

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: **1830402** Originating District: **Atlanta GA District Office**
Local Filing Number: **2017-111-31352** Investigating District: **Atlanta GA District Office**
WHMIS Case Number: Lead Investigator: **(b) (7)(C)**
Registration Date: **08/15/2017**
Assignment Date: **09/25/2017**

Employer Information

Trade Name: **Sea Island Company**

Legal Name: **Sea Island Acquisition LLC**

Address: **100 Cloister Drive**

EIN: **27-3164607**

County: **Glynn**

NAICS Code: **561599**

Sea Island, GA31561

No. Of Employees: **(b) (4)**

Investigation Information

Period Investigated From: **09/30/2015**
To: **09/28/2017**
Investigation Type: **(b) (7)(E)**
Investigation Tool: **Full Investigation**
Compliance Status: **Agree to Comply**

BNPI:
Reinvestigation: ☒
Recurring Violation: ☐
Future Compliance Agreed: ☒
Involved in AG: ☐

Recommended Action:

BWFS:	☐	RO/NO Review:	☐
CMP:	☐	Follow Up Investigation:	☐
Litigation:	☐	Other Action:	☐
Civil Action:	☐	Denial of Future Certificate:	☐
Criminal Action:	☐	BW Payment Deadline:	04/20/2018
Submit For Opinion:	☐	Trailer forms attached:	☐

CL

Violation / Compliance Status	Violations	EPs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Record Keeping - Per Child where records were not kept - No CMP / Agree to Comply	240				\$0.00	\$0.00	

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FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<i>Failure to pay Minimum Wage / Agree to Comply</i>	98	98	\$1,073.25	\$1,073.25	\$0.00	\$0.00	
<i>Failure to pay proper overtime / Agree to Comply</i>	167	167	\$45,849.20	\$45,849.20	\$0.00	\$0.00	
<i>Failure to keep accurate records / Agree to Comply</i>	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSA Totals:	167	167	\$46,922.45	\$46,922.45	\$0.00	\$0.00	
Total Violations Under FLSA:		266					\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<i>No Violation found for this act / Compliance (no violations found)</i>					\$0.00	\$0.00	
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	167	Unduplicated Employees Agreed:	167
Total Amount BWs Computed:	\$46,922.45	Total Amount BWs Agreed:	\$46,922.45
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

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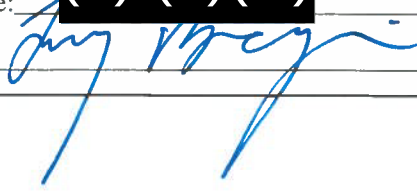
Conclusions & Recommendations:

127.5 HRS 203(s)(1)(A) FLSA coverage-Sec.206,Sec.207 vios-EEs not pd all hrs worked due to supervisors editing time on time cards;also Sec.207vio-non-exempt EE pd salary/no addt'l pay for OT;Sec.211-ER failed to keep records of hrs worked for non-exempt EE.Sec.212-ER failed to retain records of minors ages.ER ATC by paying EEs for all hours worked,pay non-exempt EE addt'l pay for OT,keep accurate records of hrs worked,non-exempt EE clock in/out, retain records of minors ages.ER ATP (b) (7)(E)

WHI Signature: (b) (7)(C)

Date:

3/30/18

Reviewed By: 

Date:

4/27/18

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FLSA NARRATIVE

COVERAGE: The legal name of the company is Sea Island Acquisition, LLC. This is a multi-unit establishment that has been in business since 1928. The officers of the corporation are:

- Scott Steilen, President/CEO
- Ron Roberts, CFO/Secretary
- Parra Vaughan, Chief Marketing Officer
- William McHugh, General Counsel
- Clifford Hickey, Vice-President/Assistant Secretary
- Scott T. Carpenter, Vice-President

(see Exhs. C-1, page 2 and D-1-b)

The company is represented by Attorney Andria Ryan of Fisher & Phillips, LLP.

Fisher & Phillips, LLP
1075 Peachtree Street, NE
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Atlanta, GA 30309
(404)240-4219
Email: alureryan@fisherrphillips.com

This business is a Foreign Limited Liability Company incorporated in the state of Delaware. This is a resort that offers guest accommodation that includes rooms, beach clubs, ocean residences, lodges, cottages; dining options ranging from casual to formal dining through five star restaurants; spa facilities, tennis and squash facilities. Recreational activities are provided such as horseback riding, kayaking, fishing and shooting schools (see Exhs C-1-g and C-1-h).

