

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Penalty Order and  
Order to Comply Issued to Dohmen, Inc.  
d/b/a Little Oscar's Family Restaurant

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

This matter came before Administrative Law Judge Barbara Case for a hearing on May 19, 2016. The record closed on that date.

Timothy S. Christensen, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). Vicky Dohmen appeared on behalf of Dohmen, Inc. (Dohmen, Inc. or Respondent).

**STATEMENT OF THE ISSUES**

1. Did Dohmen, Inc. violate Minn. Stat. § 181.04, subd. 3 (2014) by allowing minors to work before 7:00 a.m. or after 9:00 p.m.?
2. Did Dohmen, Inc. violate Minn. Stat. § 181.04, subd. 4 (2014) by allowing minors to work for more than 8 hours in a 24-hour period?
3. Did the Department properly assess penalties in the amount of \$3,500 pursuant to Minn. Stat. § 181A.12 (2014)?
4. Did the Department properly order that Dohmen, Inc. cease and desist from violating Minn. Stat. § 181A.04, subsd. 3, 4?
5. Did the Department properly order that Dohmen, Inc. take affirmative steps to comply with all provisions of the Minnesota Child Labor Standards Act, Minnesota Statutes chapter 181A (2014)?

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge finds that Dohmen, Inc. violated the Minnesota Child Labor Standards Act and respectfully recommends that the Department's fine and orders be upheld.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Respondent is a Minnesota business corporation with its registered office at 23570 Main St., Hampton Minnesota, 55031. Respondent owns and operates a restaurant located at 23470 Emery Ave., Hampton, Minnesota, under the registered assumed name Little Oscar's Family Restaurant.<sup>1</sup> The owner of Little Oscar's is Vicky Dohmen (Ms. Dohmen).

2. Respondent came to the Department's attention because of a First Report of Injury form that was filed with the Department.<sup>2</sup>

3. On April 3, 2015, the Department served an Order to Comply and a Demand for the Submission of Records on Respondent, demanding records related to any of Respondent's minor employees who were employed between April 2, 2013 and April 3, 2015.<sup>3</sup>

4. Respondent provided the Department the requested records which included a list of Respondent's minor employees, job descriptions, calendars, hours of work logs and proof of age forms (I-9 forms) for each minor employee.<sup>4</sup>

5. The Department reviewed them and found that the records documented violations of the Minnesota Child Labor Standards Act for five minors employed by Respondent.<sup>5</sup> Specifically, the records show that:

- a. An employee who was 14 years old worked before 7:00 a.m. on three occasions. On one occasion the employee began at 6:47 a.m., on one occasion at 6:54 a.m., and on one occasion at 5:52 a.m. The Department issued a \$500 fine for this violation.
- b. An employee who was 14 years old worked after 9:00 p.m. and worked more than 8 hours in a day. On one occasion the employee worked until 9:13 p.m., and on another occasion until 9:54 p.m. On one occasion the employee worked 9.85 hours, on a different occasion 11.53 hours, and on another 9.67 hours. The Department issued a \$500 fine for the employee working past 9:00 p.m. and a \$500 fine for the employee working more than 8 hours in a day.
- c. An employee who was 15 years old worked before 7:00 a.m. on 18 days and more than 8 hours in a day on four days. The Department issued a \$500 fine for the employee working before 7:00 a.m., and a \$500 fine for the employee working more than 8 hours in a day.

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<sup>1</sup> Ex.6.

<sup>2</sup> Ex. 1.

<sup>3</sup> Ex. 2

<sup>4</sup> Ex. 3

<sup>5</sup> Exs. 3, 6.

- d. An employee who was 14-15 years old worked after 9:00 p.m. on 3 occasions. The Department issued a \$500 fine for this violation.
- e. An employee who was 15 years old worked more than 8 hours in a day on two occasions.<sup>6</sup> The Department issued a \$500 fine for this violation.<sup>7</sup>

6. On July 7, 2015, the Department mailed a Notice of Initial Findings to Respondent.<sup>8</sup> The Notice of Initial Findings alleged that Dohmen, Inc. had allowed three minor employees under the age of 16 to work before 7:00 a.m., two minor employees under the age of 16 to work after 9:00 p.m. and three minor employees under the age of sixteen to work more than eight hours in one day.<sup>9</sup> The fine for each violation was \$500 and the total fine was \$4,000.

