

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	

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	

** 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 Mother case, (b) (7)(E) MAC is subsidiary of Estee Lauder Co. First Invest. (b) (6), (b) (7)(C) ER Atty, Catherine Ryan. No monetary viol found. ER has ATFC and now has implemented a Nursing Mth policy nationwide. (b) (7)(E) notified Rec admn Cls

WHI Signature: _____ Date: 02/26/2014

Reviewed By: _____ Date: _____

MAC Cosmetics Case ID: 1713550

Case Number: 2014-249-16436

MAC Cosmetics Inc
19501 Bisc Blvd
Miami, FL 33180

Corporate Office
MAC Cosmetics Inc
7 Corporate Center Dr
Melville, NY 11747-3166

EIN: 11-3581776

COVERAGE:

This investigation was initiated as the (b) (7)(E) and has been done as a **LIMITED** Investigation, limited only to **Nursing Mothers, under the Affordable Care Act, Section 7 of the FLSA,**

Subject firm is a Cosmetics company with branches all over the US and abroad with over (b) (4) employees nationwide. All employees of the establishment were covered on an enterprise basis under Section 3(s)(1)a for the entire investigative period. employees employed by this firm. The firm's ADV is in (b) (4). In addition, some employees were individually covered during the entire investigation period as they regularly ordered and received goods from other states such as NY, California and out of the country especially France. See Exhs. C1- C-5.

The corporation is a Division of Estee Lauder Cosmetics, corporate offices located at: The Estee Lauder Companies Inc, 767 Fifth Avenue, NYC, NY 10153. Firm is being represented by in house attorney, Catherine Ryan, phone: 212-277-2357.

The subject of this investigation is a MAC stand-alone store located inside Aventura Mall, Aventura, FL. This particular location has (b) (4) employees. In addition to this store there are another 2 additional MAC stores (counters) one inside Macy's with 7 employees and the other inside Bloomingdale's with (b) (4) employees.

NOTE: I have also opened a separate (b) (7)(E) file for Aventura Mall, x-ref: 2014-249-16632.

The period of investigation is from 03/01/2013 to 06/07/2013.

EXEMPTIONS:

There are no exemptions applicable to whom this investigation has been limited.

STATUS OF COMPLIANCE:

(b) (7)(E) DATA:

This investigation was initiated based on (b) (7)(E) (b) (6), (b) (7)(C) states in (b) (7)(E) that (b) (7)(C) worked for the MAC stand-alone store inside Aventura Mall (b) (6), (b) (7)(C) was pregnant and (b) (6), (b) (7)(C) baby was born (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) supervisor that (b) (6), (b) (7)(C) would be breast feeding. The supervisor told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would be able to use the Mall's bathroom. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would not be able to use the small office inside the store because the office had cameras. (b) (6), (b) (7)(C) then began the breast feeding using the Mall's bathroom. According to (b) (6), (b) (7)(C) this caused (b) (6), (b) (7)(C) much stress because there was no privacy and little by little (b) (6), (b) (7)(C) pumped less and less. (b) (6), (b) (7)(C) desire was to breast feed (b) (6), (b) (7)(C) new born for 1 year. On (b) (6), (b) (7)(C) had to stop breast feeding. The reason given was that the stress of not having a place to pump without interruptions and the aggravation of requesting a place to (b) (6), (b) (7)(C) supervisor and to Mall administration was very frustrating and finally caused (b) (6), (b) (7)(C) not to pump as frequently causing (b) (6), (b) (7)(C) to stop producing. (b) (7)(E) with the Mall and with (b) (6), (b) (7)(C) supervisor but these had no results. (b) (6), (b) (7)(C) was given time to pump and not charged for the time it took, therefore, there is no monetary violation. (b) (6), (b) (7)(C) states that the reason (b) (6), (b) (7)(C) (b) (7)(E) was to avoid this from happening to anyone else in the future. (b) (7)(E) data#1a- #1c, B-1a - B-1g,)

Section 6 - Minimum Wage

No Violations noted

Section 7 - Overtime/Nursing Mothers, Section 4207 of the Affordable care Act

A violation to the Nursing Mothers requirement was found. The violation resulted from the employer's failure to provide a place, other than a bathroom, that is shield from view and free from intrusion from co-workers and the public, which may be used by an employee to express milk. (Exhs: B-1a = B-1g, E-1,2,3)

Section 12 - Child Labor

No minors were employed contrary to the CL provisions of the FLSA.

