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FILED
ALAMEDA COUNTY

JUL 19 2010

CLERK OF THE SUPERIOR COURT
By *R. Jance* Deputy

Attorneys for Plaintiffs
LAVON GODFREY and GARY GILBERT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

LAVON GODFREY and GARY GILBERT, on)
behalf of themselves and all others similarly)
situated,)
Plaintiffs,)
v.)
OAKLAND PORT SERVICES CORP. d/b/a)
AB TRUCKING, and DOES 1 through 20,)
inclusive,)
Defendants.)

Case No. RG 08-379099
PLAINTIFFS' NOTICE OF LODGING
OF FEDERAL AND OTHER
AUTHORITIES
Date: August 20, 2010
Time: 10:00 a.m.
Department: 20
Judge: Robert B. Freedman

EXHIBIT	AUTHORITY
A	29 U.S.C. §213(b)(1)
B	49 U.S.C. § 31131
C	29 C.F.R. § 782.3(b)
D	Oakland Municipal Code section 2.28

118212/580794

29 USCS § 213

arily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempt by regulations, order, or certificate of the Secretary issued under section 14 [29 USCS § 214]; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) [Repealed]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) [Repealed]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) [Repealed]

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

(16) a criminal investigator who is paid availability pay under section 5545a of title 5, United States Code; or

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is--

(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and

who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$ 27.63 an hour.

(b) Maximum hour requirements. The provisions of section 7 [29 USCS § 207] shall not apply with respect to--

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935 [49 USCS § 31502]; or

(2) any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of title 49, United States Code [49 USCS §§ 10101 et seq.]; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 USCS §§ 181-188]; or

(4) [Repealed]

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7), (8) [Repealed]

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or



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*** CURRENT THROUGH PL 111-198, APPROVED 7/2/2010 ***

TITLE 49. TRANSPORTATION
SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS
PART B. COMMERCIAL
CHAPTER 311. COMMERCIAL MOTOR VEHICLE SAFETY
SUBCHAPTER III. SAFETY REGULATION

Go to the United States Code Service Archive Directory

49 USCS § 31131

§ 31131. Purposes and findings

(a) Purposes. The purposes of this subchapter [49 USCS §§ 31131 et seq.] are--

- (1) to promote the safe operation of commercial motor vehicles;
- (2) to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety; and
- (3) to ensure increased compliance with traffic laws and with the commercial motor vehicle safety and health regulations and standards prescribed and orders issued under this chapter [49 USCS §§ 31101 et seq.].

(b) Findings. Congress finds--

- (1) it is in the public interest to enhance commercial motor vehicle safety and thereby reduce highway fatalities, injuries, and property damage;
- (2) improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations;
- (3) enhanced protection of the health of commercial motor vehicle operators is in the public interest; and
- (4) interested State governments can provide valuable assistance to the United States Government in ensuring that commercial motor vehicle operations are conducted safely and healthfully.

HISTORY:

(July 5, 1994, P.L. 103-272, § 1(e), 108 Stat. 999.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised	Source (U.S. Code)	Source (Statutes at Large)
Section		

Exhibit B

[Code of Federal Regulations]
[Title 29, Volume 3]
[Revised as of July 1, 2009]
From the U.S. Government Printing Office via GPO Access
[CITE: 29CFR782.3]

[Page 606-607]

TITLE 29--LABOR

CHAPTER V--WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 782_EXEMPTION FROM MAXIMUM HOURS PROVISIONS FOR CERTAIN EMPLOYEES OF MOTOR CARRIERS--Table of Contents

Sec. 782.3 Drivers.

