



New York Regional Solicitor's Office U.S. Department of Labor **Enforcement Highlights**

June 24, 2024

This is the newsletter for the New York Regional Solicitor's Office (NYSOL), highlighting some of our successes in enforcing the nation's labor laws. Below you can find recent examples of NYSOL's accomplishments protecting workers' rights, wages, and safety on the job.

NYSOL welcomes communications about potential referrals for cases arising under any of the statutes we enforce. You may send them to any contact you have with our office, or Alexander M. Kondo, Counsel for Litigation and Special Projects, kondo.alexander.m@dol.gov.

About NYSOL

NYSOL is responsible for civil trial litigation and legal support for the U.S. Department of Labor for matters arising in New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands. While our attorneys may handle cases arising out of any of the Department of Labor's program areas, the majority of work performed in this region currently arises from the Wage and Hour Division, the Occupational Safety and Health Administration, and the Employee Benefits Security Administration. [Read more about NYSOL here.](#)



Wage and Hour Enforcement Highlights

The laws we enforce protect a worker's right to fair wages. They require employers to pay minimum hourly rates, overtime for work over 40 hours in a week, and to do so without unfair restrictions. And they make oppressive child labor illegal. In our recent cases, we have restored millions of dollars in hard-earned wages for workers, and fought to prevent unfair employer pay practices. We have vigorously protected the rights of workers to complain about their pay and to cooperate with the government anonymously. We have penalized employers for oppressive child labor practices. And we have consistently protected the ability of Department investigators to do their work.

NYSOL obtains \$975,000 for workers of a staffing agency that failed to pay overtime wages and illegally fired an employee for complaining about it

Employees of staffing agency Advantix Logistics Corp. worked long hours, including loading and unloading freight at warehouses for upwards of 70 hours per week. And yet, the company did not pay overtime rates required under the Fair Labor Standards Act. It also failed to meet its legal obligation to keep adequate records of employee working time. And when one employee complained about not being paid for his work, the company fired him in retaliation. NYSOL took swift action, obtaining a temporary restraining order and then a preliminary injunction in the U.S. District Court for the District of New Jersey preventing the company from retaliating against employees who complain about their pay. NYSOL then obtained one consent judgment securing \$65,000 in damages for the illegally terminated employee, and then another including \$910,000 in back wages and liquidated damages for 289 employees who had been denied overtime pay. **Read more in the press releases on the [retaliation order](#) and the [back wage order](#).**

See also the press releases for other recent lawsuits obtaining emergency relief preventing employers from retaliating against workers who make complaints, including [Nova Produce Inspection Services](#), [Berkshire Nursery and Supply Corp.](#), [Sunrise Home Care](#), and [P&B Heating and Air Conditioning](#).

NYSOL secures over \$1.1 million in relief and court order debarring landscaping company from the H-2B visa program

Dario's Landscaping violated the Fair Labor Standards Act by failing to pay employees overtime for hours worked over 40 and tried to cover it up with fake records. They also violated the requirements of the H-2B temporary foreign worker program by failing to pay correct rates, failing to reimburse transportation costs, coaching workers to give false testimony to investigators, and threatening workers that they would not be re-hired if they cooperated with the Department of Labor's investigation. NYSOL obtained a consent judgment in the U.S. District Court for the Eastern District of New York and consent findings before an administrative law judge, together requiring the company to pay over \$1.1 million in back wages, liquidated damages, civil money penalties, and post-judgment interest. The company will be debarred from the H-2B program for one year and must engage a compliance consultant, train managers about the requirements of the FLSA and the H-2B program, and educate workers about their rights. **Read more in the [Dario's Landscaping press release](#).**

NYSOL wins a decision penalizing water park for oppressive child labor practices

Zoom Flume, an upstate New York water park, illegally employed dozens of 15-year-old lifeguards at the top of power-driven, elevated water slides, in violation of the Fair Labor Standards Act and child labor regulations. NYSOL sought and won a decision from an administrative law judge finding the company in violation of the law and ordering it to pay \$38,010 in civil money penalties. **Read more in the [Zoom Flume press release](#).**

NYSOL files lawsuit to prevent staffing agencies from demanding employees work for three years or repay wages, defeats employers' motion to dismiss

Our lawsuit alleges that Advanced Care Staffing, Priority Care Staffing, and CEO Samuel Klein used abusive contract terms to force employees who left before completing three years of work into private arbitrations, and then demanded they repay earned wages to cover the companies' future profits, plus attorneys' fees and arbitration costs. The U.S. District Court for the Eastern District of New York subsequently denied the employers' motion to dismiss the case, ruling that their arbitration demands were "categorically for defendants' benefit," and therefore unlawful kickbacks to the extent the employers' demands would lead to employees being paid less than the federal wage minimums. The litigation is ongoing. **Read more in the press releases on our filing the [complaint](#) and [defeating the employers' motion to dismiss](#).**

See also the [Solicitor of Labor blog entry on our agency's prosecution of violations at workplaces where workers are subject to mandatory arbitration](#).

