

STATE OF MINNESOTA  
Department of Labor and Industry  
Division of Labor Standards

In the Matter of the Investigation of:  
Menard, Inc. d/b/a Menards

To: Menard, Inc. d/b/a Menards  
ATTN: John R Menard, Jr  
2345 Rice Street, Suite 230  
Roseville, MN 55113

To: Menard, Inc. d/b/a Menards  
ATTN: Dan Bower / Brian Nelson  
5351 Central Ave NE  
Fridley, MN 55421

**CONSENT ORDER**

File No.: ICR-202300048

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**NOTICE: THE ATTACHED EXHIBIT 1 CONTAINS DATA CLASSIFIED AS PRIVATE  
OR CONFIDENTIAL**

Pursuant to Minn. Stat. §§ 175.20 and 177.27, subds. 4 and 7, the Commissioner (“Commissioner”) of the Minnesota Department of Labor and Industry is authorized to issue orders requiring an employer to (1) comply with Minn. Stat. § 181.939 and Minn. Stat. § 181.101, (2) cease and desist from practices violating Minn. Stat. § 181.939, and Minn. Stat. § 181.101, (3) take affirmative steps that in the judgment of the Commissioner will effectuate the purposes of Minn. Stat. § 181.939 and Minn. Stat. § 181.101, and (4) pay back wages, liquidated damages, compensatory damages, civil penalties and reimbursement of litigation and hearing costs related to violations of Minn. Stat. § 181.939 and Minn. Stat. § 181.101.

The Commissioner and Menard, Inc. d/b/a Menards agree that the Compliance Order served August 23, 2023 may be resolved by this Consent Order as follows:

**A. PARTIES**

This Agreement applies to and is binding upon the following parties, collectively referred to herein as “the Parties”:

1. Nicole Blissenbach, in her official capacity as the Commissioner of the Minnesota Department of Labor and Industry, and the Minnesota Department of Labor and Industry (“Department”); and
2. Menard, Inc. d/b/a Menards (“Respondent”).

**B. SCOPE OF CONSENT ORDER AND RELEASE**

1. **Effective Date.** As used herein, Effective Date means the date this Consent Order is signed by Respondent and the Commissioner.

2. **Release.** This Consent Order is made and entered into to resolve: (1) the Department's investigation of Respondent for the Department's Audit Period covering December 1, 2022 to May 21, 2023; and (2) the Compliance Order, which was brought in connection with the Department's investigation. The Parties agree that they will not subsequently litigate the Department's allegations asserted in the Compliance Order against Respondent.

3. **Claims Not Waived by the Commissioner; Other Remedies Reserved.** The Parties to this Consent Order acknowledge that by signing this Consent Order, the Commissioner, on behalf of herself and the Department, does not release or waive the following: (a) any rights or claims occurring outside of the Audit Period, except as provided for in section F, paragraph 6(d) of this Consent Order, and (b) any right to bring a motion for the purposes of enforcing this Consent Order pursuant to section H. The Parties further acknowledge that this Consent Order shall not limit or affect the authority of the Commissioner or the Department to conduct investigations and take actions with respect to any matter within the scope of the Commissioner's or the Department's authority. Nothing in this Consent Order shall relieve Respondent of its obligations to comply with all applicable Minnesota state laws and federal laws and regulations.

4. **Scope of the Consent Order.** The terms of this Consent Order apply to Respondent's facilities, business operations, and employees located in Minnesota. The terms of this Consent Order also apply to any facilities opened or acquired by Respondent in Minnesota after the Effective Date of this Consent Order.

### C. STIPULATED FACTS

1. The audit period for this investigation ran from December 1, 2022 to May 21, 2023 ("Audit Period").

2. Respondent is an employer with at least one employee working in Minnesota during the Audit Period.

3. Respondent's registered office address with the Secretary of State is 2345 Rice Street, Suite 230, Roseville, MN 55113. [REDACTED]

4. In April 2023, the Department received a complaint alleging Respondent violated Minn. Stat. § 181.939, subd. 1 by failing to provide reasonable paid break times each workday to an employee who needed to express breast milk for her infant child during the 12 months following the birth of the child ("affected employee"). [REDACTED]

5. The Department gathered information related to the alleged violations, including information provided by the affected employee, records and information provided by Respondent, and interviews with other employees [REDACTED]

6. On April 19, 2023, the Department sent Respondent an email communicating that the Department's preliminary review of received records indicated breaks to express milk were being regularly deducted from the affected employee's overall hours worked each day in the Audit Period in violation of Minn. Stat. § 181.939, subd. 1.

