

## WHISARD Compliance Action Report

### U.S. Department of Labor Wage and Hour Division

Case ID: **1717784**      Originating District: **Tampa FL District Office**  
 Local Filing Number: **2014-342-23658**      Investigating District: **Tampa FL District Office**  
 WHMIS Case Number:      Lead Investigator: **(b) (7)(C)**  
 Registration Date: **01/23/2014**  
 Assignment Date: **03/10/2014**

#### Employer Information

Trade Name: <b>Work at Home Solutions</b>	Legal Name: <b>Work at Home Solutions, LLC</b>
Address: <b>8382 Indian Laurel Lane</b>	EIN: <b>45-3344922</b>
	County: <b>Hernando</b>
	NAICS Code: <b>561330</b>
<b>Brooksville, FL34613</b>	No. Of Employees: <b>(b) (4)</b>

#### Investigation Information

Period Investigated From: <b>03/14/2012</b>	BNPI:
To: <b>03/12/2014</b>	Reinvestigation: <input type="checkbox"/>
Investigation Type: <b>(b) (7)(E)</b>	Recurring Violation: <input type="checkbox"/>
Investigation Tool: <b>Full Investigation</b>	Future Compliance Agreed: <input checked="" type="checkbox"/>
Compliance Status: <b>Agree to Comply</b>	Involved in AG: <input type="checkbox"/>

#### Recommended Action:

BWFS: <input type="checkbox"/>	RO/NO Review: <input type="checkbox"/>
CMP: <input type="checkbox"/>	Follow Up Investigation: <input type="checkbox"/>
Litigation: <input type="checkbox"/>	Other Action: <input type="checkbox"/>
Civil Action: <input type="checkbox"/>	Denial of Future Certificate: <input type="checkbox"/>
Criminal Action: <input type="checkbox"/>	BW Payment Deadline: <b>07/13/2014</b>
Submit For Opinion: <input type="checkbox"/>	Trailer forms attached: <input type="checkbox"/>

**CL**

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<b>No Violation found for this act / Compliance (no violations found)</b>					<b>\$0.00</b>	<b>\$0.00</b>	

## WHISARD Compliance Action Report

### FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<i>Failure to pay Minimum Wage / Agree to Comply</i>	30	30	\$2,237.91	\$2,237.91	\$0.00	\$0.00	
<i>Failure to pay proper overtime / Agree to Comply</i>	13	13	\$2,403.75	\$2,403.75	\$0.00	\$0.00	
<b>FLSA Totals:</b>	<b>34</b>	<b>34</b>	<b>\$4,641.66</b>	<b>\$4,641.66</b>	<b>\$0.00</b>	<b>\$0.00</b>	
<b>Total Violations Under FLSA:</b>		<b>43</b>					<b>\$0.00</b>

### FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<i>FMLA Record Keeping / Agreement to Remedy/Resolve (ATR)</i>	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
<b>FMLA Totals:</b>	<b>0</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	
<b>Total Violations Under FMLA:</b>		<b>1</b>					<b>\$0.00</b>

\* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	<b>34</b>	Unduplicated Employees Agreed:	<b>34</b>
Total Amount BWs Computed:	<b>\$4,641.66</b>	Total Amount BWs Agreed:	<b>\$4,641.66</b>
Total Amount LDs Computed:	<b>\$0.00</b>	Total Amount LDs Agreed:	<b>\$0.00</b>

## WHISARD Compliance Action Report

### Conclusions & Recommendations:

Hours: 71.75 (b) (7)(E) COV Ent. Viols-Sec. 6 MW, 7 OT & 11 RK. ER misclassified EE's as indep. contractors. ER paid ST for OT causing OT vios. Illegal deductions noted on payroll cause MW vios. Maintained records on bi-weekly basis. ER ATP/ATC. Recommend admin close

WHI Signature: \_\_\_\_\_ Date: **06/06/2014**

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

## FLSA Narrative

(Tampa District Office)

