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July 10, 2009

Ms. Ziporah Wilon
VIP Health Care Services
116-12 Myrtle Avenue
Richmond Hill, NY 11418

Re: Limited Compliance Audit of VIP Health Care Services Compliance with the Nassau County Living Wage Law

Dear Ms. Wilon:

A limited compliance audit was performed of Contract # CQSS07000150 between VIP Health Care Services (“VIP”) and Nassau County. The objective of this audit was to determine whether VIP was in compliance with the Nassau County Living Wage Law (the Law) and the related Rules. The period of review was calendar year 2007, the term of the contract. To accomplish our objective, we reviewed VIP’s pertinent books and records, performed certain tests and interviewed personnel.

Based on our limited audit, our findings and recommendations are as follows:

Audit Finding

Compensated Days Off

VIP did not comply with the Law’s requirement for compensated days off for its covered employees or communicate with the employees to inform them of their entitlements. The Law mandates that employers shall provide employees “no fewer than twelve paid days off per year for sick leave, vacation or personal necessity at the employee’s request. Full-time employees shall accrue such leave at a rate of one day per month of full-time employment. Part-time employees who work twenty or more hours per week shall accrue such leave in increments proportional to the rate of accrual for full-time employees. Any employee shall be eligible to begin using accrued leave six months following his or her start date of employment, or consistent with company policy, whichever is sooner.”¹

¹ “Nassau County Living Wage Law,” Nassau Co. Misc. Laws, Title 57, § 3. b.(2007).

VIP's policy, in part, entitles employees to seven paid days off after the first year, another seven paid days off after the second year of employment and eight paid days off after the third year. The policy does state that an "annual review of vacation payout for employees having serviced Nassau DSS clients will include an analysis of benefits accrued and balances owed as a result of the percentage of their time worked on Nassau DSS cases." Since the policy did not provide for any paid vacation days off until after a full year of service, the policy was not in compliance with the Law's requirement that an "employee shall be eligible to begin using accrued leave six months following his or her start date of employment, or consistent with company policy, whichever is sooner."

When we advised VIP of its non-compliance, VIP revised its policy to comply with the Law and purportedly applied it retroactively as of January 1, 2007.

Also, upon our request, VIP provided us with a report showing the compensated days off that should have been provided to the covered employees. According to that report, employees earned 3,442 hours of compensated time off. As of December 31, 2007, 1,705 of these hours were still available to the employees upon their request.²

Audit Recommendations

VIP's policy and practices regarding compensated days off should comply with the Law and the related Rules. Covered employees should be provided a copy of the policy so that they are aware of accrued benefits under the Law. VIP should also inform employees of any accrued leave time that they have earned, but not taken.

In instances where days off cannot be provided (i.e. employee has been terminated), cash compensation should be paid to the affected employees at the mandated rate.

The matters covered in this report have been discussed with the officials of VIP during the course of this audit, as well as at an exit conference held on June 1, 2009. On August 1, 2008, our Office submitted a report in draft for VIP's comments. VIP provided its comments on August 14, 2008. Subsequent to the exit conference, the report was amended and VIP provided a revised response, received on June 19, 2009, which is included as an appendix to this report.

² On February 9, 2009, VIP entered into a collective bargaining agreement, retroactive to January 1, 2007, under which the Law's requirements for compensated days off were waived in favor of the provisions contained in the collective bargaining agreement.

Appendix



VIP HEALTH CARE SERVICES

OUR EXPERTISE IS
"HOME" CARING

Response from VIP Health Care Services Inc.

EXECUTIVE OFFICE
116-12 Myrtle Avenue
Richmond Hill, NY 11418
(718) VIP-9800

The compensated days off provision of Nassau County's Living Wage Law is not applicable to the Company's employees because, pursuant to Section 10(c) of the Law, the Company has an agreement with the union representing its personal care employees that these requirements are expressly waived and superseded by the terms of the collective bargaining agreement which retroactively applies to 2007. Therefore, VIP payroll practices cannot be found to be non-compliant with a section of the law that does not even apply to it. VIP is and was at all times in compliance with the Living Wage requirements for wages and health benefits and with its union contract obligations with respect to compensated days off.

Moreover, all employees were given no fewer than the twelve paid days off per year that are required under the Living Wage Law, either as time taken or as a pay-out on the anniversary of their employment. While VIP's Company policy entitles employees to seven paid days off after the first year, another seven paid days off after the second year and eight paid days off after the third year, an annual review was performed to increase that amount to twelve days (or the pro rata number of days for part-time employees) for any employees working on Nassau County cases. VIP also gives its employees an extra half-day of pay for working on certain holidays and an extra three-quarters day of pay for working on other holidays.

*Upon your request we provided the Comptroller's Office with a report that reflected the number of days earned by each employee **and unused** as of December 31, 2007. Your finding incorrectly identified the report as showing the days that "should have been provided" to employees, suggesting that we failed to comply with the Law by not having provided these days to employees. However, the report we provided to the Comptroller's Office did not reflect the number of days that was due to be provided to employees, only those that had been earned but not yet taken. All employees earn days throughout the year, and may either take them as paid time off or may be paid for them on their anniversary date. Therefore, these days were earned, but not due to employees unless an employee requested to take them as time off or until an employee's anniversary date. All employees who earned hours of compensated time off that were not taken by their anniversary date were paid for those days when they were due them. **No employees were undercompensated.***

In response to your specific audit recommendations, the Company does provide a copy of its policies to every employee upon hiring and informs its employees of any accrued leave time that has been earned but not taken. Similarly, we do post Living Wage Law notices in our office locations and will continue to advise employees of their wage and benefit rights under the union agreement.

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Appendix

VIP HEALTH CARE SERVICES

Since all employees who provide services pursuant to a Nassau County contract are afforded all of the wages and health benefits required by the Nassau County Living Wage Law, and since the union has waived the compensated days off requirements of the Nassau Living Wage Law in favor of its own contractual requirements, the findings contained in your letter are unfounded.

Ziporah Wilon
Ziporah Wilon, VP Finance

6/18/09
Date

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Auditor's Follow-up Response

While we stand by our findings as a factual matter, VIP and its employees have entered into a collective bargaining agreement under which the requirements of compensated days off were waived pursuant to Section 10 (c) of the Law. This agreement, which did not exist at the time of our audit, was provided in complete form for the first time on March 20, 2009. The agreement was executed on February 11, 2009 and has an effective date of July 1, 2008. Article XXI of the agreement states in part that “The requirement to pay compensated days off contained in the Nassau County living wage law is hereby waived effective January 1, 2007, and is superseded by the provisions for holidays and other paid leaves of absence contained in this Agreement.”

Because the Living Wage Law permits employers and employees to agree to waive the protections of the Living Wage Law as part of a collective bargaining agreement, the audit findings are superseded by the collective bargaining agreement.

Sincerely,

/Aline Khatchadourian/

Aline Khatchadourian
Deputy Comptroller for Audit and Special Projects