

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: MARGARET ANDERSON,
Determination of Compliance No. DOC-
283-15
OAH Docket No. 07-2015-LI-00155

DIRECTOR'S ORDER
RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Initial Order served on February 12, 2016, having considered the petition for review filed by Margaret Anderson (the Appellant) with the Director's Office on March 11, 2016, briefing submitted to the Director's Office, and having reviewed the record created at hearing and the records and files herein, issues this Director's Order. This Order intends to resolve the contested issue of whether Car Toys, Inc. failed to pay all wages due to the Appellant in violation of the wage payment and minimum wage laws. **The Determination of Compliance No. DOC-283-15, issued by the Department on April 15, 2015, is AFFIRMED.**

The parties in this matter are the Department and the Appellant.

The Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on February 12, 2016, following an administrative hearing on December 21, 2015 and December 22, 2015. The Initial Order affirmed the Department's April 15, 2015 Determination of Compliance No. DOC-283-15.
2. On March 11, 2016, the Appellant timely filed a petition for review with the Director.
3. On May 11, 2016, the Department filed a response to the Appellant's petition for review.
4. The Director adopts and incorporates all the Initial Order's Findings of Fact.
5. The Director also adopts and incorporates the Initial Order's "Issue Presented," the "Order Summary" and the "Hearing" summary.

II. CONCLUSIONS OF LAW

1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.
2. The Appellant argues that she should have been able to present testimony from Kent Walker, a former human resources director for Car Toys. But she did not serve Mr. Walker with a subpoena or otherwise arrange for his testimony at the hearing. Therefore she was not entitled to present this testimony.
3. The Director adopts and incorporates the Initial Order's Conclusions of Law and Initial Order.

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III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Determination of Compliance is AFFIRMED and the Initial Order of February 12, 2016, is incorporated by reference herein as Exhibit A.

DATED at Tumwater this 26 day of July, 2016.



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

NOTE: A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

I, Lisa Rodriguez, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 26 day of July 2016, to the following via certified mail, postage prepaid.

Margaret Anderson
2154 North 156th Place
Seattle, WA 98133

Car Toys, Inc.
2101 Fourth Avenue, Suite 1250
Seattle, WA 98121

Katy J. Dixon
Assistant Attorney General
800 Fifth Ave, Suite 2000
Seattle, WA 98104

DATED this 26 day of July, 2016, at Tumwater, Washington.

Lisa Rodriguez

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Margaret Anderson,

Appellant.

Docket No. 07-2015-LI-00155

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND INITIAL ORDER**

Agency: Labor and Industries
Program: Wage Payments
Agency No. DOC-283-15

1. ISSUE PRESENTED

- 1.1. From July 8, 2012 through April 5, 2014, did Car Toys, Inc., violate RCW 49.46.130 by failing to fully pay Margaret Anderson for 656 overtime hours, such that Margaret Anderson is owed \$26,225.96, plus interest, for work performed during that period?

2. ORDER SUMMARY

- 2.1. From July 8, 2012 through April 5, 2014, Car Toys, Inc., did not violate RCW 49.46.130 by failing to fully pay Margaret Anderson for 656 overtime hours, and Margaret Anderson is not owed \$26,225.96, plus interest, for work performed during that period.

3. HEARING

- 3.1. Hearing Dates: December 21 and 22, 2015
- 3.2. Administrative Law Judge: Charles H. Van Gorder
- 3.3. Appellant: Margaret Anderson¹
- 3.3.1. Representative: Margaret Anderson, *Pro Se*
- 3.3.2. Witnesses:
- 3.3.2.1. Margaret Anderson
- 3.3.2.2. Chad Cudworth

¹ The documents entered as exhibits in this matter refer to the appellant as Margaret Anderson, Margaux Anderson and Margo Anderson. For the sake of clarity and consistency, this order refers to the appellant as Margaret Anderson.

3.3.2.3. Beth Greenberg

3.4. Agency: Department of Labor and Industries

3.4.1. Representative: Assistant Attorney General Katy J. Dixon

3.4.2. Witnesses:

3.4.2.1. Ana Gamino, Industrial Relations Agent, Department of Labor and Industries

3.4.2.2. Joan Toigo, Human Resources Director, Car Toys, Inc., and Wireless Advocates, LLC. (in-person and by telephone)

3.5. Also Present:

3.5.1.1. Mike Rall (December 21, 2015 only)

3.5.1.2. Ruth Castro, Industrial Relations Agent, Department of Labor and Industries (December 21, 2015 only)

3.5.1.3. Harly Farey, Industrial Relations Agent, Department of Labor and Industries (December 21, 2015 only)

3.5.1.4. Jennifer Lenihan (December 22, 2015 only)

3.6. Exhibits: The Department's Exhibits 1 through 20 were admitted and Appellant's Exhibits A through M and O through Z were admitted; Appellant's Exhibit N was not admitted.

