



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

PO Box 44000 • Olympia Washington 98504-4400

July 5, 2022

Sent via E-Mail & US Mail

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Rachel Martinell
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RE: **Robert Keller**
OAH Docket No. 08-2020-LI-01502
Director No. 2022-017-WPA

Dear Parties:

Please find enclosed the Director's Order, which is served on the date of mailing.

Sincerely,

Joel Sacks
Director

Enclosure

cc: Judge Lisa Dublin
Hailey Miles, Tacoma OAH
Anastasia Sandstrom, AAG



DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: ROBERT KELLER,

Appellant.

Citation and Notice of Assessment
No. 59609

OAH Docket No. 08-2020-LI-01502

NO. 2022-017-WPA

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, the petition for review filed by the Department of Labor and Industries (Department) with the Director's Office, the briefing submitted to the Director's office by the parties, and the record developed at the Office of Administrative Hearings, issues this Director's Order.

The parties are the Department, Robert Keller, and Rachel Martinell.

Robert Keller is ordered to pay wages to Rachel Martinell in the amount of \$2,996.28. Robert Keller is also ordered to pay interest of one percent per month under RCW 49.48.083(2) for these wages.

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

DIRECTOR'S ORDER

2022-008-WPA

RCW 49.48.084(4); RCW 34.05

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OFFICE OF THE DIRECTOR
DEPARTMENT OF LABOR & INDUSTRIES
P.O. BOX 44001
OLYMPIA, WA 98504-4001

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on August 2, 2021. The Initial Order affirmed the Department's Citation and Notice of Assessment No. 59609 as modified. It found that Visit Services of Washington, Inc. (VSW) violated RCW 49.46.020 and RCW 49.46.130 by failing to pay minimum wage and overtime wages to Rachel Martinell totaling \$2,996.28 during the period of June 12, 2018, through June 17, 2019. But the Initial Order found that Robert Keller was not personally liable for payment of the unpaid wages and that the \$1,000 civil penalty under RCW 49.48.083(3) was inappropriate.
2. On August 25, 2021, the Department timely filed a petition for administrative review with the Director. VSW and Robert Keller did not file a petition for administrative review.
3. The only issues before the Director are whether Robert Keller is liable for the unpaid wages and interest under RCW 49.48.083(2), and whether a civil penalty under RCW 49.48.083(3) is appropriate. The issue of whether Rachel Martinell was an independent contractor or an employee was not raised in a timely petition for review and is not before the Director. As explained below, VSW's liability is also not at issue.
4. The Director adopts and incorporates the Initial Order's "Hearing" summary.
5. On April 30, 2020, the Department issued Citation and Notice of Assessment No. 59609 to VSW and Robert Keller individually for failing to pay Rachel Martinell wages due in the amount of \$2,996.28. The Department assessed interest in the amount of \$541.17 and issued a civil penalty of \$1,000.00. The Citation and Notice of Assessment and the accompanying letter advised that Citation and Notice of Assessment No. 59609 would become final on May 30, 2020.
6. On May 29, 2020, Robert Keller appealed the Citation and Notice of Assessment.
7. No representative for VSW appeared at hearing, and the Administrative Law Judge therefore dismissed its appeal. VSW did not seek reconsideration or file a petition for administrative review. Citation and Notice of Assessment No. 59609 is therefore final with regard to VSW. VSW is liable for the unpaid wages, interest, and penalty, as set forth in the Citation and Notice of Assessment. Only Robert Keller's liability is at issue.
8. The Director adopts and incorporates the Initial Order's findings of facts 4.3 through 4.27, and 4.29 through 4.34.

II. CONCLUSIONS OF LAW

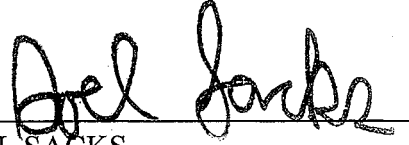
1. The Director adopts and incorporates the Initial Order's conclusions of law 5.1 through 5.16, 5.18 through 5.20, and 5.22 through 5.32.
2. The Administrative Law Judge properly dismissed VSW's appeal of Citation and Notice of Assessment No. 59609 when no representative appeared at hearing. VSW did not seek reconsideration or file a petition for administrative review regarding the Order of Dismissal. Citation and Notice of Assessment No. 59609 is therefore final with regard to VSW. VSW is liable for the unpaid wages, interest, and penalty amount, as set forth in Citation and Notice of Assessment No. 59609.
3. Robert Keller meets the definition of an "employer" under RCW 49.48.082(6) and RCW 49.46.010(4). The requirements for establishing liability under RCW 49.52.050 and RCW 49.52.070 do not apply here, and a violation of a wage payment requirement in the Minimum Wage Act, RCW 49.46, need not be willful in order for a corporate officer to be liable for the payment of unpaid wages under RCW 49.48.083(2). As an employer, Robert Keller is personally liable for payment of minimum wage and overtime wages to Rachel Martinell totaling \$2,996.28 during the period of June 12, 2018, through June 17, 2019.
4. There was a bona fide dispute regarding whether Rachel Martinell was an independent contractor or an employee. A civil penalty is therefore inappropriate.

III. DECISION AND ORDER

1. Consistent with the above Findings of Fact and Conclusions of Law, the Initial Order dated August 2, 2021, is MODIFIED. Citation and Notice of Assessment No. 59609 is MODIFIED.
2. Robert Keller violated RCW 49.46.020 and RCW 49.46.130 by failing to pay minimum wage and overtime wages to Rachel Martinell totaling \$2,996.28 during the period of June 12, 2018, through June 17, 2019.
3. Robert Keller is liable for payment of 1% monthly interest on these unpaid wages, pursuant to RCW 49.48.083(2).
4. Payment of wages. See Citation and Notice of Assessment for payment information and the effect of failing to pay wages and interest. Robert Keller is ordered to pay wages to Rachel Martinell in the amount of \$2,996.28. Robert Keller is also ordered to pay interest of one percent per month under RCW 49.48.083(2) for these wages. Robert Keller is ordered to make these payments within thirty days of service of this Director's Order.

5. Robert Keller did not willfully violate wage payment requirements. Therefore, a penalty under RCW 49.48.083(3) is not appropriate.

DATED at Tumwater, Washington this 5 day of July, 2022.

A handwritten signature in black ink that reads "Joel Sacks". The signature is written in a cursive style and is positioned above a horizontal line.

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 emailing to DirectorAppeal@LNI.WA.GOV, or 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 Deck, declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 5 day of July 2022 to the following via e-mail and U.S. Mail, postage prepaid, to:

Robert C. Keller
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Rachel Martinell
17602 Valley Circle Drive
Bothell, WA 98012
rachelpauline29@outlook.com

DATED this 5 day of July, 2022, at Tumwater, Washington.



LISA DECK