NYSOL intervenes in a private lawsuit to protect the identities of workers who cooperated with the Department's investigations

Two former employees sued Berkshire Nursery & Supply Corp. in a private lawsuit under the Fair Labor Standards Act and other laws. The Department separately initiated an investigation into the company and its owner, leading to NY SOL filing its own lawsuit, including obtaining a temporary restraining order and preliminary injunction preventing the employer from retaliating against employees. When Berkshire, in the private lawsuit, sought to question workers about their interactions with the Department, NY SOL intervened. Over the company's objections, the U.S. District Court for the Southern District of New York affirmed our right to intervene, and our attorneys attended the worker depositions to make sure that confidential informer identities would not be revealed. **Read more in the [Berkshire Nursery press release](#).**

NYSOL vigorously enforces subpoena compliance by business owners to ensure critical information is provided in FLSA investigations

The Wage and Hour Division, like other investigative agencies of the Department of Labor, regularly issues subpoenas requiring that employers provide documents or testimony as part of its investigations. When Manhattan Halal Gyro King and restaurant owner Samad Uddin failed to comply with this basic government function, NYSOL obtained a civil contempt order in the U.S. District Court for the District of New Jersey, imposing a daily fine. But the employer still failed to cooperate, so NYSOL sought and obtained an order for incarceration, and the U.S. Marshalls Service arrested Mr. Uddin. Following his arrest, Uddin finally complied with the subpoena. **Read more in the [Halal Gyro King the press release](#).**

See also the press releases for other recent actions seeking the arrest of employers who refuse to comply with Department subpoenas, including [Cross Island Fruits](#) and [Il Vizio Ristorante Italiano Corp.](#)

OSHA Enforcement Highlights

All workers deserve a safe and healthy workplace. Our recent work enforcing the Occupational Safety and Health Act has required employers to implement new safety measures and secured millions of dollars in penalties against employers who break the law. We have obtained groundbreaking settlements, convincing employers to take meaningful responsibility for worker safety. And we have repeatedly vindicated the rights of workers to complain about unsafe conditions in the workplace.

NYSOL secures \$812,000 in penalties and an imminent danger injunction requiring detailed safety improvements for roofing contractor whose repeated safety violations caused two worker deaths; refers case for criminal prosecution

Two workers died and many others were placed at risk because ALJ Home Improvement, Inc. repeatedly refused to use basic safety equipment that would protect workers from falls while doing roof work. NYSOL litigated two separate cases against the company, leading to affirmance of thirteen willful violations of the Occupational Safety and Health Act and associated penalties. The company and its individual owner agreed to an extensive set of injunctive measures including notice to OSHA of future jobsites; OSHA-30 training for all supervisors and foremen; and retention of a qualified safety consultant to develop health and safety and disciplinary programs and perform unannounced inspections. The employer also consented to an imminent danger injunction that was ordered by the U.S. District Court for the Southern District of New York to enforce the employer's commitments. NYSOL further made a referral to the U.S. Attorney for the Southern District of New York for the employer's willful violation that resulted in a worker's fatal fall, leading to company owner Jose Lema being sentenced to a four-month prison term. **Read more in the press releases for the [first](#) and [second](#) case, and the [criminal sentence](#).**

See also the press release for our similar actions against [Northridge Construction Corp.](#)

NYSOL protects whistleblower who complained about COVID-19 safety

In March 2020, as the COVID-19 pandemic spiked, an employee of Community Health Center of Richmond expressed concerns about holding an in-person meeting with a large group of people in a windowless conference room. The company responded by

suspending and then firing them. So NYSOL filed a lawsuit alleging that the company and its CEO, Henry Thompson, had illegally retaliated against the employee in violation of Section 11(c) of the Occupational Safety and Health Act. After fending off the defendants' attempts to dismiss the case, they ultimately agreed to a consent judgment ordered by the U.S. District Court for the Eastern District of New York, requiring them to pay \$195,000 in back wages and compensatory damages to the employee, as well as injunctive relief. **Read more in the press releases on [defeating defendants' motion to dismiss](#) and [reaching settlement](#).**

See also the press release for our similar lawsuit against [Kwiat Laser and Eye Surgery Center](#).

