

MAINE DEPARTMENT OF LABOR
FINAL DECISION BY THE BUREAU OF LABOR STANDARDS
2024 - BLS – 02

Bureau of Labor Standards
v.
Liberty Bell Moving and Storage


A Recommended Decision was issued by the Hearing Officer in this matter on May 29, 2024, a copy of which is attached to this Final Decision. The History of the Case is set forth in the Recommended Decision. The parties submitted no objections or comments to the Recommended Decision.

The Director of the Bureau of Labor Standards delegated to the Deputy Director the authority to issue this Final Decision.

The Bureau of Labor Standards hereby affirms and adopts all Findings of Fact and Conclusions of Law set forth in the Recommended Decision.

Accordingly, pursuant to 12-170 C.M.R. Chapter 9, Rules Governing Administrative Civil Penalties for Labor Law Violations, Section V., the penalty in the amount of \$533.60 is due within 30 business days from the date of this Final Decision.

Dated: July 15, 2024



Rioux, John L
Deputy Bureau Director
Bureau of Labor Standards

NOTICE OF APPEAL RIGHTS

Any party wishing to appeal this decision must file an appeal in the Superior Court within 30 days after receipt of the decision. The appeal may be filed in the Superior Court in Kennebec County, located at Capital Judicial Center, 1 Court Street, Ste. 101 in Augusta, Maine, 04330. Alternatively, the appeal may be filed in the Superior Court located in the county in which the appealing party resides.



**MAINE DEPARTMENT OF LABOR
RECOMMENDED DECISION**

Bureau of Labor Standards

VS.

Liberty Bell Moving & Storage

2024 - BLS - 02

History of the Case:

This is a proceeding initiated by a determination on March 7, 2024, by the Maine Department of Labor, Bureau of Labor Standards (BLS) against Liberty Bell Moving & Storage (Appellant), a State of Maine employer. That determination alleged violations of Maine Labor Law, 26 MRS §600-A, and ordered penalties in the amount of \$533.60 under 26 MRS §626-A and 26 MRS §53.

On March 13, 2024, the Appellant timely contested the determinations and sought review.

BLS subsequently designated the undersigned hearing officer to conduct the review. A hearing was held on May 21, 2024. Anne Macri, Assistant Attorney General represented the BLS. Kevin Finkenaur representing the Appellant.

BLS presented the testimony of Scott Cotnoir, Director, Wage and Hour of the Bureau of Labor Standards. The Appellant presented the testimony of Kevin Finkenaur.

Exhibits: BLS presented nine exhibits that were admitted without objection. Exhibit 2 - 9 were images of solicitations on Craigslist.

Exhibit 1, March 7, 2024 BLS Citation Letter

Exhibit 2, January 26, 2024 Craigslist post

Exhibit 3, January 27, 2024 Craigslist post

Exhibit 4, January 29, 2024 Craigslist post

Exhibit 5, January 29, 2024 Craigslist post 2

Exhibit 6, January 31, 2024 Craigslist post

Exhibit 7, February 1, 2024 Craigslist post

Exhibit 8, February 8, 2024 Craigslist post

Exhibit 9, February 24, 2024 Craigslist post

The hearing officer takes official notice of Exhibits 10 and 11, BLS Rules and State of Maine Statutes.

Issues:

Whether the Appellant's request for information regarding an initial employment application form violates 26 MRS 600-A.

Findings of Fact

1. Liberty Bell Storage is a Maine employer.
2. Liberty Bell employs Maine employees.
3. During the period from January 26, 2024, to February 24, 2024, Liberty Bell solicited employees through Craigslist, a social media website on eight separate occasions.
4. The solicitations requested applicants for the positions to provide information about their qualifications.
5. Solicitations for a "bookkeeper" occurred on January 26, 2024, January 27, 2024, January 29, 2024 (twice), January 31, 2024, February 1, 2024, included the question:
" **8. Do you have a police record (Yes / No) if yes, for what ?**"
6. Solicitations for "Secretary/Warehouse/Labor" occurred on February 8, 2024, and February 24, 2024, and included the following question:
" **8. List any felonies that you may have**"

Applicable Law and Rules

26 MRS §600-A provides for the following:

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Criminal history record information" has the same meaning as in 16 MRS §703(3)

B. "Employer" means a person in this State who employs individuals.

2. Initial employee application form. Except as provided in subsection 4, **employer may not:**

A. Request criminal history record information on the employer's initial employee application form; or (emphasis added);

16 MRS §703(3) provides a definition of Criminal history record information.

It provides: "Criminal history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency that connects a specific, identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, information's and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties.

"Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means being within the jurisdiction of the criminal justice system commencing with **arrest, summons or initiation of formal criminal charges** and concluding with the completion of every sentencing alternative imposed as punishment or final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent.

26 MRS §626-A. Penalties: Whoever violates any of the provisions of section 600-A, §621-A to 623 or section 626, 628, 628-A, 629 or 629-B is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation.

BLS Rules, Chapter 9, Rules Governing Administrative Civil Money Penalties for Labor Law Violations, section II and III defines terms and how penalties are calculated respectively, including multipliers. 26 MRS §626-A Penalties.

Whoever violates any of the provisions of §600-A...is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation.

Conclusions of Law

There is no dispute that the Appellant solicited prospective employees on Craigslist. In each of the eight instances, it requested information either of "police records" or "list felonies". These were initial employee application forms. The Appellant had not had any previous contact with these prospective employees. Requesting information about the prospective employee interaction with the "police records" and whether they were involved in felonies comes within the definition of 16 MRS §703(3). For a total of \$800.

The multiplier for an employer size of 1-20 employees is .667. Multiplying .667 by \$800 results in a total penalty of \$533.60.

Recommended Decision:

For the reasons stated above, the Appellant violated Labor Laws and Rules resulting in a penalty of \$533.60 that is assessed against the Appellant. This amount must be paid within 30 days of the issuance of final decision in this matter.

The parties may submit written objections or comments on this Recommended Decision to the Bureau Director by US mail, hand delivery or email within ten (10) business days after the Recommended Decision was issued. To do so, comments must be sent to the Bureau Director within 30 calendar days of this Recommended Decision.

Allan Toubman
Hearing Officer

Date 05/29/2024