DISPOSITION:

A final conference was held with Catherine Ryan and Kathy Jennings both attorneys for the firm out of NYC on 02/26/2014 via a tele-conference call. The violations were discussed in detail. Both attorneys stated that the

reason the violations occurred is that this is a fairly new law and the local managers were not aware that they must provide a place other than a bathroom free from view and intrusion. They must also, in the future notify corporate headquarters when they receive a request from a nursing mother. The firm understands that this investigation was ONLY LIMITED to Section 7 dealing with Nursing Mother's. All the participants were advised that to comply in the future the 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 CL regulations.
- 5) **Establish a Nursing Mother's policy for all locations/branches for future compliance**

The firm agreed to fully comply in the future with all applicable provisions of the FLSA, including the Nursing Mother's regulation. They have now established a written policy that would apply to all locations Nation-wide. In addition they will provide education to supervisors, managers and HR personnel in order to ensure that the policy is understood and enforced. As far as the MAC stand-alone store, they have already indicated that in the future if an employee requests a place to pump they will be able to use the small office inside the store, cameras will be turned off and the door may be locked to provide privacy, in addition a sign outside the door will be placed stating "DO NOT DISTURB". For their counter stores inside the department stores such as Macy's, they are working with the department stores to have them ensure there is space available for employees who wish to express breast milk. The firm also knows and understands now that the employee should have hand washing facilities close by and a refrigerator to store the milk. If the location does not have a refrigerator than the employee needs a space so that she may bring her own cooler and store it in the job site along with the storing of the pump and attachments.

(b) (6), (b) (7)(C) was advised of the results of this investigation on 2/26/2014.

Publications provided and discussed: HRG, FMLA, Poster, 561,541, Nursing Mother Fact Sheet#73

Recommendations:

I recommend this case be closed administratively without further action.

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

Wage & Hour Investigator
2/26/2014

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FLSNM

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FMLA

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FMLA Totals:	0	0	\$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:

LIMITED to Nursing Mother SEction 7. ER is a mall management atty is Scott Schomber. No monetary violation found. ER ATFC and has now implemented a Nursing Mother policy for theri mall employees. REc Admn cls. without further action

WHI Signature: _____ Date: 02/27/2014

Reviewed By: _____ Date: _____

Case Number: 2014-249-16632

Aventura Mall Venture, G.P.
19501 Biscayne Blvd
Aventura, FL 33180

EIN: 59-2162675

COVERAGE:

This investigation was initiated as a (b) (7)(E) Case from a spin-off of MAC Cosmetics inside Aventura Mall. The case has been **LIMITED** only to **Nursing Mothers, under the Affordable Care Act, Section 7 of the FLSA,**

Subject firm is a Mall Management company. There are no other branches. The firm has (b) (4) direct employees, these employees include maintenance personnel, security, administrative office and valet. All employees of the establishment were covered on an enterprise basis under Section 3(s)(1)a for the entire investigative period. The firm's ADV is in the millions. In addition, some employees were individually covered during the entire investigation period as they regularly ordered and received goods from other states as well as the office personnel worked with the internet ordering supplies and doing banking.. See Exhs. C1- C-3

The firm is being represented by an attorney, Mr. Scott Schomber of the Law offices of McConnaughay, Duffy, Coonrod, Pope & Weaver P.A. located at 500 W Cypress Creed Rd, Suite 300, Ft Lauderdale FL 33309, phone 305-206-1176. .

NOTE: X-ref file: MAC Cosmetics 2014-249-16436.

The period of investigation is from 03/01/2013 to 06/07/2013.

