

Howard S. Weitzman
Comptroller

Elizabeth Botwin
Chief Deputy Comptroller

Aline Khatchadourian
Deputy Comptroller
for Audit & Special Projects



OFFICE OF THE COMPTROLLER

240 Old Country Road
Mineola, New York 11501
Tel: (516) 571-2386
Fax: (516) 571-5900

May 6, 2009

Mr. Michael Shapiro, President
Able Health Care Services, Inc.
1240 Broadcast Plaza
Merrick, NY 11566

Re: Limited Audit of Able Health Care Services, Inc. Compliance with the Nassau County Living Wage Law

Dear Mr. Shapiro:

A limited compliance audit was performed of contract #CQSS07000130 between Able Health Care Services, Inc. ("Able") and Nassau County. The objective of this audit was to determine whether Able was in compliance with the Nassau County Living Wage Law (the "Law") and related Rules. The review period was calendar year 2007. To accomplish our objective, we reviewed Able's pertinent books and records, performed certain tests and interviewed key personnel.

Based on our limited audit, our findings and recommendations are as follows:

Audit Finding (1):

Compensated Days Off

Able did not provide its covered employees with compensated days off in accordance with the Law. The Law requires employers to provide "no fewer than twelve paid days off per year for sick leave, vacation or personal necessity at the employee's request. Full-time employees shall accrue such leave at a rate of one day per month of full-time employment. Part-time employees who work twenty or more hours per week shall accrue such leave in increments proportional to the rate of accrual for full-time employees."¹

¹ Nassau County Living Wage Law, Nassau Co. Misc. Laws, Title 57, § 3 (2007). The Law and the related rules can be found on the Comptroller's website, at <http://www.nassaucountyny.gov/agencies/Comptroller/LivingWage/index.html>

Instead of providing full-time employees with twelve compensated days off per year, Able's policy entitled full-time employees to four sick days per calendar year. The policy also provided five vacation days upon completion of one year of service. In total, Able's Policy provided covered employees with nine compensated days off per year, a policy that is in violation of the Law. Additionally, the policy did not meet the requirement that employees should accrue compensated days off at the rate of one day per month of full-time employment or provide for the prorated accrual of leave time for eligible part-time employees.

In response to our audit request, Able provided us with an analysis showing that it owes certain covered employees a total of \$12,126.00 in accrued time. We will conduct an audit of Able's compliance with the Law for 2008. The scope of that audit will include tests to determine whether Able has fully complied with the Law's days off requirement.

Audit Recommendation:

Able's policy and practices for providing compensated days off to its employees should be amended so that it complies with the Law. This revised policy should be communicated to all covered employees in accordance with the Comptroller's Rules so that they are aware of their rights and entitlements under the Law.

For the calendar year 2007, Able should immediately make available the accrued leave time owed and notify each of the impacted employees of their entitlements. In instances where days off cannot be provided (i.e. employee has been terminated), cash compensation should be paid to the employee at the mandated rate.

Response from Able Health Care:

The calculation of the compensated days off earned and the related pay totaling \$12,126² is still under review. We have discovered that bonuses paid to a number of the employees in 2007 and additional accrued vacation paid in 2008 was not included in the final calculation.

The company will review and modify our policy as necessary to comply with the requirements of compensated days off and communicate the policy to covered employees. Able will pay the employees any monies owed after the final review of the 2007 calculation is completed.

Target Date for completion: December 31, 2008.

Auditor's Follow-up Response:

The timing of the corrective actions proposed by Able is not acceptable. Under the Law, employers are required to make compensated days off available at the employee's request. We note with significant concern that even though Able was advised of these findings in our draft report on October 8, 2008,

² Subsequent to Able's assertion that its liability for compensated days off is \$12,126, it provided a revised calculation showing that the liability was reduced to \$4,157 through the application of certain payments against its remaining liability for compensated days off earned, but not taken by employees (see Auditor's Follow-up Responses to Audit Findings 1 and 2).

Able's response indicated a targeted completion date for the required corrective action of December 31, 2008.

Able subsequently provided, on November 26, 2008, revised calculation of their outstanding liability for 2007 compensated days off. According to Able, their liability has been reduced from \$12,126 to \$4,157 as a result of additional payments made from April to October 2008 and the inclusion of some other payments that further reduced the amount of the liability.

A preliminary review of Able's revised calculation showing a liability \$4,157 indicated that the wage rates used to pay employees who used accrued compensated time off were below the living wage rate and that they had underpaid those employees for time used by \$5,907 (see Audit Finding 2).

In total, based on the information provided by Able, it owed its employees \$18,033 consisting of \$12,127 for compensated days off still owed to employees and \$5,907 due to wage payments made at lower wage rates than required under the Law when employees were paid for compensated days off. We requested confirmation from Able that the corrective payments were made to employees. Able provided a schedule showing supplemental payments in November and December 2008; however the payments totaled only \$1,278

We will be reviewing the accuracy and appropriateness of methodology of Able's corrective payments as part of our 2008 compliance audit.

Audit Finding (2):

Living Wage Rate

Able did not pay the hourly wage rate required by the Law. The Law requires that "Employers shall pay their employees no less than the living wage for each hour they perform County work and either provide them benefits or supplement their hourly wage rate by an amount no less than the benefits supplement rate."³ During the audit period, the living wage was \$9.50 per hour and the benefits supplement rate was \$1.50 per hour, aggregating \$11.00 per hour. We tested payments for leave utilization made to five employees and found that two out of the five employees were paid less than the required rate. One of those employees was paid \$ 8.00 per hour and the other employee was paid \$ 9.50 per hour. These two employees were collectively underpaid by \$168.60.

We also tested wage rates for twenty-one employees during three test weeks and found that one employee was underpaid by \$5.63. The employee was paid \$9.50 per hour for 3.75 hours instead of the required \$11 per hour.

³ "Nassau County Living Wage Law," Nassau Co. Misc. Laws, Title 57 (2007) § 3a The Law and Rules can be found on the Comptroller's website at: <http://www.nassaucountyny.gov/agencies/Comptroller/LivingWage/index.html>

Audit Recommendations:

Able should:

- Inform covered employees of their entitlement to the required rate of pay;
- identify all under-payments made for compensated days off for the year 2007, calculate the amount owed to each employee, provide the auditors with copies of the calculations, and make the necessary payments to affected employees. The calculations, along with the payments to the affected employees, will be included in the scope of our 2008 audit;
- pay \$5.63 to the employee who was underpaid; and
- review its payroll records to determine if any other employees were underpaid and make retroactive adjustments if necessary.

Response from Able Health Care:

The company will review wage payments made for compensated days off and make any necessary payments, including the one employee identified in the audit.

The company will communicate to covered employees their entitlement to the mandated rate of pay.

Target Date for completion: December 31, 2008.

Auditor's Follow-up Response:

The timing of the corrective actions proposed by Able is not acceptable. We note with significant concern that even though Able was advised of these findings in our draft report on October 8, 2008, Able's response indicated a targeted completion date of December 31, 2008 for the required corrective action. Able should have taken corrective action immediately.

Able should also be aware that the January 2009 amendment to the Comptroller's Rules requires that employers provide a copy of their policy on compensated days off to each employee.

Our audit of compliance for 2008 will also include a verification that all the required corrective payments were made for 2007.

Sincerely,



Aline Khatchadourian
Deputy Comptroller for Audit and Special Projects