

E D Fashion Inc

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Case ID: 1532712
EIN: 20-4376017

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FLSA NARRATIVE REPORT

COVERAGE:

E D Fashion, Inc is a garment contractor (registration GA#63508-1) involved in the production of women's clothing, *Exhibit C-3*. The firm has gone through two names changes since 2005. Based on information provided at the initial conference, the contractor was operated under KB Apparel, Inc. at 201 E. 58th Street, Los Angeles, CA 90011 prior to November 2008. Mr. Kevin K. Choi and his wife Mrs. Hyun Choi were the owners of KB Apparel, *Exhibits C-2e*. Due to a fire, the firm moved to 770 E. Washington Blvd., Los Angeles, CA 90021 and changed its name to E D Fashion, Inc. Mr. Choi is the sole owner of the firm. The firm incorporated in California on March 3, 2008, *Exhibits C-2a*. The contractor produced garments for the following manufacturers for the past 2 years and the percentage of goods produced for each manufacturer was provided by the firm's consultants and data gathered at the initial conference: [redacted] Ex. 4 (90%) and the remaining 10% were evenly divided among [redacted] Ex. 4

[redacted]. The finished goods are shipped and distributed to the following retailers:
[redacted] Ex. 7(C) *Exhibit C-5*.

Mr. Kevin K. Choi is the sole owner of the firm. He is involved in the daily business operations. He is in charge of setting company regulations; hiring and terminating employees and setting the employees' pay rate including signing the employees' pay checks. He is the employer as defined under Section 3(d). However, throughout the investigation, the firm designated Mr. Tae and Mrs. Young An as his consultants during this investigation, *Exhibits C-1 and D-1*.

The consultants provided copies of the firm's Federal Tax Returns for year 2006, 2007, and quarterly gross sales in 2008. The ADV data reported was Ex. 4 for 2006, Ex. 4 for 2007, and Ex. 4 in 2008, *Exhibits C-4*. Ex. 7(C)

At the time of the investigation, the firm employed approximately Ex. 4. Employees handled goods that have been moved in interstate commerce such as sewing machines made from Japan. Enterprise coverage is applicable in year 2008 and 2009 since the firm meets the requirements listed under Section 3(s)(1). However, all employees are individually covered as they produced goods for interstate commerce. The finished garments are distributed to various retailers throughout the United States. This is a full investigation covering from 01/17/2007 to 01/17/2009.

No prior history found. This is the first investigation of the firm.

EXEMPTIONS:

541.1 is applicable to General Manager Ex. 7(C) who performed the following duties: supervising employees, checking employees' worked hours, assigning work and providing recommendation to the owner for hiring purposes. His earning records presented constant gross of at least \$455 or more per week. His duties and salary met the exemption requirement as described under CFR Part 541.100, *Exhibits B-1 to B-35*.

However, the other managers were not found to be non-exempt as they did not meet the salary requirement listed under CFR Parts 541.100. They were paid on an hourly basis, *Exhibits C-1 and D-4*.

STATUS OF COMPLAINEE:

This case was initiated

Ex. 7(D), Ex. 7(E)

Exhibits A-24 and B-8.

EX. 7(D), EX. 7(E)

The investigation determined \$350,000 due to 111 employees for minimum wage and overtime violations.

Section 6 – Minimum Wage

The firm was found in violation of Section 6. The firm failed to guaranteed minimum wage payments to piece rate employees. Employees were paid only for the pieces that they produced. 108 employees are due \$55,104.68 in minimum wage violations, *Exhibits A-2 to A-112*.

Method of computation:

The back wages were reconstructed from employees' statements, surveillance, and limited payroll information during the investigation period. The applicable federal minimum wage \$5.85 per hour was used for year 2007 to 07/24/2008 and \$6.55 thereafter.

Sample 1: Ex. 7(C), *cover stitch employee, Exhibits B-8 and A-24. The same example was used to compute overtime:*

WWE	Hours Worked	Weekly Gross	Rate of Pay	MW Due
11/22/2008	54.85	332.43	\$6.06	\$26.84

Ex. 7(C) , cover stitch employee earned total of \$332.43 in week ending 11/22/08; Reconstructed hrs = 54.85

Formula: Weekly Earnings / Hours Worked = Regular Rate of Pay
\$6.55/hrs – Regular Rate of Pay x Hours Worked = Minimum Wage Due

Example: \$332.43 Weekly Earnings / 54.85 hrs/wk = \$6.06 Regular Rate of Pay / hr
\$6.55 MW - \$6.06 = \$0.49 difference x 54.85 hrs = \$26.84 MW Due

Section 7- Overtime

The firm was found in violation of Section 7. The firm failed to pay overtime when employees worked over 40 hours in a workweek. 111 employees are due \$294,895.32 in overtime back wages, *Exhibits A-2 to A-112*.