7. After receiving written notice of the requirements of Minn. Stat. § 181.939, subd. 1 from the Department, Respondent continued to deduct breaks to express milk from the affected employee's hours worked each day.

8. After reviewing time records provided by Respondent, the Department identified unpaid breaks to express breast milk taken by the affected employee and requested Respondent pay back wages due to the affected employee. As of June 9, 2023, Respondent paid the affected employee \$736.34 in back wages to account for unpaid breaks for the purpose of expressing milk during the Audit Period. The Department initially found that Respondent still owed the affected employee an additional \$373.65 in back wages. However, during the Department's Settlement Conference with the Respondent on September 6, 2023, Respondent provided information suggesting that the additional \$373.65 in back wages included time periods the affected employee left work early and was not engaged in breaks to express milk. As a result, the Department re-examined the time records provided by Respondent and identified instances where the affected employee left work early and was not engaged in breaks to express milk. After excluding those periods, Respondent agrees that the affected employee is still owed an additional \$88.34 in back wages.

9. During the Department's investigation, Respondent suspended the affected employee for three days without pay. Respondent claimed it suspended the affected employee because she had three unexcused absences in a 90-day period in violation of Respondent's applicable company policy. As a result of the suspension, the affected employee lost three days of pay, totaling \$338.77.

10. The Department found that at least one of the affected employee's absences that was considered unexcused should have been excused because the affected employee was unable to work as she was caring for her sick child, which is not considered an unexcused absence under the Respondent's policy. As indicated in the Department's Compliance Order, it found Respondent retaliated against the affected employee; Respondent disputes the Department's conclusion.

11. On August 23, 2023, the Department served a Compliance Order on Respondent that found Respondent had violated Minn. Stat. § 181.939 and Minn. Stat. § 181.101. The Department and Respondent subsequently engaged in settlement discussions. As a result, the Parties were able to resolve this matter and agree to enter into this Consent Order.

#### **D. VIOLATIONS**

Based upon the above STIPULATED FACTS, the Parties agree the following violations of the law occurred:

1. Respondent violated Minn. Stat. § 181.939 by failing to provide reasonable paid break times each workday to an employee who needs to express milk; and

2. Respondent violated Minn. Stat. § 181.101 by failing to pay an employee for all wages earned at their regular rate of pay.

### **E. GROUNDS FOR CONSENT ORDER CONDITIONS**

Respondent agrees that the Commissioner is authorized to issue this Consent Order requiring Respondent to pay unpaid back wages earned, to take affirmative steps to effectuate the purposes of the statutes violated as specified under the CONDITIONS below, and to comply with Minn. Stat. § 181.939 and Minn. Stat. § 181.101, along with the related administrative rules.

### **F. CONDITIONS**

Based upon the above sections, Respondent agrees that the Commissioner should issue a Consent Order in accordance with the following terms:

1. **Back Wages.** The employee listed in the attached Exhibit 1 is owed gross back wages earned in the amounts set forth therein. Exhibit 1 is specifically incorporated herein and made a part of this Consent Order.

2. **Method of Payment and Due Date.** The total amount of gross back wages due is **\$88.34**. Respondent shall pay the back wages due to the employee in the amount specified in Exhibit 1 and provide the following documentation as proof of payment to the Commissioner on or before **30 days of the Effective Date** (“Due Date”):

- a. an individual check made payable to the employee listed on Exhibit 1 for the gross amount due that employee less applicable FICA, Federal and State withholdings;
- b. a wage and earning statement for the employee set forth in Exhibit 1; and
- c. a full alphabetical list of all employees entitled to back wages with their last known address and phone number(s).