EXEMPTIONS:

There are no exemptions applicable to whom this investigation has been limited.

STATUS OF COMPLIANCE:

(b) (7)(E) DATA:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) states in (b) (7)(E) worked for the MAC stand-alone store inside Aventura Mall for over (b) (6), (b) (7)(C) was pregnant and (b) (6), (b) (7)(C) baby was born (b) (6), (b) (7)(C) told

(b) (6), (b) (7)(C) supervisor that (b) (6), (b) (7)(C) would be breast feeding. The supervisor told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would be able to use the Mall's bathroom. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would not be able to use the small office inside the store because the office had cameras. (b) (6), (b) (7)(C) then began the breast feeding using the Mall's bathroom. According to (b) (6), (b) (7)(C) this caused (b) (6), (b) (7)(C) much stress because there was no privacy and little by little (b) (6), (b) (7)(C) pumped less and less. (b) (6), (b) (7)(C) desire was to breast feed (b) (6), (b) (7)(C) new born for 1 year. On November (b) (6), (b) (7)(C) had to stop breast feeding. The reason given was that the stress of not having a place to pump without interruptions and the aggravation of requesting a place to (b) (6), (b) (7)(C) supervisor and to Mall administration was very frustrating and finally caused (b) (6), (b) (7)(C) not to pump as frequently causing (b) (6), (b) (7)(C) to stop producing. (b) (7)(E) with the Mall and with (b) (6), (b) (7)(C) supervisor but these had no results. (b) (6), (b) (7)(C) was given time to pump and not charged for the time it took, therefore, there is no monetary violation. (b) (6), (b) (7)(C) states that the reason (b) (7)(E) was to avoid this from happening to anyone else in the future. Exhs: E-2 - E-10

Section 6 - Minimum Wage

No Violations noted

Section 7 - Overtime/Nursing Mothers, Section 4207 of the Affordable care Act

A violation to the Nursing Mothers requirement was found. The violation resulted from the employer's failure to provide for their "direct" employees a place, other than a bathroom, that is shield from view and free from intrusion from co-workers and the public, which may be used by an employee to express milk. (Exhs: B-1a = B-1g, E-3 - E-10)

Section 12 - Child Labor

No minors were employed contrary to the CL provisions of the FLSA.

DISPOSITION:

A final conference was held with Attorney, Scott Schomber, on 02/27/2014 via a tele-conference call. The violations were discussed in detail. The attorney stated that the reason the violations occurred is that this is a fairly new law and the Mall management was not aware that they must provide a place other than a bathroom free from view and intrusion to their "direct" employees. The firm understands that this investigation was ONLY LIMITED to Section 7 dealing with Nursing Mother's. They also understand that they are under no obligation to provide the facility to other employees that are not theirs. In other words, they are not responsible for employees employed by any of their tenants, which includes departments stores and boutiques in the mall. Each employer is responsible to provide a facility to their own employees. All the participants were advised that to comply in the future the 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 CL regulations.
- 5) **Establish a Nursing Mother's policy for future compliance**

The firm agreed to fully comply in the future with all applicable provisions of the FLSA, including the Nursing Mother's regulation. They have now established a policy that would apply to all Mall employees.. In addition they will provide education to supervisors, managers and HR personnel in order to ensure that the policy is understood and enforced. They have already indicated that in the future if an employee requests a place to pump they will be able to use an office inside the management offices on the 4th floor This office is not a bathroom . The firm also knows and understands now that the employee should have hand washing facilities close by and a refrigerator to store the milk. If the location does not have a refrigerator than the employee needs a space so that she may bring her own cooler and store it in the job site along with the storing of the pump and attachments.

At this time, they are also working to provide an area for their tenants and even mall customers to use somewhere in the mall.

Publications provided and discussed: HRG, FMLA, Poster, 561,541, Nursing Mother Fact Sheet#73

Recommendations:

I recommend this case be closed administratively without further action.

(b) (6), (b) (7)(C)
Wage & Hour Investigator
2/27/2014