Method of computation:

The firm's partial but actual earning records (returned payroll checks/vouchers and summary of payroll registers since September 2008), employees' interview statements, surveillance data, and consultants' self audit report were used in computing the back wages for all employees.

Due to the inaccuracy of the time records, the work hours were reconstructed from on interview statements and surveillance information, *Exhibits A-1 (profile pay period), B-1 to B-35, and E-5*. Per employees' interview statements, the employees' hours worked varied for each job classification (Cover Stitch, Single Needle, and Over Lock) in each workweek.

In addition, the investigation also revealed that it was mandatory for the employees to cash their payroll checks at a particular check cashing facility, Ex. 4 . The employees were required to cash their checks at this location with 1% additional

processing fee. As a result, the weekly wages paid were not “free and clear” to the employees as required under CFR Parts 531.35. Therefore, the 1% additional fees were computed back for employees in the overtime workweeks.

The following reconstructed hours and earnings were used for computing back wages in the missing periods:

- ⌚ 54.85 hrs/wk and \$269.88 were used for Cover Stitch employees
- ⌚ 51.18 hrs/wk and \$325.78 were used for Single Needle employees
- ⌚ 55.31 hrs/wk and \$388.18 were used for Over Lock employees
- ⌚ 53.9 hrs/wk and \$327.95 were used for unclassified (unable to identify their position) employees.

Sample 2: Ex. 7(C), cover stitch employee:

WWE	Hours Worked	Weekly Gross	Rate of Pay	App. MW	OT Hrs	MW Due	RR Due	OT Due	1% addition
11/22/2008	54.85	332.43	\$6.06	\$8.00	14.85	\$26.84	\$79.53	\$59.40	\$ 1.66

Ex. 7(C), cover stitch employee earned total of \$332.43 in week ending 11/22/08; Reconstructed hrs = 54.85

Formula: (Applicable MW rate – Federal MW wage rate) x Hrs Worked = RR Due
 Applicable MW rate x OT Hrs x 0.5 = OT Due
 (MW Due + RR Due + OT Due) x 1% = additional 1% due

Example: (\$8.00 - \$6.55) x 54.85 hrs/wk = \$79.53 RR Due
 \$8.00 x 14.85 OT hrs x 0.5 = \$59.85 OT Due
 (\$26.84 MW due + \$79.53 RR due + \$59.40 OT due) x 0.01 = \$1.66

Given that the firm did not maintain records during the investigation period, employees' hours and earnings were reconstructed from employee statements, partial pay records, consultants' self audit report, partial W-2s and surveillance data for duration of 20 months. *Exhibit D-4, D-5, and E-6.* The self audit

documents were taken into account for the average earnings from the high earners and low earners. The period of employments was determined from employees' interviews, *Exhibits B-1 to B-35, and E-5*. Employees confirmed they only received the pieces produced with no additional pay. For those employees who were not interviewed, their period of employments was determined from employers' records (employee list, payroll records, and W-2s) and the computations were based on these records. According to employee statements, it also revealed that the short term employees (4 months or less) appeared to work more than 40 hours and earned less than the reconstructed wages. For this reason, they were computed for their entire period of employments using the actual earnings and the reconstructed earnings and hours were used to fill in the missing periods, *Exhibits B-2, 9, 12, 13, 18, 32, 35, Exhibits E-4 and E-7*. The computations were taken in consideration for business downtime and closure. Approximately 4 months of each year were deducted due to the holidays, fire, slow periods, and time for moving and setting up the new location, *Exhibits B-1 to B-35 and E-7*.

Section 11 – Record keeping

The firm did not maintain accurate records as required under FLSA. The employees' basic information such as names, addresses, employment periods and rates of pay were not properly kept and made available upon request. In addition, the pay and time records for former and current employees were not accurate. The firm used computer software “Global Production System (GPS)”, developed by Mr. Brian Yu, to generate falsified payroll registers that displayed an appearance of compliance. Mr. Choi admitted that he paid \$1,500 for the program and received 2-3 days of training on how to operate the program. The software converted piece rate earnings into fluctuating hourly rates and showed overtime hours paid properly when in fact the employee received straight time piece rates for all hours worked, *Exhibit A-1 (profile pay period) and D-4*. On 02/06/08, ADD Bui and Ex. 7(C) visited the establishment and interviewed the owner on his business operations and information about the payroll software, *Exhibit C-1e*. Ex. 7(C). He admitted that he only paid workers based on the pieces produced and he did not take into account the hours employees worked. The employer demonstrated the software program on his computer from start to finish. He claimed that he purchased the software program from a random seller, *Exhibits A-1 and E-2*. He then provided the assurance not to use the software as a result of this investigation.