3.7. Other: The hearing was recorded through a digital recording system and has been preserved on compact discs. Court reporters Amanda Sue Varona (December 21, 2015 only) and Karen Grant (December 22, 2015 only) of Central Court Reporting were also present.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1. On April 15, 2015, the Department of Labor and Industries ("Department") issued Determination of Compliance No. DOC-283-15 which determined Car Toys, Inc., did not violate RCW 49.46.130 by failing to fully pay Margaret

Anderson for 656 overtime hours, such that Margaret Anderson is owed \$26,225.96, plus interest, for work performed during the period July 8, 2012 through April 5, 2014. Exhibit 1, pp. 1-3.

- 4.2. Margaret Anderson appealed the Department's issuance of Determination of Compliance No. DOC-283-15 by letter received by the Department on May 5, 2015. Exhibit 2.

Margaret Anderson's Work for Car Toys

Offer of Employment

- 4.3. On March 25, 2012, Car Toys extended to Margaret Anderson (hereafter "appellant") an offer of employment as a full-time revenue analyst at an annualized salary of \$55,000 ("offer of employment"). Exhibit 6.² The offer of employment included statements of the Mission and Scope, Essential Duties & Responsibilities, Dimensions, Working Relationships and Qualifications for the position of revenue analyst at Car Toys. Exhibit B, pp. 1-2. The anticipated start of employment for the appellant was July 2, 2012. The appellant accepted the job offer on June 25, 2012. Exhibit 12, p.12.

- 4.4. The offer of employment set forth the mission and scope of the position of revenue analyst:

The Revenue Analyst has responsibility for managing the wireless accounts receivable program involving the commission calculations, reconciliations and coordination of accounting and month-end related responsibilities. The position plays a critical role in ensuring & protecting Car Toys from financial loss resulting from inaccurate revenue entries & ensuring full timely collection of funds. Responsibilities include managing the collection and reconciliation of wireless commissions. Duties also include providing the data for the primary critical responsibility of validating store transactions related to wireless sales for compliance & accuracy.

- 4.5. The offer of employment set forth the following essential duties and responsibilities of the position of revenue analyst:

- Develop contract analysis, calculate, & journalize wireless & satellite accounts receivable.
- Develop, design & prepare month end financial reporting related to wireless & satellite.

² Exhibit 6 was misdated as March 25, 2010.

- Manage dispute process per contracts & reconcile sales records to carrier commission statements.
 - Oversee sales compliance performance reporting, & feedback.
 - Assist in helping Wholesale Wireless Manager.
- 4.6. The offer of employment included as qualifications for the position of revenue analyst: 1) a BA in accounting or finance, or equivalent experience, preferred, and 2) proven analytical skills. Exhibit B, p.2. At the time the appellant applied for her job at Car Toys, she had received a B.A. in business administration (finance concentration) from Seattle Pacific University in 1999, and had ten years' experience in a commercial finance professional environment. Exhibit K.

Compensation and Job Duties during Employment

- 4.7. During the entire time the appellant was employed by Car Toys, she was paid on the basis of a fixed annual salary. On two occasions, the appellant's earning statements reflected payments at an hourly rate, due to the manner in which vacation time was accrued and paid, and due to the transition of the appellant's position from Car Toys to Wireless Advocates. Exhibit 13. These payments were not inconsistent with Car Toys' payment of the appellant on a salary basis. Exhibit 12, p.2.
- 4.8. The appellant was not required to clock in or clock out when working, nor was she required to keep track of hours worked. The appellant did not have a set work schedule but as an exempt employee, the appellant was expected to be at the headquarters during the core hours of 9:00 a.m. until 5:00 p.m. The appellant was not paid overtime wages if she worked more than forty hours per week. Testimony of Joan Toigo; Testimony of Beth Greenberg.
- 4.9. The appellant's position as a revenue analyst was important to Car Toys because her responsibilities included ensuring all of Car Toys' revenue was being identified and collected. This responsibility was one of the most important activities of the employer, and the revenue analyst fulfilled a critical function. At the time the appellant was hired, Car Toys had a \$10 -12 million problem with uncollected revenue from wireless carriers from sales commissions. Testimony of Joan Toigo. The appellant's efforts resulted in the collection of more than \$688,000 in lost and past-due revenues. Exhibit I, p.1.
- 4.10. The appellant's duties as revenue analyst included: 1) re-establishing business rhythms, 2) completing special projects such as pursuing lost revenue for 2011, 3) identifying and disputing commission payment discrepancies, and 4) establishing a methodology and strategy for establishing a dialog with wireless

carriers to resolve disputed commission claims. Exhibit 8, pp.1, 6-7; Testimony of Joan Toigo.