(a) A "driver," as defined for Motor Carrier Act jurisdiction (49 CFR parts 390-395; Ex parte No. MC-2, 3 M.C.C. 665; Ex parte No. MC-3, 23 M.C.C.1; Ex parte No. MC-4, 1 M.C.C. 1), is an individual who drives a motor vehicle in transportation which is, within the meaning of the Motor Carrier Act, in interstate or foreign commerce. (As to what is considered transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act, see Sec. 782.7). This definition does not require that the individual be engaged in such work at all times; it is recognized that even full-duty drivers devote some of their working time to activities other than such driving. "Drivers," as thus officially defined, include, for example, such partial-duty drivers as the following, who drive in interstate or foreign commerce as part of a job in which they are required also to engage in other types of driving or nondriving work: Individuals whose driving duties are concerned with transportation some of which is in intrastate commerce and some of which is in interstate or foreign commerce within the meaning of the Motor Carrier Act; individuals who ride on motor vehicles engaged in transportation in interstate or foreign commerce and act as assistant or relief drivers of the vehicles in addition to helping with loading, unloading, and similar work; drivers of chartered buses or of farm trucks who have many duties unrelated to driving or safety of operation of their vehicles in interstate transportation on the highways; and so-called "driver-salesmen" who devote much of their time to selling goods rather than to activities affecting such safety of operation. (Levinson v. Spector Motor Service, 300 U.S. 649; Morris v. McComb, 332 U.S. 422; Richardson v. James Gibbons Co., 132 F. (2d) 627 (C.A. 4), affirmed 319 U.S. 44; Gavril v. Kraft Cheese Co., 42 F. Supp. 702 (N.D. Ill.); Walling v. Craig, 53 F. Supp. 479 (D. Minn.); Vannoy v. Swift & Co. (Mo. S. Ct.), 201 S.W. (2d) 350; Ex parte No. MC-2, 3 M.C.C. 665; Ex parte No. MC-3, 23 M.C.C. 1; Ex parte Nos. MC-2 and MC-3, 28 M.C.C. 125; Ex parte No. MC-4, 1 M.C.C. 1. Cf. Colbeck v. Dairyland Creamery Co. (S.D. Supp. Ct.), 17 N.W. (2d) 262, in which the court held that the exemption did not apply to a refrigeration mechanic by reason solely of the fact that he crossed State lines in a truck in which he transported himself to and from the various places at which he serviced equipment belonging to his employer.)

(b) The work of an employee who is a full-duty or partial-duty "driver," as the term "driver" is above defined, directly affects "safety of operation" within the meaning of section 204 of the Motor Carrier Act whenever he drives a motor vehicle in interstate or foreign commerce within the meaning of that act. (Levinson v. Spector Motor Service, 300 U.S. 649, citing Richardson v. James Gibbons Co., 132 F. (2d) 627 (C.A. 4), affirmed 319 U.S. 44; Morris v. McComb, 332 U.S. 422; Ex parte No. MC-28, 13 M.C.C. 481, 482, 488; Ex parte Nos. MC-2 and MC-3, 28 M.C.C. 125, 139 (Conclusion of Law No. 2). See also Ex parte No. MC-2, 3 M.C.C. 665; Ex parte No. MC-3, 23 M.C.C. 1; Ex parte No. MC-4, 1 M.C.C. 1.) The Secretary has power to establish, and has established, qualifications and maximum hours of service for such drivers employed by common and contract carriers or passengers or property and by private carriers of property pursuant to section

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Exhibit C

204, of the Motor Carrier Act. (See Ex parte No. MC-4, 1 M.C.C. 1; Ex parte No. MC-2, 3 M.C.C. 665; Ex parte No. MC-3, 23 M.C.C. 1; Ex parte No. MC-28, 13 M.C.C. 481; Levinson v. Spector Motor Service, 330 U.S. 649; Southland Gasoline Co. v. Bayley, 319 U.S. 44; Morris v. McComb, 332 U.S. 422; Safety Regulations (Carriers by Motor Vehicle), 49 CFR parts 390, 391, 395) In accordance with principles previously stated (see Sec. 782.2), such drivers to whom this regulatory power extends are, accordingly, employees exempted from the overtime requirements of the Fair Labor Standards Act by section 13(b)(1). (Southland Gasoline Co. v. Bayley, 319 U.S. 44; Levinson v. Spector Motor Service, 330 U.S. 649; Morris v. McComb, 332 U.S. 422; Rogers Cartage Co. v. Reynolds, 166 F. (2d) 317 (C.A. 6). This does not mean that an employee of a carrier who drives a motor vehicle is exempted as a "driver" by virtue of that fact alone. He is not exempt if his job never involves transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act (see Sec. Sec. 782.2 (d) and (e), 782.7, and 782.8, or if he is employed by a private carrier and the only such transportation called for by his job is not transportation of property. (See Sec. 782.2. See also Ex parte No. MC-28, 13 M.C.C. 481, Cf. Colbeck v. Dairyland Creamery Co. (S. Ct. S.D.), 17 N.W. (2d) 262 (driver of truck used only to transport himself to jobsites, as an incident of his work in servicing his employer's refrigeration equipment, held non exempt).) It has been held that so-called "hostlers" who "spot" trucks and trailers at a terminal dock for loading and unloading are not exempt as drivers merely because as an incident of such duties they drive the trucks and tractors in and about the premises of the trucking terminal. (Keegan v. Ruppert (S.D. N.Y.), 7 Labor Cases, par. 61,726 6 Wage Hour Rept. 676, cf. Walling v. Silver Fleet Motor Express, 67 F. Supp. 846)