A 72-hour letter was issued for the records. The firm only provided partial records and claimed the records were lost from the fire in August 2008. The consultants provided partial payroll registers and check stubs (documents generated from computer software) and partial (undated) piece tickets. In addition, the firm also provided tax returns, incomplete W-2s and article of corporation documents.

Section 12 – Child Labor

There was no evidence of minors working at the firm based on a tour establishment, employer's and employees' interview statements.

Section 15(a)(1) – Hot Goods

The firm was in violation of the “Hot Goods” provision. Department of Labor made objections to the shipment of goods that have been made at the time of initial conference based on minimum wage and overtime violations. On 1/28/09, the goods were verified at the establishment and the firm did not ship the goods to its manufacturers. Manufacturer contacts were made to all manufacturers involved in this case. Five manufacturers posted \$110,000 on 01/30/09. Notices of the retraining shipment of goods were also issued to the manufacturers. *Exhibits C-5 and C-6.*

DISPOSITION

The pre-final conference was held at the Los Angeles District Office on 02/23/09 with ADD Bui, 7(C) Ex. 7(C), Consultants Mr. Tae An and Mrs. Young An. ADD Bui requested the owner Kevin Choi to attend the meeting but the consultants claimed he was not available due to his business obligations. 7(C) Ex. 7(C) explained the general requirements under FLSA which covered minimum wage, overtime, exemptions, record keeping and child labor provisions. The investigation period and procedures were also explained in detail, *Exhibit E-1.*

Prior to discussing the monetary findings, Ex. 7(C) discussed the current issues found during the investigation. The firm did not maintain accurate time and pay records because the employees did not clock in-out. The firm used payroll software to generate falsified records to show overtime hours worked and proper payments. The investigation determined employees worked more than 40 hrs/wk and received

straight time pay for all hours worked. The workers only got paid by the pieces they produced with no guaranteed of minimum wage and overtime premium. The investigation resulted in significant minimum wage, overtime and record keeping violations.

Consultant Tae An provided the documents to show the contractor is in compliance. Currently, the firm is using manual timesheets to keep track of employees' hours on a daily basis. He stated that the employees still are paid by the piece but the firm is guaranteeing minimum wage and proper overtime payments when employees work over 40 hours in a week. He further explained that each employee is given a weekly timesheet to complete on a daily basis. The employees record in & out times and have their supervisor verifies the time each day. The timesheets get turn in to the office clerk at the end of the week for calculations of payments. The clerk inputs the daily hours into the spreadsheet. This new tracking system is designed and implemented by the consultants. The system automatically totals the hours. The clerk also transcribes the earnings from piece tickets and enters that amounts in the system. This amount then gets converted into an hourly rate from the total hours and earnings. The spreadsheet calculates overtime at time and one half when the employee worked more than 40 hours each workweek. He stated that the owner started using this new system from pay period ending 02/13/09. However, he admitted that the firm is still using the old payroll software to print out the payroll checks. However, the firm immediately stopped using the payroll software for the calculation of payments. The consultants indicated the firm is looking for another system to produce the checks. The employer provided time and pay records for the most recent pay periods to show compliance, *Exhibit E-8*.

Mr. An further stated that the firm currently operates from 6:30am to 6:00pm during Monday to Friday and closed on Saturday and Sunday because of this investigation. The firm has approximately Ex. 4 employees. They worked in two shifts, 8 hours per shift. Everyone was required to write down time in-out for lunch and they got at least 30 minutes lunch break. The firm also reported that everyone is now on the payroll. The employees received wages in form of actual check and not a voucher that could be deposited at the bank or other cashing locations. Mr. An gave assurance that the firm will not issue the checks or vouchers which employees can only be cashed at the one location. Again, Mr. An stated the firm will stop using the software that generates falsified records and will comply with all FLSA requirements.

ADD Bui expressed concerns about the data on the tax returns and W-2s reports and whether the firm

reported accurate information on these documents. Based on the review of records, there were no salary or wage amounts reported on the tax returns. In addition, the payroll registers and copies of employee pay statements show no tax deductions from employees' earnings, yet the W-2s issued were issued in 2008 to numerous employees. Mr. An admitted that the W-2s were accurate and the tax returns were done by Mr. Choi's CPA. He claimed that Mr. Choi has no knowledge about this matter. Ex. 7(C)

Ex. 7(C) continued discussing the investigation and explained the method of computation. Ex. 7(C) explained how the hours and wages were derived from employees' interview statements as well as the employer's records provided during the investigation. The method of computations was broken down to four main job classifications. The hours and wages varied from different positions. The employer was informed that the reconstruction of hours and wages were used to fill in the missing periods without the records. In addition, ADD Bui also explained the reason for not using the consultants' initial audit report as to no supporting documentation was provided, *Exhibit E-7*.