There are approximately (b) (4) employees.

Enterprise coverage per 203(s)(1)(A) is applicable for the investigation period based on a letter received from the employer's attorney stating the following "The Company does not dispute that it is subject to the provisions of the Fair Labor Standards Act" (see Exh. D-1-b). The Annual Dollar Volume of the business investigated for the calendar years of 2014, 2015 and 2016 was not provided.

This investigation was limited to the Accounting and Housekeeping Departments. The period of investigation is from September 30, 2015 to September 28, 2017.

The 3(d) employer is a combination of people. Every department has a director with several layers of management. There is a Department Leader under the director who initiates the hiring process and works through the company's disciplinary process when terminating an employee as well as consulting with the company's Human Resource Department. The department leaders approve leave requests. The directors and the department leaders schedules employees' hours of

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work. The Human Resource Department sets the rates of pay as well as authorizes pay raises. The leaders of each department submits a form for a pay raise to the Human Resource Department who determines if the pay raise is in compliance with the company's pay structure.

MODO: This is a multi-establishment employer and the MODO is the Atlanta, GA DO.

(b) (7)(E) The MODO ID # is 72766 (see Exhs. D-2-e to D-2-h).

EXEMPTIONS:

541.1 was claimed by the employer for the following employees in the Accounting Department and is applicable based on conversations with the employer:

- (1) (b) (7)(C) Sr. Accountant/Assistant Mgr. Administration who supervises 3 full-time employees
- (2) (b) (7)(C) Account Manager, who supervises 2 full-time employees
- (3) (b) (7)(C) Manager, who supervises 6 full-time employees

The aforementioned employees all receive a weekly salary in excess of \$455.00 per week (see Exh. E-1-d) and, based on conversations with the employer, are performing duties within the Executive Exemption.

541.2 was claimed for the following employees in the Accounting Department and is applicable to the following employees that were interviewed:

- (1) (b) (7)(C) Staff Accountant (b) (7)(C)
- (2) (b) (7)(C) Accountant (b) (7)(C)
- (3) (b) (7)(C) Sr. Accountant (b) (7)(C)

The aforementioned employees all receive a weekly salary in excess of \$455.00 per week (see Exh. E-1-d) and, based on their interview statements, are performing duties that come within the Administrative Exemption.

There were other employees that were not interviewed in the Accounting Department; however based on conversations with the employer regarding their duties, as well as the salary amount, the exemption appears to be applicable (see Exh. E-1-d).

541.2 was claimed by the employer for (b) (7)(C); however, based on (b) (7)(C) interview, it was determined that this exemption was not applicable (b) (7)(C)

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STATUS OF COMPLIANCE:

(b) (7)(C)

(b) (7)(E)

This investigation also revealed that the employer employed minors 18 and younger without retaining appropriate age certificates verifying the ages of minors.

Investigator attempted to contact the complainant by telephone on 9/28/17 at which time a telephone message was left for him to which he did not respond. On 10/2/17 a call me letter was sent to (b) (7)(C) who did not respond (see Exh. D-1-m); neither was the letter returned by the postal service.

(b) (7)(C)

Prior history:

One limited (b) (7)(E) investigation was conducted in 2000

CID 1011965 – The investigation was limited to the Food Purchasing Department - the department that (b) (7)(C) worked in. No violations were found.

Unknown who the final conference was held with or when the final conference was held as there is not a narrative in Whisard (see Exh. D-2-b).

CID 1453315 Investigation assigned and dropped (b) (7)(C)

(b) (7)(C) (see Exh. D-2-c).

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CID 203821 – (b) (7)(E) – employer holding final pay check. Spoke with Tony Armstrong. Employee due and paid \$64.00 (see Exh. D-2-d).

According to the company's attorney, there are not any 16 (b) actions currently filed against the company.

Section 206 – Employees in the Housekeeping Department were not paid for all hours worked as a result of two former supervisors editing employees' time cards.

(b) (7)(E)

See "A" Exhs. 1, 2, 5, 6, 8 – 13, 16, 17, 19, 21, 25, 26, 30, 31, 33, 37 – 41, 48 – 50, 52, 53, 59 – 61, 63 – 68, 70 – 74, 76, 77, 79 – 88, 90, 91, 93, 96, 97, 99, 100, 108, 109, 111 – 116, 120, 123, 126, 128, 129, 131, 132, 135, 138, 141 – 143, 145 – 147, 149 – 153, 155 – 157, 162 – 164, 166 and 167.

