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Department of Workplace and Employment Standards

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Date Issued: October 25, 2023

Modality: Email tony.ng@radissonamericas.com

Tony Ng
Radisson Hotel
8400 Edes Avenue
Oakland, CA 94621

**RE: Notice of Determination
Oakland Hotel Minimum Wage and Humane Workload Ordinance
Case No. 2020-Z-9**

Dear Mr. Ng:

Please be advised that the City of Oakland's Department of Workplace and Employment Standards ("DWES") finds that Radisson Hotel (Radisson) is in violation of the hotel minimum wage provision of the City of Oakland's ("City's") Hotel Minimum Wage and Humane Workload Ordinance ("Measure Z"), [Oakland Municipal Code \("OMC"\) section 5.93.040](#), and owes employees back pay as described below. To avoid incurring additional liability, including penalties, Radisson must immediately come into compliance with Measure Z as required in this Notice of Determination ("Notice").

DETERMINATIONS

Our audit of the submitted documents found that Radisson failed to pay the correct 2019 and 2020 minimum wage rates prescribed in Measure Z to 128 employees from 7/1/2019 to 4/1/2020.

Payroll Check Detail records provided by Radisson show that 128 employees that were paid less than the 2019 Measure Z minimum wage without benefits and/or the 2020 Measure Z minimum wage without benefits. Further, DWES found no Radisson documentation indicating any attempts by Radisson to correct the wage difference between the improper 2019 and 2020 wage rates originally paid to the employees, and the legally required 2019 and 2020 Measure Z wage rates, to the 128 employees for the period 7/1/2019 to 4/1/2020.

Radisson's submitted documents, particularly an employee health benefit document indicating which Radisson employees received and did not receive health benefits between 7/1/2019 and 4/1/2020, do not comport with the requirements of Measure Z as noted below in several areas of the City of Oakland's Municipal Code:

- OMC section 5.93.040 (A) requires that a hotel employee shall pay hotel employees a wage of no less than fifteen dollars (\$15.00) per hour with health benefits, not including gratuities, service charge distributions, or bonuses, or twenty dollars (\$20.00) per hour without health benefits, not including gratuities, service charge distributions, or bonuses.
- OMC section 5.93.040 (B) requires that Health benefits under this Section shall consist of the payment of the difference between the higher wage and lower wage under Section 5.93.040(A) towards the provision of health care benefits for hotel employees and their dependents. Proof of the provision of these benefits must be kept on file by the hotel employer, if applicable. Further, under the Measure Z Interpretive Regulations, section IV (D), if a Hotel Employee declines a Hotel Employer's office of health insurance, the Hotel Employer must pay the employee the higher hourly minimum wage under this ordinance. Using the employee health benefit document provided by Radisson, DWES cross-referenced the employees who did and did not receive health benefits with the Payroll Check Detail report and reconciled the difference between the actual wages paid, and the correct wages to be paid. DWES found that Radisson paid the rate required when health benefits are provided to employees who declined health benefits.
- OMC section 5.93.040 (C) requires that the wage rates set forth in this Section shall be adjusted for inflation annually in the manner set forth in Section 5.92.020(B).

REMEDY AND ACTION REQUIRED

Radisson is ordered to immediately restate the deficient Measure Z minimum wage to the 128 affected employees:

- a. Payment to Employees: Radisson is directed to pay the deficient Measure Z minimum wage from July 1, 2019 to April 1, 2020. This amount constitutes **\$404,491.43**. A worksheet is attached with this letter detailing the amounts owed to each employee.

You must issue (by certified mail or employee pick-up with signature of receipt) the restitution checks to the affected workers within forty-five calendar (45) days of the date of this letter. Please send copies of the cancelled checks within forty-five calendar (45) days of this letter to:

City of Oakland Attn: Matt Berens
 Department of Workplace and Employment Standards
 250 Frank Ogawa Plaza, Suite 3341
 Oakland, CA. 94612

PLEASE NOTE: By law, Radisson shall not retaliate against any employee for making a complaint to the City, participating in any of its proceedings, or otherwise asserting their rights under Measure Z and/or participating in this investigation.

In addition, please be advised that the Oakland City Attorney's Office has thirty (30) calendar days from the date of this Notice to determine whether it will initiate a civil action to remedy the violations; if the City Attorney's Office chooses to pursue a civil lawsuit, you will be notified of such intention within that timeframe.

APPEAL PROCESS

Under the applicable City regulations, specifically Regulation #E7 section B, an appeal must be received by DWES within twenty-one (21) calendar days of the expiration of the City Attorney's 30-day deadline to evaluate and advise whether it will initiate a civil action. To be clear, this means DWES must receive an appeal within fifty-one (51) calendar days of the date of this Notice or Radisson shall have waived its appeal rights.

An appeal must be in writing and shall contain the following:

- 1) Full name and address, and telephone number of the appealing party;
- 2) DWES case number;
- 3) A copy of this Notice;
- 4) Name and title of the employer designee who will attend the administrative hearing;
- 5) A written statement setting forth the specific facts and legal arguments supporting the appeal;
- 6) The signature of the representative for the Employer; and
- 7) The verification (by declaration under penalty of perjury) of at least one representative for the Employer as to the truth of the matters stated in the Request for Appeal.

You may refer to Regulations #E6 and #E7 of the City of Oakland's Rules and Regulations for the Enforcement of Oakland's Minimum Wage Law for further details regarding the appeal process.

If the City Attorney's Office does not issue written notice of its intent to pursue a civil action, Radisson may appeal this Notice by mailing a written appeal to the following address:

City of Oakland
Department of Workplace and Employment Standards
250 Frank Ogawa Plaza, Suite 3341
Oakland, CA. 94612
Attn: Matt Berens

Please also email a copy of the appeal to: mberens@oaklandca.gov

Should you have questions regarding this Notice, please do not hesitate to contact me at (510) 238-7735 or by email at mberens@oaklandca.gov. Thank you, in advance, for your full cooperation.

Sincerely,

Matt Berens

Matt Berens

Senior Contract Compliance Officer

Cc: Emylene Aspillá, Director, Department of Workplace and Employment Standards
Caryl Casden, Senior Deputy City Attorney
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