NYSOL obtains settlement requiring Rite Aid to implement bloodborne pathogen program for retail staff at all New York and New Jersey stores

Any worker who might have to contact blood needs to be protected from bloodborne pathogens. But when a customer injury at a Rite Aid pharmacy location resulted in spilled blood, the company instructed an employee to clean it up without taking adequate precautions. Rite Aid initially contested the citations issued by the Occupational Safety and Health Administration, so NYSOL took legal action to affirm them in court. As a result, the company agreed to implement a new program to ensure the safety of front-end customer service staff who may be required to clean up blood spills or otherwise handle potentially infectious materials at work. The program will cover all approximately 370 stores in New Jersey and New York. **Read more in the [Rite Aid press release](#).**

NYSOL obtains major overhaul of company safety practices and \$868,000 in penalties against automotive dismantling facility

An employee suffered a crushed hand while using an automotive lift at a facility operated by Auto Store LLC dba My Auto Store. When the Occupational Safety and Health Administration inspected, they discovered myriad safety violations, including fire hazards, electrical hazards, falls, unsafe noise levels, and others. The company contested OSHA's citations, so NYSOL sought to affirm them in court. As a result, the company ultimately committed to pay \$868,628 in penalties, affirm thirty-five violation items, and implement a comprehensive corporate safety and health management system. **Read more in the [My Auto Store press release](#).**

ERISA Enforcement Highlights

Workers and their families should be able to count on receiving the workplace benefits they are promised. Our recent work enforcing the Employee Retirement Income Security Act has helped secure hundreds of millions of dollars in employee benefits. We took on major insurance companies and financial institutions, restoring the promises made in plans for employee life insurance, retirement income, and health insurance.

NYSOL obtains \$5.6 million in life insurance payments for beneficiaries unfairly denied by Prudential Insurance Company

People pay for life insurance because they expect the insurance company to provide needed money to their loved ones after they die. But for years, Prudential Insurance Company collected life insurance premiums for hundreds of people, only to later deny their grieving families' claims, citing the participants' failure to provide "evidence of insurability" at the time they applied. After an investigation by the Employee Benefits Security Administration, NYSOL negotiated a settlement in which Prudential will end this practice. Prudential also committed to pay at least \$5,579,887 in previously denied claims. **Read more in the [Prudential press release](#).**

NYSOL obtains \$124.6 million for employee benefits plans in settlement resolving financial mismanagement lawsuits

The Employee Retirement Income Security Act requires that fiduciaries handling employee retirement plan assets must do so prudently, including diversifying the plan's assets. But an investigation by the Employee Benefits Security Administration found that the fiduciaries of a retirement plan sponsored by DST Systems, Inc., including Ruane, Cunniff & Goldfarb Inc., instead concentrated investments in a select number of securities. For example, the investment manager allowed the stock of a single pharmaceutical company to grow to more than 45 percent of the plan's assets before dramatically declining in value. So NYSOL filed a lawsuit in the U.S. District Court for the Southern District of New York, alleging violations of the Employee Retirement Income Security Act. The resulting settlement resolves our case as well as separate litigation by private plaintiffs and requires the fiduciaries to pay \$124,625,000. **Read more in the [DST Systems press release](#).**

NYSOL obtains agreement from EmblemHealth to stop illegal “cross-plan offsetting” practice that short-changed people seeking medical reimbursements

EmblemHealth used a practice called “cross-plan offsetting” to recoup alleged overpayments it made to healthcare providers under employment-based health plans. In so doing, the company withheld subsequent payments owed to the same providers for healthcare expenses incurred by participants covered under completely different employment-based health plans. We allege that this practice violated Emblem’s fiduciary duties under the Employee Retirement Income Security Act because the insurer benefitted at the expense of the employment-based group health plans and their participants by wrongfully retaining assets from one health plan for a debt allegedly owed by a different health plan. After an investigation by the Employee Benefits Security Administration, we negotiated a settlement in which Emblem has agreed to stop cross-plan offsetting for all ERISA-covered plans. Emblem will also notify affected participants and beneficiaries and reimburse those who were harmed as a result of Emblem’s cross-plan offsetting practice. **Read more in the [EmblemHealth press release](#).**

For questions about this newsletter, please contact Alexander M. Kondo, Counsel for Litigation and Special Projects, kondo.alexander.m@dol.gov.



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