Oakland, California, Code of Ordinances >> Title 2 - ADMINISTRATION AND PERSONNEL >> Chapter 2.28 - LIVING WAGE ORDINANCE >>

Chapter 2.28 - LIVING WAGE ORDINANCE

Sections:

- 2.28.010 - Title and purpose.
- 2.28.020 - Definitions.
- 2.28.030 - Payment of minimum compensation to employees.
- 2.28.040 - Duration of requirements.
- 2.28.050 - Notifying employees of their potential right to the federal earned income credit.
- 2.28.060 - Contract review process and city reporting and record keeping.
- 2.28.070 - Noncompliance review and appeal.
- 2.28.080 - Waivers.
- 2.28.090 - Exemptions.
- 2.28.100 - RFP, contract and financial assistance agreement language.
- 2.28.110 - Obligations of contractors and financial assistance recipients.
- 2.28.120 - Retaliation and discrimination barred.
- 2.28.130 - Monitoring, investigation and compliance.
- 2.28.140 - Employee complaint process.
- 2.28.150 - Private right of action.
- 2.28.160 - Collective bargaining agreement supersession.
- 2.28.170 - Expenditures covered by this article.
- 2.28.180 - Ordinance applicable to new contracts and city financial assistance.
- 2.28.190 - Implementing regulations.

2.28.010 - Title and purpose.

This chapter shall be known as the "Oakland living wage ordinance." The purpose of this chapter is to require that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors of the city and employees of CFARs.

(Ord. 12050 § 1, 1998)

2.28.020 - Definitions.

The following definitions shall apply throughout this chapter:

"Agency" means that subordinate or component entity or person of the city (such as a department, office, or agency) that is responsible for solicitation of proposals or bids and responsible for the administration of service contracts or financial assistance agreements.

"City" means the city of Oakland and all city agencies, departments and offices.

"City financial assistance recipient" (CFAR) means any person who receives from the city financial assistance as contrasted with generalized financial assistance such as through tax legislation, in an amount of one hundred thousand dollars (\$100,000.00) or more in a twelve (12) month period.

1. Categories of such assistance include, but are not limited to, grants, rent subsidies, bond financing, financial planning, tax increment financing, land writedowns, and tax credits. City staff assistance shall not be regarded as financial assistance for purposes of this article. The forgiveness of a loan shall be regarded as financial assistance, and a loan provided at below market interest rate shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f).
2. A tenant or leaseholder of a CFAR who occupies property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who will employ at least twenty (20) employees for each working day in each of twenty (20) or more calendar weeks in the twelve (12) months after occupying or using such property, shall be considered a "city financial assistance recipient" for the purposes of this chapter and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.

"Contractor" means any person that enters into a service contract with the city in an amount equal to or greater than twenty-five thousand dollars (\$25,000.00).

"Employee" means any person who is employed (1) as a service employee of a contractor or subcontractor under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees; restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; health care employees; gardeners; waste management employees; and clerical employees; or (2) by a CFAR and who expends at least half of his or her time on the funded project/program or property which is the subject of city financial assistance, or (3) by a service

contractor of a CFAR and who expends at least half of his or her time on the premises of the CFAR and is directly involved with the funded project/program or property which is the subject of city financial assistance. Any person who is a managerial, supervisory or confidential employee is not an employee for purposes of this definition.