- 4.11. The duties of the appellant as a revenue analyst in developing analysis, calculating accounts receivable amounts, designing business processes and rhythms, managing the entire commission dispute resolution process, and training other analysts all involved the exercise of discretion and independent. Testimony of Joan Toigo.
- 4.12. The appellant “identified significant discrepancies and implemented changes in how data is reported resulting in favorable impact on the accuracy of monthly accruals.” Exhibit I, p.1. She also “collaborated with other impacted departments to implement process improvements” and “collaborated on an Excel model to work around system limitations in reporting.” Exhibit I, pp. 1-2. Finally, the appellant “initiated a high level of collaboration with other impacted departments and in developed my assertiveness in exercising discretion, judgment and personal responsibility when under pressure and while handling completing priorities.” Exhibit I, p. 3. In the appellant’s 2013 SHQ Overall Performance Summary, she was praised by her review manager for “[doing] a good job of analyzing.” Exhibit I, p.1.
- 4.13. In working with protocol developed by the Finance Department for the analysis of journal entries, the appellant as a revenue analyst could vary from the established protocol if there was a sound reason to do so. The appellant’s role as a revenue analyst in recapturing revenue from wireless carriers included direct contact with the carriers regarding revenues owed but not yet paid through validating reports of units sold as matched with the contractual value of those units. A revenue analyst was responsible for the analysis necessary for summarizing and organizing data generated by the point of sale system and translating that data into spreadsheets for use by the Finance Department. Although the appellant’s analysis involved the cut and paste of data, it also involved cognitive analysis and evaluation and data manipulation. Testimony of Chad Cudworth; Testimony of Beth Greenberg.
- 4.14. The principal duty performed by the appellant was monitoring the wireless accounts. Most of the appellant’s work involved reconciling the sales of handsets and rate plans to the payments received from wireless carriers. The appellant was responsible for disputing discrepancies in wireless commissions through the preparation of Excel spreadsheets, and for calculating at the end of each month Car Toys’ expected revenue from each of the wireless carriers. The appellant was not responsible for recommendations to write-off disputed accounts receivable. The manipulation of data downloaded from the stores into journal entries by the revenue analyst was more than cutting and pasting numbers – it

involved sorting and analysis to ensure the numbers had integrity before being uploaded into spreadsheets, and required discretion and independent judgment.
Testimony of Beth Greenberg.

- 4.15. In performing her duties as a revenue analyst, the appellant continued to look for ways to improve the monthly wireless accounting procedures and processes and improve data integrity, conducted comprehensive review and analysis of the monthly accrual process, prepared ad hoc reports based upon her data analysis and synthesized, analyzed and cleaned up large amount of data downloaded from individual stores. Upon hire, the appellant re-established reporting, reconciliation and relationship building. Exhibit I, pp. 10-15; Exhibit 8, p.6; Testimony of Beth Greenberg.
- 4.16. The appellant's factual contention that her position was nothing more than a re-labeled "entry level accounts receivable clerk" position is not credible. In evaluating the credibility of the appellant's summary characterization of her job position, I considered the demeanor and motivation of the witnesses, as well as the documents admitted into evidence. Because: 1) one of the minimum qualifications of the appellant's job position was a BA in accounting or finance or equivalent experience, 2) at the time the appellant applied for her position of revenue analyst at Car Toys, she had received a B.A. in business administration (finance concentration) from Seattle Pacific University and had ten years' experience in a commercial finance professional environment, and 3) the breadth and extent of the responsibilities of the appellant's position as revenue analyst, I find the appellant's characterization of her position as nothing more than a re-labeled "entry level accounts receivable clerk" position is not credible.
- 4.17. In entering the finding set forth in Section 4.16 above, the undersigned need not be persuaded beyond a reasonable doubt as to the true state of affairs, nor must the persuasive evidence be clear, cogent, and convincing. The undersigned need only determine what most likely was the case. At the hearing, the appellant's testimony on this point was deemed not to be credible upon careful consideration and weighing of the evidence, the witnesses' demeanor (as determined by voice, straightforwardness, hesitancy or lack of hesitancy in responses), the reasonableness and consistency of the claimant's testimony throughout the hearing and as related to the admitted exhibits, and the totality of the circumstances presented.
- 4.18. The appellant assumed that because she was paid on a salary basis she was not eligible for overtime. The appellant never asked to be paid overtime; instead she asked how she could be paid bonuses. Testimony of Margaret Anderson.

