

**MAURA MCCANN**

Chief Labor Standards Investigator  
Department of Labor  
W. Averell Harriman State Office Campus  
Building 12, Room 532, Albany, NY 12240  
[www.labor.ny.gov](http://www.labor.ny.gov)  
(518) 457-2460

January 14, 2015

COPY

Harry's Nurses Registry, Inc.  
Attn: Mr. Harry Dorvilier  
88-25 163 St  
Jamaica, NY 11432

Re: LS03 2010015248 Investigation Findings and Underpayment Total

Total Due: \$7,061,005.21

Dear Mr. Dorvilier:

On July 13, 2010, New York State Department of Labor investigators visited Harry's Nurses Registry a/k/a Harry's Home Care at 88-25 163<sup>rd</sup> Street in Jamaica, New York to investigate allegations of labor law violations. We understand your position has been that your employees are independent contractors.

We obtained copies of your payroll and time records and have since been concluding the audit portion of our investigation. It is our understanding that other related proceedings have also been initiated, including a FLSA class-action lawsuit, and a criminal proceeding brought by the Queens District Attorney. We believe these proceedings also addressed the issue of independent contractor status as a matter of jurisdiction; therefore, our position is that the nurses you employ are not independent contractors.

In making our determinations, we have taken the outcomes of the above-referenced proceedings into consideration. After concluding an audit of your payroll records, it is our position that you owe wages to **415 employees** for the following reasons:

- **Unpaid overtime wages** (for the period of June 2005 – June 2010) are owed to employees for your failure to pay time and one-half the regular rate of pay for over 40 hours worked in a payroll week. These amounts are listed as Claim Type 4 on the attached spreadsheet. To determine overtime amounts due we used your payroll and time records. Because payroll is bi-weekly, we split the total hours worked in half for each pay period. We made this decision based on a review of your time records, which demonstrated the total hours worked were almost always evenly split between two work weeks. Where an hourly rate of pay was not clear according to your payroll records, we extrapolated a rate by dividing the gross pay by the hours worked, or we applied any observable patterns for pay rates. We calculated the overtime

due by multiplying half of the full hourly pay rate, and the number of hours worked over 40 for each week. Note: we did not include medically fragile enhancement rates in the calculation of overtime, nor did we include underpayments for weeks where it was questionable that someone worked overtime. **The amount due for unpaid overtime is \$ 5,621,015.57.**

- **Unpaid wages** are due to employees for your failure to reimburse the full amount due to nurses who performed services for Medically Fragile Children (for the period of January 1, 2007 – June 2010). To determine the amounts due we used the enhancement rate of \$6.31 per hour. Where we observed that you increased the rate of pay for a nurse during the relevant period, we credited the partial raises as amounts paid. Claim Type 1 lists the balance of the enhancement due that you improperly retained. Your payroll records show a pattern of a rate increase for nurses worked on medically fragile enhancement cases. We were able to corroborate this pattern with the timing of the legislation and by cross-referencing your records with Medicaid billing data. **The amount due for unpaid wages is \$1,005,963.26.**
- **Unpaid wages for illegal deductions** of workers' compensation insurance costs (for the period of July 2006 – December 2007) is due to employees. These amounts are Claim Type 14 on the enclosed spreadsheet. These amounts were calculated directly from your payroll records as you referenced the charge as "LESS: W/C @1 PER HR..." in your payroll records. **The amount due for illegal deductions from wages is \$434,026.38.**

You did not respond to our letter dated May 19, 2014 in which we requested to meet with you to discuss these findings. As such, the enclosed spreadsheet lists the total amount due for each claimant for each claim type as described above. We will allow 21 days from the date of this letter to review the spreadsheet and your payroll records. You must then contact this office to make payment arrangements. Failure to contact this office to make payment arrangements within 21 days from the date of this letter will result in further legal action, including issuance of an Order to Comply. An Order to Comply will include an assessment of interest and civil penalties on the amounts due.

Sincerely,



Maura McCann  
Chief Labor Standards Investigator  
Division of Labor Standards

MM:sc

cc: Harry's Nurses Registry, Inc.  
Attn: Mr. Harry Dorvilier  
169-14 Hillside Avenue  
Jamaica, NY 11432

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New York State Department of Labor  
Andrew M. Cuomo, Governor  
Peter M. Rivera, Commissioner

May 19, 2014

Harry's Nurses Registry, Inc.  
88-25 163 St  
Jamaica, NY 11432

Re: LS03 2010015248

Dear Mr. Dorvilier:

On July 13, 2010, New York State Department of Labor investigators visited Harry's Nurses Registry a/k/a Harry's Home Care at 88-25 163<sup>rd</sup> Street in Jamaica, New York to investigate allegations of labor law violations. We understand your position has been that your employees are independent contractors.

We obtained copies of your payroll and time records and have since been concluding the audit portion of our investigation. It is our understanding that other related proceedings have also been initiated including an FLSA class-action lawsuit and a criminal proceeding brought by the Queens District Attorney. We believe these proceedings also addressed the issue of independent contractor status as a matter of jurisdiction; therefore, our position is that the nurses you employ are not independent contractors.

In making our determinations, we have taken the outcomes of the above-referenced proceedings into consideration. After concluding an audit of your payroll records, it is our position that you owe wages to employees for the following reasons:

- unpaid overtime wages (for the period of June 2005 – June 2010) for failure to pay time and one half the regular rate of pay for hours worked over 40 in a payroll week.
- unpaid wages for failure to reimburse the full amount due to nurses who performed services for medically fragile children (for the period of January 1, 2007 – June, 2010).
- unpaid wages for illegal deductions of workers' compensation insurance costs (for the period of July 2006 – December 2007).

The total amount due for these claims is substantial. As such, we would like to meet with you and your legal counsel to discuss our audit methodology, findings, payment, and your current state of compliance. Please contact Assistant Director Maritza Lamboy's secretary, Lilibiana Munoz, as soon as possible at 212-775-3645 to schedule a meeting.

Sincerely,

Maura McCann  
Chief Labor Standards Investigator  
Division of Labor Standards

MM:sc

Phone: (518) 457-2460 Fax: (518) 457-7997  
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