was it in view of the public or other EEs of the establishment. The space provided to (b) (6), (b) (7)(C) by the ER was two temporary cubicle walls that joined two permanent walls in the corner of the establishment's backroom, accessed only by EEs. The space was adjacent to the bathroom, but not inside of the bathroom. Although EEs could pass by the temporary space, they could not see inside of the space, and (b) (6), (b) (7)(C) was able to lock the cubicle wall door which restricted access to the space. Additionally, an electrical outlet was accessible inside of the space in order for it to be fully functional for the purposes of expressing milk. A chair was located inside of the space as well. There was a camera located on the ceiling of the backroom; however, WHI viewed the video footage of that camera and it was unable to view the inside of the space provided. Further, the backroom had a door that locked. (b) (6), (b) (7)(C) was able to close the backroom door, if needed, and lock it as well as close the temporary space within the backroom and lock it for ensured privacy. WHI found no violations regarding the space provided to (b) (6), (b) (7)(C) for the purposes of expressing milk.
- August 23, 2016 to present, (b) (6), (b) (7)(C) was not required to clock in and out for (b) (6), (b) (7)(C) two-15 minute breaks for which (b) (6), (b) (7)(C) used to express milk. Similar to all other EEs of the establishment, (b) (6), (b) (7)(C) was compensated for short breaks, was not clocking in and out, and was able to express milk during the paid break time without time deductions. Additionally, (b) (6), (b) (7)(C) used (b) (6), (b) (7)(C) unpaid 30 minute meal time to express milk and eat at the establishment; therefore, all meal

period time was found to be uncompensable during this time period. No violations were found regarding hours worked and space provided to (b) (6), (b) (7)(C) from August 25, 2016 to present.

**§15(a)(3) – Prohibited Acts and §16(b) – Penalties**

§15(a) ...it shall be unlawful for any person –

To discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.

§16(b) ...Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damage

Therefore, according to the above Prohibited Acts and Penalties laws within the FLSA, the Klinghoffer Rule need not apply, and (b) (6), (b) (7)(C) is due (b) (6), (b) (7)(C) paid regular rate for hours worked under 40, not the federal minimum wage, in order to provide equitable relief under the FLSA.

Example Computation for Unpaid Breaks, Travel Time, and Mileage:

(b) (7) (E)

The time and payroll records were provided by the ER; therefore, the uncompensated break time was recorded on the provided records.

The records showed the (b) (6), (b) (7)(C) was uncompensated approximately two breaks per shift; one-15 minute break was not compensated, nor was the travel time, and one 30-minute meal period was not paid, nor was the travel time. Although (b) (6), (b) (7)(C) typical unpaid meal time was 30 minutes, (b) (6), (b) (7)(C) was required to extend this time beyond the typical unpaid 30 minutes to travel to (b) (6), (b) (7)(C) home and also express milk.

(b) (7) (E)

(b) (6), (b) (7)(C) was found to be due \$619.56 in back wages, plus and equal amount in liquidated damages, totaling \$1,239.12 (Exhibit A-1).

## Disposition

The initial conference (IC) was held on November 29, 2016; WHI (b) (6), (b) (7)(C) and general manager Drake Miller were present. WHI toured the establishment, did not locate any child labor, and did locate all applicable WHD posters. Fact Sheets 77A and 44 were presented to the Drake Miller and discussed.

Basic business location information was obtained from Drake Miller and the remainder of the information obtained during the investigation was derived from the ER's attorneys. WHI determined that the business was covered under the FLSA and specifically under the regulations that cover the ER and EEs for providing accommodations for nursing mothers (FLSA §7(r)). The ER's handbook was reviewed and discussed, and the findings of the investigation were discussed; specifically, that there was a two week time period from July 8, 2016 to August 22, 2016.

As discussed under the violation section, the ER did not have appropriate accommodations for (b) (6), (b) (7)(C) to express milk at the establishment during this time frame. (b) (6), (b) (7)(C) was driving to (b) (6), (b) (7)(C) home during (b) (6), (b) (7)(C) work day, clocking out during this time, to express milk. The ER provided two 15-minute paid breaks during the workday for all employees; however, (b) (6), (b) (7)(C) clocked out during these breaks to go to (b) (6), (b) (7)(C) home to express milk and was not retroactively compensated for this time.

August 23, 2016, the ER installed a temporary cubical wall partition in the back office area of the establishment for the purposes of the complaint to express milk at the establishment and so (b) (6), (b) (7)(C) no longer needed to drive home to express milk. (b) (6), (b) (7)(C) was no longer clocking out during the time (b) (6), (b) (7)(C) expressed milk at the establishment, and was compensated for all of that time.

Violations were cited from July 8, 2016 to August 22, 2016; the ER was in compliance on August 23, 2016, following the installation of an appropriate space for (b) (6), (b) (7)(C) to express milk and the compensation of the two 15-minute paid break time.

A Settlement Agreement was signed by the ER, District Director Michael Speer for the WHD at the OKCDO, and (b) (6), (b) (7)(C). The ER agrees to future compliance with all regulations pertaining to the FLSA, FLSNM, and the FMLA. Additionally, the ER agreed to pay the back wages and liquidated damages found for (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C), was found to be due under the FLSNM \$619.56 in back wages, plus and equal amount in liquidated damages, totaling \$1,239.12 (Exhibit A-1).

**Publications Provided Electronically**

Family Medical Leave Act regulations  
FLSA Nursing Mothers (FLSA 7(r)) regulations  
Fact Sheets 28D and 73  
Links to Nursing Mother resources on dol.gov  
Links to FMLA resources on dol.gov

**Recommendations**

WHI recommends administratively closing the case (b) (7)(E). The ER will provide a check made out to (b) (6), (b) (7)(C), less any applicable deductions, for the amount owed. WHD at OKCDO will be responsible for disseminating the check to (b) (6), (b) (7)(C).

**Future Contact**

Human Resources at the ER

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