

Instruction: This is a model letter. Adapt to fit your facts and circumstances.

Date

VIA FAX & U.S. MAIL

Name
Company
Address
City, State Zip Code

Re:
Exception To Determination of Civil Penalty

Dear. :

Our firm represents (hereinafter " "). appeals and takes exception to the determination of a civil penalty for the alleged violation of the overtime provisions of the FLSA.

The basis for 's exception is that is a small business and the assessed civil penalties are excessive, harsh and unduly burdensome in light of all of the circumstances. denies that it violated the FLSA in either or . However, if any such violations occurred, they occurred without the knowledge or consent of the officers and directors of and were neither intentional nor willful.

is in the construction business, working on various projects through the State of . (hereinafter " ") is the President of and works "on site" with the various projects, although the corporation has its main office in , . Due to this fact, is often away from the main office for extended periods of time. As a result, employs an office manager to oversee payroll, bookkeeping and similar functions. (hereinafter " ") was the office manager during and continued in this capacity through , when he entered the hospital for cancer treatment. died in .

In , was investigated for alleged violations of failing to pay statutory overtime. Although maintains that the individuals in question were legitimate independent contractors exempt from overtime rather than employees, agreed to pay the individuals the alleged back overtime and to comply in the future with all provisions of the FLSA instead of expending its limited funds to litigate the matter. At the conclusion of the investigation, instructed to comply fully with the and in particular to pay overtime to the individuals in question.

Prior to the investigation, reasonably believed that had complied with these instructions. However, as a result of the investigation, learned for the first time that had refused to comply with his instructions and had not paid overtime to the individuals in question. While again contested the status of certain individuals as employees, rather than independent contractors, again elected to agree to pay the overtime compensation alleged to be due and again agreed to comply with the provisions of the Act. Since that time, has fully complied with all provisions of the Act.

In summary, does not believe this is an appropriate case for the assessment of civil penalties. Neither alleged violation was intentional, willful or deliberate. In fact, the allegations stem from conduct of an employee in direct contradiction of explicit instructions to the contrary. Further, is a small business and the assessed civil penalties are excessive, harsh and unduly burdensome.

Sincerely,

by:

/
cc: