



www.DailyGC.com  
800.296.7681

### **STORM CLOUDS OVER FAIRWEATHER**

**CHALLENGE: Identify 14 of the 16 violations.**  
**By March 31st, email your answer to [info@newenglandcarwash.org](mailto:info@newenglandcarwash.org)**

Rich Repairman owns Fairweather Car Wash. It has 2 locations in Western Massachusetts, one in Lee and one in Pittsfield. Rich also owns and operates a busy auto repair business in Lenox, and the car washes are his "side business." Both locations are full-service car washes, with several wash options, monthly unlimited wash packages, and detailing services.

Although he is the owner, Rich prefers not to be involved with the car wash operations and management. Each location has a manager, two shift supervisors and up to 8 additional employees. Rich hires the managers and expects them to handle everything. The managers hire and fire all other employees, including the shift supervisors, and handle the personnel and administrative issues. The managers and shift supervisors deal with all customer service issues, and they train and oversee the other employees. Beyond this, the managers and supervisors participate with other employees in every aspect of the operations. Most of their time is spent working alongside the other employees, greeting and upselling customers, collecting money, towel drying and detailing.

The car washes are open every day from 7:00 a.m. to 7:00 pm throughout the year, weather permitting. Shifts are 6 hours each, 7:00 a.m. – 1:00 p.m. and 1:00 p.m. – 7:00 p.m. Each employee is allowed a 10-minute break per shift if it's not too busy. A manager or supervisor is on site at all times. The manager is expected to work "full-time" – at least 50 hours per week – and is paid a salary of \$1,000 per week plus a percentage of the profits from that location. A supervisor is present on every shift and is paid \$100 per shift. The detailers/dryers are paid \$75 per shift, and the cashiers are paid \$55 per shift for women and \$65 per shift for men. Most of the employees work 5-6 days per week, and several of them work double shifts per day. Most employees work 7-9 shifts per week. A few high school freshmen work there on weekends, unloading supplies from delivery trucks, using ladders to stock the supplies and clean the high windows, moving cars in and around the detailing area, and buffing the detailed cars. They typically have work permits from other jobs and are paid \$7.50 per hour (in cash) plus free food (usually pizzas and burgers).

After every car wash, all cars are dried and "finished" by car wash employees. There is a tip basket in the finishing area. Most customers drop a couple dollars in the tip basket after a wash, but bigger tips are put into the basket by the detailing customers. The tips are shared on a "per shift" basis among all employees, including the cashiers and supervisors, but not including the managers or the high school kids. No records are kept of the amount of tips received or paid.

Barry Boss manages the Pittsfield location. He has been working at the car wash for nearly 10 years, first as a detailer and then as a shift supervisor. The location is very profitable.

Barry recently hired a young woman, Carla Clerk, as a cashier. She was smart, good-natured, reliable and honest. She worked, on average, 8 shifts per week. Barry liked her a lot, and he told her that he was thinking about talking with Rich (the Owner) about making her a supervisor.

One day, Barry decided to ask Carla out for a date. She said "no" and told him that she already was in a relationship. About a week later, Barry asked her again, saying that it might be good for her career if she went out with him, but she said "no" again. Carla called Rich to complain about Barry's hitting on her. Rich told Barry to cut it out. Barry then decided that Carla would not be a good supervisor and he never spoke to Rich about it.

About a month later, Carla came to work wearing a hijab, the veil covering the head and chest that is worn by some Muslim women. Barry was shocked to see it. He asked her about it, but she did not want to discuss it. She told Barry it was none of his business. During her breaks, Carla went to a quiet area of the office, put down a prayer rug and prayed, which made Barry and some of the other employees very angry.

Several of Fairweather's regular customers mentioned the hijab to Barry. One customer even told Barry that he was not returning to the car wash until the hijab was gone. Without discussing it with Rich, Barry concluded that Carla's hijab and prayer practices were bad for the business and employee morale, and he was worried that it might impact his profit share.

Barry asked Carla if she would consider removing the hijab and not praying during work hours, but she refused. Barry told her that he thought this religious display was not appropriate at the business and could actually hurt the business. Carla said she disagreed and yelled at him to leave her alone about this. Barry was tired of constantly warning other employees about insubordination, and he was fed up. On the spot, he fired her without any warning.

Like so many employees who are fired on the spot or in difficult situations, Carla's first stop was to see her friend, Lois Lawyer. This was a good day for Lois and a bad day for Rich and Barry. Lois was a smart employment lawyer, and she asked Carla all of the rights questions to learn, not only the violations of Carla's rights, but also the rights of the other employees.

**Activity conducted at the NECA 1/26/16 Dinner Meeting:**

Take 20 minutes or so to discuss among your colleagues at your table the following questions:

1. Were any "wage and hour" laws violated by Fairweather Car Wash and, if so, what were they?
2. Were any tip laws violated by Fairweather Car Wash and, if so, what were they?
3. Were any discrimination laws violated by Fairweather Car Wash and, if so, what were they?
4. Rich Repairman delegated all responsibility for the operation and management of the car washes to his Managers. For which legal violations, if any, was he responsible?
5. What other laws, if any, were violated by Fairweather Car Wash?
6. In total, how many legal violations were committed by Fairweather Car Wash? Bragging Rights go to the team with the closest answer.

*Prepared by Joel Sowalsky, Esq. , owner of Daily General Counsel™, a social impact law firm that helps small businesses and startups that cannot afford to hire a business lawyer and likely would "go it alone" in resolving their problems.*