

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: ABIGAIL WHITE dba WHITE
PAINT

Citation and Notice of Assessment Nos.
W-717-15

OAH Docket No. 10-2015-LI-00247

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 March 23, 2016, having considered the appeal filed by the Department of Labor & Industries (Department) with the Director's Office on April 4, 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 Abigail White dba White Paint (White Paint) failed to pay all the wages due to Tracey Kranson in violation of the Washington wage laws. **White Paint is ordered to pay wages to Tracey Kranson in the amount of \$1,480.00. White Paint is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages. White Paint is ordered to pay the Department a penalty in the amount of \$1000.00.**

The parties in this matter are the Department of Labor & Industries and White Paint.

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

I. FINDINGS OF FACT

1. On June 29, 2015, the Department issued a citation and notice of assessment to White Paint alleging that White Paint violated RCW 49.48.010, assessing unpaid wages in the total amount of \$1,480, assessing interest, and assessing a penalty of \$1,000. White Paint emailed and filed an appeal on July 30, 2015, after trying to fax it the day before.¹

2. This decision incorporates by reference Findings of Fact No. 4.4 to 4.9 and 4.14 to 4.16 of the Initial Order.

3. Tracey Kranson began working as an office manager for White Paint in February 2014. In June 2014, Tracey Kranson was offered a job at a different company. Her employer Kerry White did not want to lose her as an employee because of an upcoming big job and because he was having hip replacement surgery that would cause him to be out of the office. He offered her a \$1500 bonus if she would stay through the end of the year. She held up her side of the bargain and worked the entire time period. Tracey Kranson's testimony was credible. In contrast, Kerry White offers several different explanations about the \$1500 bonus. The changing nature of his story renders his testimony not credible.

4. In December 2014, the employer prepared two checks in the amount of \$750 each in payment of the \$1500 bonus. The second check stated "2/2 \$1500 bonus." Ex. 5. Kerry White's signature is on the two bonus checks, payable to the wage claimant in the amounts of \$750, is evidence of White Paint's determination the bonus had been earned by the wage claimant. This was a nondiscretionary bonus because the employment contract provided White Paint would pay it if she worked to the end of the year.

¹ The Director does not reach the question of whether this was a timely appeal or not because the Department's citation should be otherwise affirmed.

5. Tracey Kranson cashed the first check in January, but when she went to cash the second check in February 2015, the check was returned because of a stop payment. White Paint never paid the remaining \$750 of the bonus.

II. CONCLUSIONS OF LAW

1. Based on the Department'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. This decision adopts Conclusions of Law No. 5.2 to 5.8, 5.13, and 5.15 to 5.19.

3. Bonuses paid for work performed are wages. *LaCoursier v. Camwest Dev., Inc.*, 181 Wn.2d 734, 741, 339 P.3d 963 (2014). A one-time bonus can constitute wages. *Flower v. T.R.A. Indus., Inc.*, 127 Wn. App. 13, 35, 111 P.3d 1192 (2005). Here, the bonus was non-discretionary: once Tracey Kranson worked to the end of the year, White Paint was obligated to pay her the bonus, and so the bonus was wages.

4. White Paint has not appealed the Initial Order decision that White Paint owed Tracey Kanson in wages in the amount of \$730 and that it owes the Department a penalty in the amount of \$1000 and so the Initial Order is final in those respects. White Paint has also not appealed the Initial Order's determination that it would not decide whether there could be a lawful deduction related to the cell phone because White Paint did not file a police report alleging a theft. WAC 296-126-025(3)(d). The Initial Order is final in this respect.

5. White Paint owes unpaid wages to Tracey Kranson in the amount of \$1480. White Paint owes interest in the amount of one percent per month under RCW 49.48.083(2) for these wages. The interest payment obligation is ongoing until paid in full.

6. White Paint owes the Department a penalty in the amount of \$1000.

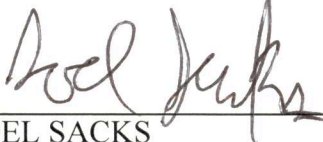
III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Citation and Notice of Assessment is AFFIRMED.

1. Payment of wages. See Citation and Notice of Assessment (June 29, 2015) for payment information and the effect of the failure to pay wages and interest. White Paint is ordered to pay wages to Tracey Kranson in the amount of \$1480. White Paint is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages. The interest payment obligation is ongoing until paid in full. White Paint is ordered to make these payments within thirty days of the date of service of this final Director's Order.

2. Payment of civil penalty: White Paint is ordered to pay the Department a penalty in the amount of \$1000. This penalty shall be paid to the Department within 30 days of the date of service of this final Director's Order. See Citation and Notice of Assessment (June 29, 2015) for payment information.

DATED at Tumwater this 16 day of September, 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 16 day of September 2016, to the following via certified mail, postage prepaid.

Abigail White dba White Paint
Kerry White
Mary Yeldon
15806 Hwy 99, Ste. 2
Lynnwood, WA 98087

Tracey Kranson
3605 Lombard Ave.
Everett, WA 98201

Heather Leibowitz, Assistant Attorney General
Attorney General's Office
800 Fifth Ave., Ste. 2000
Seattle, WA 98104

DATED this 16 day of September, 2016, at Tumwater, Washington.

Lisa Rodriguez