"Employer" means any person who is a city financial assistance recipient, contractor, or subcontractor.

"Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

"Service contract" means (1) a contract let to a contractor by the city for the furnishing of services, to or for the city, except contracts where services are incidental to the delivery of products, equipment or commodities, and that involves an expenditure equal to or greater than twenty-five thousand dollars (\$25,000.00), or (2) a lease or license under which services contracts are let by the lessee or licensee. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for the purposes of this definition.

"Subcontractor" means any person who enters into a contract with (1) a contractor to assist the contractor in performing a service contract or (2) a CFAR to assist the recipient in performing the work for which the assistance is being given or to perform services on the property which is the subject of city financial assistance. Service contractors of CFARs shall not be regarded as subcontractors except to the extent provided by the definition of "employee" in this section.

"Trainee" means a person enrolled in a job training program which meets the city job training standards.

(Ord. 12050 § 2, 1998)

2.28.030 - Payment of minimum compensation to employees.

- A. Wages. Employers shall pay employees a wage to each employee of no less than the hourly rates set under the authority of this chapter. The initial rate shall be eight dollars (\$8.00) per hour worked with health benefits, as described in this chapter, or otherwise nine dollars and twenty-five cents (\$9.25) per hour. Such rate shall be upwardly adjusted annually, no later than April 1st in proportion to the increase immediately preceding December 31st over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to nine dollars and twenty-five cents (\$9.25). The city shall publish a bulletin by April 1st of each year announcing the adjusted rates, which shall take effect upon such publication. Such bulletin will be distributed to all city agencies, departments and offices, city contractors and CFARs upon publication. The contractor shall provide written notification of the rate adjustments to each of its employees and to its subcontractors, who shall provide written notices to each of their employees, if any, and make the necessary payroll adjustments by July 1st.
- B. 1. Compensated Days Off. Employers shall provide at least twelve (12) days off per year for sick leave, vacation, or personal necessity at the employee's request. Employees shall accrue one compensated day off per month of full-time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve (12) compensated days off.
2. Employers shall also permit employees to take at least an additional ten days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year. This chapter does not mandate the accrual from year to year of uncompensated days off.
- C. Health Benefits. Health benefits required by this chapter shall consist of the payment of at least one dollar and twenty five-cents (\$1.25) per hour towards the provision of health care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the agency not later than thirty (30) days after execution of the contract to qualify for the wage rate in subsection (A) of this section for employees with health benefits.

(Ord. 12050 § 3, 1998)

2.28.040 - Duration of requirements.

- A. For CFARs, assistance given in an amount equal to or greater than one hundred thousand dollars (\$100,000.00) in any twelve (12) month period shall require compliance with this chapter for the life of the contract in the case of assistance given to fund a program or five years in the case of assistance given to purchase real property, tangible property or construct facilities, including but not limited to materials, equipment, fixtures, merchandise, machinery or the like.
- B. A service contractor and subcontractor shall be required to comply with this chapter for the term of the contract.

(Ord. 12050 § 4, 1998)

2.28.050 - Notifying employees of their potential right to the federal earned income credit.

Employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit ("EIC") under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. Section 32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer. These forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within thirty (30) days of employment under the terms of this chapter and as required by the Internal Revenue Code.

(Ord. 12050 § 5, 1998)

PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On July 19, 2010, I served upon the following parties in this action:

Jay Ian Aboudi
The Law Office of Jay Ian Aboudi
1855 Olympic Blvd., Ste. 210
Walnut Creek, CA 94596

copies of the document(s) described as:

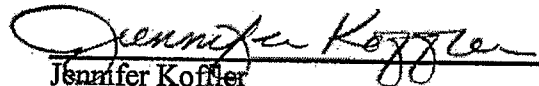
PLAINTIFFS' NOTICE OF LODGING OF FEDERAL AND OTHER AUTHORITIES

BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

BY OVERNIGHT DELIVERY SERVICE I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.

BY E-MAIL I caused to be transmitted each document listed herein via the e-mail address(es) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on July 19, 2010.


Jennifer Koffler

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