4.19. In April of 2014, the appellant's position as revenue analyst was switched from Car Toys to Wireless Advocates, LLC ("Wireless Advocates"). Exhibit 12, pp. 16-18; Exhibit F, pp. 1-4. The appellant's job description had been up-dated as of October of 2013 to state the position had an "Exempt" FLSA status. That up-dated job description was signed by the appellant on March 10, 2014. Exhibit 12, pp. 19-21; Exhibit F, pp. 15-17.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

5.1. The Department issued Determination of Compliance No. DOC-283-15 on April 15, 2015. Margaret Anderson appealed the Department's issuance of that Determination of Compliance by letter received by the Department on May 5, 2015. Because any appeal in this matter needed to be received by the Department on or before May 15, 2015, Ms. Anderson timely appealed the Determination of Compliance. Therefore, I have jurisdiction to hear and decide this matter under RCW 49.48.084(3) and RCW 34.05.425.

Wage Complaint

5.2. If an employee files a wage complaint, the Department must investigate. RCW 49.48.083(1). If the Department finds that the employer has violated one or more wage payment requirements, it shall issue a citation and notice of assessment, including 1% interest per month on all unpaid wages. RCW 49.48.083(2). If the Department determines the employer has complied with the law, the Department shall issue a Determination of Compliance. RCW 49.48.083(1).

Overtime Pay; Exemptions

5.3. RCW 49.46.010 provides in part (emphasis added):

As used in this chapter:

...

(3) "Employee" includes any individual employed by an employer but shall not include:

...

- (c) **Any individual employed in a bona fide executive, administrative, or professional capacity** or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

5.4. RCW 49.46.130 provides in part (emphasis added):

- (1) **Except as otherwise provided in this section**, no employer shall employ any of his or her employees for a workweek longer than forty hours unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he or she is employed.

(2) **This section does not apply to:**

- (a) **Any person exempted pursuant to RCW 49.46.010(3)**. The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(3)(c);

5.5. WAC 296-128-520 provides:

The term "individual employed in a bona fide . . . administrative . . . capacity" in RCW 49.46.010 (5)(c) shall mean any employee:

- (1) Whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general business operations of his employer or his employer's customers; or
- (2) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and
- (3) Who customarily and regularly exercises discretion and independent judgment; and
- (a) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in this regulation), or

- (b) Who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge, or
 - (c) Who executes under only general supervision special assignments and tasks; and
- (4) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of his hours worked in the work week to activities which are not directly and closely related to the performance of the work described in paragraphs (1) through (3) of this section; and
- (a) Who is compensated for his services on a salary or fee basis at a rate of not less than \$155 per week exclusive of board, lodging, or other facilities; or
 - (b) Who, in the case of academic administrative personnel is compensated for his services as required by paragraph (4)(a) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which he is employed: **Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers; which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.** (Emphasis added.)

5.6. Section 29 CFR 541.202 (Discretion and independent judgment) provides in part:

- (a) To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.
- (b) The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which

the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

- (c) The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term "discretion and independent judgment" does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment.
- ...
- ...

- (e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. See also § 541.704 regarding use of manuals. The exercise of discretion and independent judgment also does not include clerical or secretarial work,

recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work. An employee who simply tabulates data is not exempt, even if labeled as a "statistician."