3. The check and documentation shall be mailed or delivered on or before 4:30 p.m. on the Due Date to:

Department of Labor and Industry  
Division of Labor Standards  
Attn: Prairie Bly  
443 Lafayette Road N.  
St. Paul, MN 55155

4. **Compensatory Damages.** The employee listed in the attached Exhibit 1 is owed compensatory damages in the amount of **\$338.77**. Respondent shall submit to the Department a second check payable to the employee listed in the attached Exhibit 1 for the gross amount of

compensatory damages due to that employee. This check shall be mailed or delivered at the same time and in the same manner as the checks and documents in Condition 3 above.

4. **Civil Penalties.** Respondent willfully and repeatedly violated Minn. Stat. § 181.939, subd. 1 by reducing an employee's compensation for time used to express milk. As a result, the Department is owed a civil penalty of **\$15,000**, of which \$7,500 is stayed. Respondent shall submit to the Department a check for civil penalties in the amount of **\$7,500**, and the check shall be made payable to the **Minnesota Department of Labor and Industry** and shall be mailed or delivered at the same time and in the same manner as the checks and documents in Condition 3 above. If Respondent fails to fully comply with this Consent Order or has a future violation of the Minnesota Fair Labor Standards Act (MFLSA) or Minnesota Statutes, Ch. 181 within the next three (3) years from the Effective Date of this Consent Order, then the full amount of the stayed civil penalty shall be due in full to the Minnesota Department of Labor and Industry within 30 days of the Department providing written notice of a breach of the terms of this Consent order or a final order being issued to Respondent for violation(s) of MFLSA or Minnesota Statutes, Ch. 181.

5. **Self-Audit.** Respondent will conduct an audit of Respondent's Minnesota stores to identify and compensate all employees whose pay was reduced for taking breaks to express milk during the Audit Period and confirm compliance with this requirement to the Department by submitting a report within sixty (60) days of the Effective Date of this Consent Order as follows:

- a. Respondent shall review all its time records for its Minnesota employees who expressed milk at work during the Audit Period, and for all Minnesota employees who took parental leave at any time from December 1, 2021 to November 30, 2022;
- b. If any of the employees identified in section F, paragraph 6(a) took more than one 30-minute meal period or other unpaid breaks during a shift, Respondent shall calculate and pay back wages owed to the employee, unless the employee took the additional unpaid break(s) for reasons other than expressing milk;
- c. Respondent shall prepare and submit a report to the Department listing all employees entitled to back wages, along with their last known addresses, phone numbers, and proof of the gross amount of back wages paid to each employee; and
- d. The Department agrees that it will not pursue any additional penalties against Respondent related to any employees owed back wages pursuant to Respondent's self-audit as long as Respondent complies with all terms of section F, paragraph 6 herein.

6. **Employee Rights.** Respondent hereby confirms that it has updated its "Team Member Information Booklet" with the information below and will continue to maintain the following information as an addendum to the booklet:

- a. Information contained in Minn. Stat. § 181.172 regarding wage disclosure protections;
- b. A notice regarding nursing mothers, lactating employees, and pregnancy accommodations as required by Minn. Stat. § 181.939, subd. 3; and
- c. Information contained in Minn. Stat. § 181.941 regarding pregnancy and parenting leave.



7. **Nursing Mothers Poster.** Respondent hereby confirms that it has posted a copy of the Nursing Mothers, Lactating Employees, and Pregnancy Accommodations poster at each of Respondent's Minnesota stores and will continue to maintain a posted copy at each of Respondent's Minnesota Stores.

#### **G. VACATION OF ORDER**

Based upon the above sections, the Commissioner vacates the Compliance Order served on August 23, 2023.

#### **H. JUDICIAL RELIEF**

Pursuant to Minn. Stat. §177.27, subd. 5, if Respondent fails to comply with this Consent Order, the Commissioner may bring an action in District Court to enforce or require compliance with this Consent Order without further notice or additional proceedings. The Commissioner may file and enforce any unpaid portion of the penalty as a judgment in district court without further notice or additional proceedings. *See* Minn. Stat. § 16D.17. Additionally, interest shall accrue on and be added to the unpaid balance from the date that payment is due under the terms of this Order until it is paid at an annual rate computed in accordance with Minn. Stat. § 549.09. *See* Minn. Stat. § 177.27, subd. 7.