Employer: Work at Home Solutions, LLC  
Dba: Work at Home Solutions

Establishment 8382 Indian Laurel Ln.  
Address: Brooksville, FL 34613

Mailing  
Address: Same as above

Contact person: Mrs. Melissa Adams, Owner  
Establishment: (352) 556-6342

FEIN: 45-3344922 (*see exhibits C-1, C-2, C-3*)

Case ID: 1717784

File number: 2014-342-23658

### COVERAGE

#### Organization and Ownership

Work at Home Solutions, LLC dba Work at Home Solutions is a staffing company that recruits call agents for customer service lines for companies such as (b) (4). The company was established in Florida in January 2012 under the sole ownership of Mrs. Melissa Adams. Work at Home Solutions has approximately (b) (4) employees throughout the country. (*see exhibit (b) (7)(C)*)

**3(d) Employer**

Owner, Mrs. Melissa Adams, meets the definition of an employer under 3(d) of the Fair Labor Standards Act. Mrs. Adams runs the day to day operations of the company and manages all financial and administrative matters. (see exhibit (b) (7)(C))

**Other Establishments**

None

**Enterprise Coverage**

3(s)(1)(A) The company was subject to the Act as a Enterprise for y/e 2013 but not 2012 as the company did not gross over \$500,000 until 2013. The company opened in February of 2012 and grossed (b) (4) then in 2013 grossed (b) (4). Additionally, the employees receive phone calls from customers from all over the United States and regularly use the internet on a weekly basis. (see exhibit C-1, C-2)

**Individual Coverage**

3(s)(1)(a)(i) The virtual call center agents were subject to the Act as every employee accepts calls from customers from all over the United States. When customers contact any of the contracting companies' customer service numbers they are routed to the agents of Work at Home Solutions in various states. (see exhibit (b) (7)(C))

**Investigative Period**

March 14, 2012 – March 12, 2014

**Limitation of Investigation**

This is a full investigation of Work at Home Solutions, LLC

**MODO Information**

Tampa District Office is the MODO.

**Prior History**

There is no history.

**Employee/Employer Relationship**

Work at Homes Solutions, LLC is claiming that all virtual call agents are independent contractors. The six relevant factors were used in determining if the call agents' function as independent contractors or as employees.

1. Control: Based on employee statements, the workers indicated that the contracts Work at Home Solutions operates under requires employees to take trainings specific to the company. The employees cannot negotiate their rate of pay and are also required to work a minimum of 15 hours per week to remain employed.
2. Opportunity for profit/loss: The call agents have no opportunity for profit and loss. They are paid a piece rate or hourly rate determined by the contracting companies. The agents do not work for other companies. Though the agents could go to other companies to perform the same work, they are hired solely to answer customer service calls and must be registered with a licensed company to receive any work.
3. Open Market Competition: The agents do not own their own business, have workers compensation, any licenses and do not advertise for themselves.
4. Permanency of the relationship: The agents are required to work 15 hours per week to maintain their employment with Work at Home. If the agents do not work a certain amount of time their contract will be canceled and they will have to repeat the initial training to continue working with Work at Home.
5. Work performed is integral to the employer's business: The employer is in the business of staffing virtual call agents for contracting companies such as (b) (4). The workers stated that they receive inbound calls from leads provided by contracting companies.
6. Investment in facilities and equipment: The agents provide their own telephone and internet lines but the leads are provided by the contracting companies.

*(see B exhibits)*

Based on these factors it's determined that the independent contractors are incorrectly labeled as such.

Exemptions

The employer did not claim any exemptions.

Status of Compliance

(b) (7)(E)

(b) (7)(E)

**FLSA Section 6**

Section 6 minimum wage violations were cited due to deductions made by the employer. The employer and contracting company made deductions for various fees outside of the typical taxes bringing the employees below minimum wage. The payroll records were used to transcribe the hours worked and amount paid to each employee. The difference in what was paid and the federal minimum wage was computed.