Employees due back wages: 98

Back wages due: \$1,073.25

3 employees were found due less than \$20.00 each in minimum wage back wages (see Exhs. AA-4, AA-9 and AA-13).

Section 207 – Non-exempt employee was paid a salary and no additional pay for overtime hours worked. Also, employees in the Housekeeping Department were not paid for all hours worked as a result of a former Executive House Keeping Director and two former supervisors editing employees' time cards.

(b) (7)(E)

(b) (7) (E)

See Exhs. A-1 to A-167.

Employees due back wages: 167
Back wages due: \$45,849.20

23 employees were found due less than \$20.00 in overtime back wages (see Exhs. AA-1 to AA-23).

TOTAL MW & OT BACK WAGES DUE: \$46,922.45 – 167 employees

CMPs were not computed. The previous investigation of this employer in 2000 did not reveal any violations.

Section 211 – Employees working in the Accounting – Membership Services Department that handle the billing, process payments, make reservations and answer questions about membership did not record their hours of work. These employees were paid a salary and considered to be exempt employees.

Section 212 – This employer employed a total of 240 minors in violation of the recordkeeping requirements as a result of not obtaining/retaining the appropriate age certifications documenting the ages of the minors (see Exhs. D-3 to D-3-g and WH-103).

CL CMPs not applicable for recordkeeping violations.

DISPOSITION:

The initial conference was held on October 10, 2017 via telephone. The following employer representatives were on this call:

- Attorney Andria Ryan of Fisher & Phillips, LLP
- Suzanne Tilghman, Team Member/Relations Manager
- Carolyn Kuchera, Payroll Manager

Prior to this conference call, on October 5, 2017, Investigator was contacted by Attorney Ryan who advised that she was retained by the company. A letter was also provided (see Exhs. D-1-b to D-1-c).

During this initial conference, Investigator was advised that the employer was currently conducting a review of the time/pay records of the Housekeeping Department to determine if employees were paid for all hours worked as a result of being advised by an employee that the employees were not being paid for all hours worked. Investigator was also advised that the Director of Housekeeping and two supervisors were terminated as a result of issues relating to employees' time. Attorney Ryan also advised Investigator that coverage was being asserted.

On December 13, 2017 a compliance meeting was held with the above named Attorney and the employer's Team Member/Relations Manager. At this time, the employer was advised that this investigation was being limited to the Accounting and Housekeeping Departments due to the number of employees (2,000+).

The 541 exemption was discussed with the employer as the records revealed that a significant number of employees are being paid a salary. The Attorney advised that when the salary threshold was going to be revised, the company did an audit of all of their salary employees and were preparing to raise the employees' salaries. However, when the new salary threshold amount fell through, the company did not raise employees' salaries.

Investigator suggested to the employer that they may want to carefully review the duties of the employees considered to be exempt as administrative employees are in fact performing the type of duties that come within the Administrative Exemption.

Investigator advised the employer that the appointment letter requesting records for the information requested that documents verifying the ages of minors 18 and younger be provided, which were not. The employer and their Attorney responded that they do not have documents verifying the ages of minors and they were not aware of the requirement. Investigator was also advised that the minors' drivers' license is looked at, as well as the date of births are on the I-9s. The employer also stated that it is the policy of the company to not hire anyone under the age of 16. Investigator advised the employer that employers are required to retain certificates of age certifying that minors are above the oppressive child labor age such as a work permit. The employer agreed to comply with this requirement going forward.

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On February 27, 2018 a telephone compliance meeting was held with the employer to discuss the investigation findings. Present on this telephone compliance meeting was the VP of Human Resources, Team Member/Relations Manager and the company's attorney. The employer was advised of (b) (7)(C) (b) (7)(E) as (b) (7)(C) (b) (7)(E)

The Administrative Exemption was discussed in relation to the duties performed by (b) (7)(C) (b) (7)(C) and Investigator advised that, based on (b) (7)(C) statement, (b) (7)(C) did not perform duties in line with the Administrative Exemption.

The employer was also questioned as to the completion of the computations for the employees in the Housekeeping Department that were not paid for all hours worked. The employer advised that the calculations were not completed and that the employer anticipated having the calculations completed by March 16, 2018.