#### **I. WAIVER OF RIGHTS**

For the purposes of this Consent Order, Respondent waives all procedures and proceedings before the Commissioner, Office of Administrative Hearings, or District Court to which it may be entitled pursuant to the Minnesota and United States Constitutions, statutes, or rules. This includes waiver of the right to dispute the STIPULATED FACTS in section C above, the VIOLATIONS set forth in section D above, and/or the CONDITIONS set forth in section F above in a contested case proceeding pursuant to Minn. Stat. Ch. 14. If Respondent defaults on any requirements in section F, Respondent agrees that, without further notice to or an appearance by it, the Commissioner may issue an order containing all the terms and amounts listed in section F above and an additional equal amount as liquidated damages, plus civil penalties, reimbursement of fees and costs, or any combination thereof, plus interest from the date of the order. Default occurs if Respondent fails to satisfy every Condition set forth in section F by the Due Date. Respondent waives the right to any judicial review of the Consent Order by appeal, writ of certiorari, or otherwise.

#### **J. ADDITIONAL ENFORCEMENT ACTION**

This Consent Order pertains only to the facts specified herein and shall not in any way limit the initiation of an enforcement proceeding based upon unrelated or unknown facts or violations. This Consent Order may be used in the future against Respondent to prove repeated violation(s) of the MFLSA and/or additional statutory provisions stated in Minn. Stat. §177.27, subd. 4.

## L. GENERAL TERMS

1. **No Admission of Liability.** Menard, Inc. disputes and does not admit the violations of law alleged by the Department, and nothing in this Consent Order shall be construed as an admission of any wrongful or unlawful act.

2. **Government Data.** Pursuant to the Minnesota Government Data Practices Act, this Consent Order (other than any attached exhibits) is classified as public data upon its issuance by the Commissioner. All documents in the record shall maintain the data classification to which they are entitled pursuant to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13. The documents shall not, to the extent they are not already public documents, become public merely because they are referenced herein.

3. **Voluntary Agreement.** The Parties acknowledge that no person has exerted undue pressure on them to sign this Consent Order. Each party is voluntarily choosing to enter into this Consent Order after arm's length negotiations. The Parties acknowledge that they have read and understood the terms of this Consent Order, that they have been represented by legal counsel and that they are voluntarily entering into this Consent Order to resolve the dispute among them.

4. **Severability.** The provisions of this Consent Order will be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Consent Order will remain in full force and effect.

5. **Entire Agreement.** This Consent Order constitutes the entire agreement between the parties relating to: (1) the Department's investigation for the Audit Period; and (2) the Department's Compliance Order. No party has relied upon any promises or representations that are not stated in this document. No changes to this Consent Order are valid unless they are in writing, identified as an amendment to this Consent Order, and signed by all parties. There are no inducements leading to the execution of this Consent Order except as herein explicitly contained.


6. **Warranty.** The persons signing this Consent Order warrant that they have full authority to enter into this Consent Order on behalf of the party each represents, and that this Consent Order is valid and enforceable as to that party.

7. **Governing Law.** This Consent Order shall be construed and interpreted in accordance with the laws of the State of Minnesota.

8. **Counterparts.** This Consent Order may be executed in multiple counterparts, which shall be construed together as if one instrument. Any party is entitled to rely on an electronic or facsimile copy of a signature as if it were an original.

9. **Service.** A copy of this Consent Order shall be served by regular first-class mail and first-class certified mail upon Respondent at the addresses listed above. The Consent Order shall be effective and deemed issued when it is signed on behalf of the Commissioner.

Menard, Inc. d/b/a Menards

By:   
Jim McMenemy  
Its Legal Manager

Dated: 12/5/23

Minnesota Department of Labor and Industry

By:   
Jessica Grosz  
Labor Standards Division Director

Dated: 12/5/2023

Upon consideration of the forgoing Consent Order and based upon all the facts, records and proceedings herein, the Commissioner makes the following:

**ORDER**

NOW THEREFORE, IT IS HEREBY ORDERED that all terms of the Consent Order are approved and adopted.

Dated: 12/5/2023

NICOLE BLISSENBACH  
Commissioner

By:   
Jessica Grosz, Director  
Division of Labor Standards  
Minnesota Department of Labor and Industry