*Method of Computations*

*Pay period ending 11/15/2013 EE worked 29 hours and was paid \$208.00.*

*Regular rate = \$208.00 / 29HW = \$7.17 per hour*

*(\$7.25 MW x 29 HW) - \$208.00 = \$2.25 MW BW due (see exhibit A-33)*

*30 call agents were due a total of \$2,237.91 in minimum wage back wages.*

**FLSA Section 7**

Section 7 overtime violations were cited because the employer paid straight time for overtime. Time records were used to transcribe hours and compute the additional half time due. Hours worked after 80 were used to determine overtime hours worked as the employer was unable to separate the hours into work weeks.

*Method of Computations*

(b) (4)

*13 call agents were due a total of \$2,403.75 in overtime back wages.*

***34 CALL AGENTS WERE DUE A TOTAL OF \$4,641.66***

**FLSA Section 11**

Section 11 violations were cited because the employer did not keep hours worked records in compliance with Part 516.2 as records were not maintained on a weekly basis. The employer maintained hours worked records on a bi-weekly basis and was unable to separate the work weeks to determine when overtime was worked.

**FLSA Section 12**

No violations were cited.

**Family Medical Leave Act**

The employer is covered by FMLA as the company has more than 50 employees. The employer did not have a FMLA policy to review and was provided with the FMLA fact sheets and regulations.

**DISPOSITION**

The final conference was held at a commercial establishment on May 2, 2014 with Mrs. Melissa Adams



and WHI (b) (7)(C) represented the Department. At this time, Mrs. Adams agreed to full future compliance with the Act. She explained that violations occurred because she believed all of her employees were bona fide independent contractors and that she was not subject to the requirements of the Act. Mrs. Adams stated that she had consulted with her attorney, Mr. Herb Long, and was told that she could classify the call agents as independent contractors. She then requested that WHI (b) (7)(C) speak with Mr. Long. After attempting to contact Mr. Long, Mrs. Adams notified investigator on May 5, 2014 that Mr. Long will be on vacation until May 15<sup>th</sup> but had consulted a second attorney. Upon consulting her second attorney, Ms. Adams agreed to pay all back wages due and change the classification of her employees from independent contractors to employees. Ms. Adams agreed to meet all requirements of the Act.

A WH-56 was given to Mrs. Adams on May 24, 2014. Ms. Adams took a maternity leave and agreed to issue payments upon returning on July 13, 2014. She will provide proof of payment in the form of WH 58 Receipt Forms or copies of fronts and backs of the canceled checks per the Back Wage Disbursement and Pay Evidence Instructions.

Mrs. Melissa Adams agreed for Work at Home Solutions, LLC that they will fully comply with the Act in the future. Specifically, they will:

1. Keep an accurate record of all hours worked for any non-exempt employee for a two-year time period; specifically the all records will be kept on a weekly basis displaying regular and overtime hours work,
2. Pay overtime at the correct rate for all employees;
3. Guarantee at least the full Minimum Wage due for all hours worked on the regular pay date; specifically that deductions will not be made that would bring an employee below minimum wage
4. Continue compliance with Youth Labor Regulations.

An initial conference was held via telephone on March 12, 2014 with Mrs. Melissa Adams, employer and Investigator (b) (7)(C) represented the Department of Labor. During this meeting Mrs. Adams was instructed how to locate the Handy Reference Guide on the Wage and Hour homepage. She indicated that the company does not have any current or pending 16(b) actions that she is aware of. A hard copy of the Handy Reference Guide with all the pertinent SBREFA information was provided to Mrs. Adams at the

final conference on May 2, 2014.

The potential of Civil Money Penalties for a violation of Sections 6 and 7 were discussed. The employer understood all of the ramifications and agreed to future compliance. Penalties are not recommended because this was the first investigation, errors were not intentional, and the employer immediately made corrections in any area that could be misconstrued as a potential violation. Mrs. Melissa Adams, owner, was advised that the potential of assessment exists even after compliance with the Act is confirmed and that the decision is made at the supervisory level and that they will be advised in writing when a final determination has been made.

The ER was given & we discussed in great detail: HRG, FLSA, 778,785, 541, CL 101, 516, FMLA HRG, I-9 pub & Posters

**(b) (7)(C)**, Investigator  
Tampa District Office

May 28, 2014