7. On July 28, 2015, the Department received a request for an Informal Conference from Ms. Dohmen.<sup>10</sup> On the request form Ms. Dohmen explained that she disagreed with the Department's findings because the number of minutes that the minors began earlier than 7:00 a.m. or stayed later than 9:00 p.m. were few. She also explained that any days on which the minors worked more than 8 hours were approved by their parents.<sup>11</sup>

8. The Department held an Informal Conference with Ms. Dohmen. As a result of the Informal Conference the Department removed one \$500 fine for a minor who began work prior to 7:00 a.m. by just a few minutes.<sup>12</sup>

9. The Department issued a Penalty Order and Order to Comply to Respondent on October 19, 2015.

10. On October 30, 2015, Respondent appealed the Penalty Order and Order to Comply.<sup>13</sup>

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Commissioner of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 14.50 and 181A.01-.12 (2014).

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<sup>6</sup> Exs. 3, 6; Testimony (Test.) of Sara Ellstra.

<sup>7</sup> *Id.*

<sup>8</sup> Ex. 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; Test. of S. Ellstra.

<sup>13</sup> Ex. 7.

2. The Department of Labor and Industry has complied with all substantive and procedural requirements of law or rule and the Notice of Hearing in this matter was proper.

3. The Department bears the burden of proof to show, by a preponderance of the evidence, that the Respondent violated Minnesota Statutes Chapter 181A.<sup>14</sup>

4. Minn. Stat. § 181A.04, subd. 3, states that no minor under the age of 16 shall be permitted to work any day before 7:00 a.m. or after 9:00 p.m.

5. The Department proved by a preponderance of the evidence that, on multiple occasions, Respondent allowed two minor employees under the age of 16 to work before 7 a.m. and allowed two minor employees to work after 9:00 p.m.

6. Minn. Stat. § 181A.04 subd. 4, states that no employer shall be permitted to work a minor under the age of 16 more than 40 hours a week or more than eight hours in any 24-hour period.

7. The Department proved by a preponderance of the evidence that on multiple occasions the Respondent allowed three minor employees to work more than eight hours in a 24-hour period.

8. Minn. Stat. § 181A.12 requires the Department to assess a fine of \$500 per employee for each of the violations in this case.

9. The Department's fine is statutorily mandated and its orders that Respondent cease violating and comply with all provisions of Minnesota Chapter 181A are reasonable.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### RECOMMENDATION

The Administrative Law Judge finds that Dohmen, Inc. violated the Minnesota Child Labor Standards Act and respectfully recommends that the Department's \$3,500 fine, Cease and Desist Order, and Compliance Order be **UPHELD**.

Dated: May 25, 2016



BARBARA J. CASE  
Administrative Law Judge

Reported: Digitally Recorded  
No transcript prepared

<sup>14</sup> Minn. R. 1400.7300, subp. 5 (2015).

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61 (2014), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact John Aiken, Director, Division of Labor Standards and Apprenticeship, Department of Labor and Industry, 443 Lafayette Rd., St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014). The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1 (2014), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

Ms. Dohmen does not dispute that she was in violation of the Minnesota Child Labor Standards Act. However, she finds the fine burdensome and the application of the law overly particular when in some cases the minors who worked for her began before 7:00 a.m. or stayed after 9:00 p.m. by just a few minutes.

The Department however, has no discretion regarding the fines. While it did drop the fine in the situation where the sole incident was a minor starting a few minutes early, in other cases the Department found, for each minor, there were incidents of longer periods of time when the minors worked outside of the legal parameters. The fines imposed by the Department were supported by the record.

It is worth noting that the Department's application of only per employee and each violation, but not per incident, significantly reduces the fine from what it might be if calculated per incident. Also, it was clear at the hearing that Ms. Dohmen wishes to run her business in a law abiding manner and now better understands the law as it pertains to minor employees.

**B. J. C.**