This employer employed lifeguards that were 15+ years of age and the employer was requested to provide copies of the certifications as it is a requirement that lifeguards be certified by the American Red Cross or similar certifying organization in aquatics and water safety as per FOH 33d06(a). The documents were provided (see Exhs. D-3-r to D-3-k-1).

Investigator advised employer that a review of the date of births provided revealed that two 16 year olds were golf attendants. The employer was questioned about their duties including the operation of a motorized golf cart. The employer advised at a later date that the minors only operated the golf carts on the golf course only (see Exh. D-3-L-1). Per FOH 33h02(c)1 and 2 16 and 17 year old minors may operate motorized vehicles such as riding mowers or golf carts as long as they are not driven on public roads.

REASON FOR VIOLATIONS:

MW: It was brought to the attention by an employee that the employees in the Housekeeping Department were not being paid for all hours worked. The employer also stated that an Executive Housekeeper Director and two supervisors were editing employees' hours which resulted in housekeeping employees not being paid for all hours worked.

OT: It was brought to the attention by an employee that the employees in the Housekeeping Department were not being paid for all hours worked. The employer also stated that an Executive Housekeeper Director and two supervisors were editing employees' hours which resulted in housekeeping employees not being paid for all hours worked.

With regards to the non-exempt employee that was paid a salary, the employer's position was that the employee was an exempt employee.

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RK: The non-exempt employee that was paid a salary was considered to be an exempt employee by the employer. With regards to the employees in the Housekeeping Department the time records were edited by two former supervisors and an Executive Housekeeper Director.

CL: The employer stated that they were not aware of the requirement to retain appropriate documents verifying the ages of employees 18 and younger.

SUMMARY OF FUTURE COMPLIANCE BY EMPLOYER:

MW: The employer agreed to pay minimum wage for all hours worked/recorded in the time records.

OT: The employer agreed to pay proper overtime to non-exempt employees that are paid a salary and is, in fact, in compliance as the employer has employees that are paid a salary and additional half-time for overtime hours. The employer agreed to pay proper overtime for all overtime hours worked/recorded in the time records.

With regards to the minimum wage and overtime violations, the VP of Human Resources also stated that there is now a process in place that if any edits need to be made, employees must sign off on the edits. Managers in the Housekeeping Department have been advised that they cannot edit employees' times.

RK: The employer agreed to comply by paying the housekeeping employees for all hours worked.

The employer has removed the non-exempt employee from an exempt status and the employee now clocks in and out.

CL: The employer agreed to obtain and retain copies of appropriate documents verifying the ages of employees 18 and younger.

On March 29, 2018 a final conference was held with employer by telephone. Present on this call was the employer's Attorney and the VP of Human Resources.

As this employer computed the back wages, the employer was advised of the back wages that can be enforced by Wage and Hour. The employer computed back wages in the amount of \$60,000+; however the amount enforceable by Wage and Hour totaled \$46,922.45.

The employer agreed to pay the back wages before/by April 20, 2018. The back wage payment process was explained to the employer.

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The employer was also advised of the child labor Reg. 3 violations as a result of not retaining documents verifying the ages of minors 18 and younger.

The following documents/publications were sent to the employer's Attorney via email after the final conference:

- Back Wage Summary
- Back Wage Disbursement and Pay Instructions
- Receipts For Payment of Back Wages
- WH-103

CMPs – The possibility of the assessment of CMPs were discussed.

Publications:

- provided on September 28, 2017 with the appointment letter: Handy Reference Guide, Fact Sheets #44, #28D and #77A
- provided on March 29, 2018 via email to the employer's attorney: Child Labor Bul. 101, Reg. 516 – Recordkeeping, Reg. 541 – Executive, Administrative, Professional Exemptions, Reg. 785 – Hours Worked and Reg. 578 – MW/OT Civil Money Penalties

Recommendation: It is recommended that this case is administratively closed (b) (7)(E)

(b) (7)(E)

Responsible person(s) for the company is: William McHugh, General Counsel for Company and Attorney Andria Ryan of Fisher & Phillips, LLP

All correspondence should be sent to:

Attorney Andria Ryan
Fisher & Phillips, LLP
1075 Peachtree Street, NE
Suite 3500
Atlanta, GA 30309

Email: alureryan@fisherrphillips.com

(b) (7)(C)

Wage Hour Investigator
March 29, 2018