Margaret Anderson Was an Exempt, Administrative Employee

- 5.7. In the present case, the appellant's work as revenue analyst meets the three-prong definition of an individual employed in a bona fide, administrative capacity as set out in WAC 296-128-520. Under the first prong, the appellant's primary job duties as a revenue analyst consisted entirely of the performance of office work. The appellant's primary job duties as a revenue analyst directly related to general business operations of Car Toys because her duties as set forth in the offer of employment, and as performed by her, were directly related to maximizing revenue of Car Toys from sales commissions, an essential aspect of Car Toys' general business operations.
- 5.8. Under the second prong, if the appellant's principal job functions were nothing more than simply tabulating data or performing other tasks in a mechanical, repetitive, recurrent or routine manner, she may have exercised insufficient discretion and independent judgment to qualify as working in a bona fide administrative capacity. See, 29 CFR 541.202(e). However, the appellant's job duties as a revenue analyst included, among other things, analyzing and manipulating data downloaded from individual stores, managing the entire commission dispute resolution process, cognitive analysis and data evaluation and manipulation rather than simple cutting and pasting of numbers, and preparing ad hoc reports based upon her data analysis. Taking into consideration the multiple duties of the appellant as a revenue analyst, the appellant had the authority to interpret and implement management policies and operating practices, carried out a major assignment in conducting the operations of Car Toys, performed work that affected business operations of Car Toys to a substantial degree, investigated and resolved matters of significance on behalf of management, and represented Car Toys in arbitrating commission disputes with wireless carriers. The fact the appellant's work was subject to review by a supervisor does not mean she did not exercise discretion and independent judgment. *Mitchell v. PEMCO, Mut. Ins. Co.*, 134 Wn.App. 723, 734 (2006). The appellant admitted in her own comments set forth in her 2013 SHQ Overall Performance Summary that she exercised "discretion, judgment and personal responsibility" in carrying out the duties of her job as a revenue analyst. Therefore, the appellant exercised discretion and independent judgment in her position as a revenue analyst for Car Toys.

- 5.9. Under the third prong, more than eighty percent of the appellant's work was conducted in a bona fide administrative capacity, and the appellant was compensated on a salary basis in excess of \$250.00 per week exclusive of board, lodging or other facilities. The fact that the appellant's pay was calculated on an hourly basis on occasion due to the use of paid time off and when her job was transitioned from one company to another does not alter the manner of the appellant's compensation as being entirely on a salary basis. See, *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 303, 996 P.2d 582, 587-88 (2000).
- 5.10. In summary, because the appellant: a) was compensated on a salary basis at a rate of not less than \$250 per week (exclusive of board lodging or other facilities), b) performed a primary duty consisting of the performance of office work directly related to the general business operations of Car Toys, and c) performed work requiring the exercise of discretion and independent judgment, the appellant's position and work as a revenue analyst at Car Toys meets all of the requirements of WAC 296-128-520 to be considered as being employed in a bona fide administrative capacity. See, WAC 296-128-520(4)(b). Therefore, under RCW 49.46.130(2), the appellant was not entitled to overtime pay for work in excess of forty hours per week during that period.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. Determination of Compliance No. DOC-283-15, issued by the Department of Labor and Industries on April 15, 2015, is **AFFIRMED**.

Issued from Tacoma, Washington, on the date of mailing.



Charles H. Van Gorder
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Director of the Department of Labor and Industries.³ A Petition for Administrative Review may be mailed to the Director or delivered to the Director at the Department's physical address listed below.

Mailing Address:

Director
Department of Labor and Industries
PO Box 44001
Olympia, WA 98504-4001

Physical Address:

Director
Department of Labor and Industries
7273 Linderson Way SW
Tumwater, WA 98501

Whether you mail or deliver the Petition for Administrative Review, the Director *must actually* receive the Petition for Administrative Review during office hours at the Director's office within 30 days of the date this Initial Order was mailed to the parties. Part of filing a Petition is providing copies to the other parties at the same time.

If the Director does not receive a Petition for Administrative Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.⁴

If you timely file a Petition for Administrative Review, the Director will conduct an administrative review under chapter 34.05 RCW.

CERTIFICATE OF MAILING IS ATTACHED

³ RCW 49.48.084 and RCW 34.05.464.

⁴ RCW 49.48.084 and Chapter 34.05 RCW.

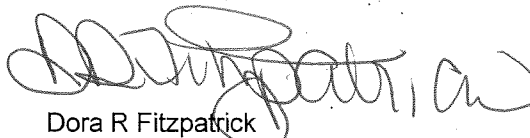
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 07-2015-LI-00155

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

<p>Margaret Anderson 2154 North 156th Place Seattle, WA 98133 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Department of Labor & Industries Katy J. Dixon, AAG 800 Fifth Avenue, Suite 2000 Seattle, WA 98110 <i>Agency Representative</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Car Toys, Inc 2101 Fourth Avenue, Suite 1250 Seattle, WA 98121 <i>Employer</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Friday, February 12, 2016

OFFICE OF ADMINISTRATIVE HEARINGS



Dora R Fitzpatrick
For Julie Wescott
Legal Assistant 2