Mr. An agreed to the fact that not all sewing operators worked the same hours or earned the same wages. However, Mr. An disagreed to the findings. He stated that the average earnings used were too low and the average hours were too high. He claimed that the piece rate workers must earn at least \$350 for an employee to work more than 40 hours per week. He also claimed that the firm did not have employees working up to 50 hours per week. He requested to have time to discuss with his client and come back with additional data to dispute the findings.

On 02/25/09, Mr. An met with ADD Bui and Ex. 7(C) and provided a revised audit report that showed the average earnings and hours worked per job classification. The reports were reviewed and taken into account for the back wages. Per ADD Bui's instructions, the computation for the overtime workweeks were adjusted using the average wages from the audit report.

There were numerous discussions that took place between Consultants Tae & Young An, ADD Bui and Ex. 7(C) from 2/25/09 to 3/2/09 regarding the information provided and follow-up interviews of employees were done to confirm compliance. However, the interview statements reported that the firm has not come into compliance. The employees were asked to fill in the manual timesheets and sign per manager's instructions. The hours were not reflected as the true hours worked, *Exhibit B-1h*. They spent

the same hours working and no one work in different shifts. Some employees received paychecks issued under different company name, *Exhibits B-1f*. The employees were required to cash the check at the same location, *Exhibits B-1, 6, 14, 16, 17, 19, 27, 29, 33, and 34*.

On 3/03/09, a second final conference meeting was held at the Los Angeles District Office with owner Mr. Kevin Choi, Consultants Mr. Tae An and Mrs. Young An, **Ex. 7(C)** and ADD Bui.

Ex. 7(C) discussed the FLSA requirements including minimum wage, overtime, record keeping, child labor, and Hot Goods provision in detail. Prior to discussing the findings, ADD Bui discussed future compliance with the firm. Mr. Choi agreed to comply with all FLSA requirements and stated he immediately corrected his pay practice. He stated the firm is using manual time sheets to record hours of all employees and everyone is paid on the payroll. He also stated that all piece rate employees will be paid at least the minimum wage (\$6.55 /hr) and proper T ½ for hours over 40 in a workweek. He agreed to keep accurate records of employees' information such as name, address, rate of pay, and period of employment. Mr. Choi further explained about the changes at his business. Currently, the employees are not working overtime by scheduling two shifts each day (two 8-hour shifts per day). There are a total of **Ex. 4** working there as sewing operators, pressers, trimmers, and finishers. The hours of operation are from 7:00am to 6:00pm, Monday to Friday; 7:00am to 12pm on Saturday. The employees get 45 minutes for lunch breaks and 30 minutes morning breaks. He stated that only 50% of the workers take both breaks. The employees are now issuing actual bank checks to be cashed at any locations. ADD Bui questioned if the firm has opened up a new business and explained that the Department of Labor recently received information that employees received checks under the a different company. Mr. Choi admitted that his payroll clerk made a mistake and issue old checks to about 60 employees under the company **Ex. 4** for the last two weeks. He stated that it was his old company and it was dissolved about 5 years ago. He claimed that his office clerk mistakenly pick up a wrong stack of checks and pay the employees. **Ex. 7(C)** confirmed the address on the check is now an abandoned building. Those workers had to cash the “old” company checks at the same check cashing facility to receive wages. Mr. Choi agreed to stop using the old checks and start paying employees actual payroll checks that can be processed through the bank. He agreed to comply with all FLSA requirements.

Ex. 7(C) explained the method of computation, adjustments and the revised findings The sample of computation worksheets was presented and explained in detail. After several hours of negotiation, both

parties finally reached a settlement for \$350,000.00 in back wages due 111 employees for minimum wage and overtime violations. The settlement amount was approved by RA Friday who participated in the meeting to finalize the details. Given the firm's financial situation, the firm was given a 5-month installment plan to pay the back wages in full. Five manufacturers have already posted \$125,000 towards the back wages and this amount was used as the initial down payment. The balance of \$250,000.00 will be evenly distributed over 5 months starting from 3/17/09 to 7/17/09. As part of the settlement, the firm also agreed to stop using the computer software that falsified time & payroll documents and sign a consent judgment. The file will be forwarded to Los Angeles Solicitor of Labor's Office to prepare the consent judgment.

Recommendation

Ex. 7(E)

Pub Provided:

Pub: Handy Reference guide, FLSA, Employment Relationship, Youth employment Provisions. CFR Parts 516, 541, 579, 580, 778, 785. Poster: EPPA, MW, Youth Rules

Ex. 7(C)

Investigator
March 10, 2009