

**DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON**

In re:

THE BARNACLE TEA & SPIRITS, LLC and
TARA ANDERSON,

Appellants,

Appeal of Citation and Notice of Assessment
No. W-340-23 & W-361-23

OAH Docket No. 01-2024-LI-02045

No. 2025-016-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor and Industries, having considered the appeal filed by The Barnacle Tea & Spirits, LLC and Tara Anderson (collectively "Barnacle"), briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

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

The parties are Barnacle and the Employment Standards Program of the Washington State Department of Labor and Industries (L&I).

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I. FINDINGS OF FACT

The Director adopts and incorporates by reference Findings of Fact No. 4.1 to 4.127 of the Initial Order dated October 9, 2024.

4.128. The Office of Administrative Hearings (OAH) served the Initial Order on October 9, 2024.

4.129. The Director received a timely filed petition for administrative review from Barnacle.

4.130. The wellness wages were not part of the salary. The paycheck stub lists the rate as \$24.04 times 40 hours per week as “Regular Hours | Salaried.” Ex. 20. That is the predetermined amount of the salary. On a separate line of the paycheck stub, it has a line item, which states wellness wages in the amount of \$500. Ex. 20.

4.131. These paycheck stubs were drafted by Barnacle, and Barnacle listed wellness wages as something separate and distinct from the salary. Ex. 20. And in appealing the citation, Tara Anderson wrote “in addition to the required salary, Drew also received bonus pay in the form of cash bonuses, wellness wages, and vacation pay.” DLI Ex. 2A at 1.

4.132. The wellness wages provided healthcare benefits.

4.133. The health care benefit was changed in July 2022 when health care insurance was purchased, and the employees’ portion of \$189.55 was replaced as the line item on the paycheck stub. Barnacle continued to provide health care benefits.

II. CONCLUSIONS OF LAW

The Director adopts and incorporates by reference Conclusions of Law No. 5.1 to 5.6 and 5.8 to 5.55 of the Initial Order dated October 9, 2024.

- 5.56. Based on Barnacle's timely filed petition for administrative review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.
- 5.57. Barnacle had the burden to disprove the hours claimed worked because L&I satisfied its prima facie burden to produce evidence to show a wage violation, and Barnacle did not keep records of the hours. *See MacSuga v. County of Spokane*, 97 Wn. App. 435, 445-46, 983 P.2d 1167 (1999) (citing *Anderson v. Mt. Clemens Pottery Co.*, 328 US. 680, 687-88, S. Ct. 1187, 90 L. Ed. 1515 (1946)).
- 5.58. Determining legislative intent is the goal of the tribunal. *Dep't of Lab. & Indus. v. Cannabis Green, LLC*, No. 102922-5, 2025 WL 1523430, at *5 (Wash. May 29, 2025). The tribunal determines intent from the provision's plain language, considering the text of the provision in question, the context of the statute or regulation in which the provision is found, related provisions, amendments to the provision, and the statutory and regulatory scheme as a whole. *Id.*; *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 56, 50 P.3d 627 (2002).
- 5.59. Statutory construction rules apply to administrative regulations just as they do to statutes. *Cannon*, 147 Wn.2d at 56. If a provision's meaning is plain on its face, then the tribunal gives effect to that plain meaning as an expression of legislative intent. *Id.*
- 5.60. If a rule is ambiguous, in addition to construing the rule to effectuate the intent of the Legislature, additional steps are taken in the analysis in that the tribunal resorts to outside sources to interpret the rule. *See id.* at 57.
- 5.61. If the language of the regulation is ambiguous, the court liberally construes the Minimum Wage Act and its regulations to favor employees. *See Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870, 281 P.3d 289 (2012).

Washington has a “long and proud history of being a pioneer in the protection of employee rights.” *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582 (2000).

- 5.62. A narrow construction is given to exemptions from the Minimum Wage Act. *See Clawson v. Grays Harbor College Dist. No. 2*, 148 Wn.2d 528, 540, 61 P.3d 1130 (2003). The exemptions from paying overtime wages for executive, administrative, or professional employees reflect the considerable independence, responsibility, expertise, and monetary advantages of these employees. But because these exemptions exclude employees from receiving compensation for excess hours that other employees routinely receive, the salary basis is strictly enforced in a manner favorable to employees. When interpreting remedial labor statutes, any doubts must be “resolved in favor of the worker.” *Cannabis Green*, 2025 WL 1523430, at *6 (citation omitted).
- 5.63. If the language of the regulation is ambiguous, the court gives great weight to the agency’s interpretation. *D.W. Close Co. v. Dep’t of Lab. & Indus.*, 143 Wn. App. 118, 128-29, 177 P.3d 143 (2008). “An agency acting within the ambit of its administrative functions normally is best qualified to interpret its own rules, and its interpretation is entitled to considerable deference by the courts.” *Id.* at 129 (citations omitted).
- 5.64. For an ambiguous provision, the court gives a “high level” of deference of an agency policy to interpret a regulation’s terms, *see Brady v. Autozone Stores, Inc.*, 188 Wn.2d 576, 581, 397 P.3d 120 (2017), provided it is consistent with the statutory scheme. *Waste Mgmt. of Seattle, Inc. v. Utilities & Transp. Comm’n*, 123 Wn.2d 621, 628, 869 P.2d 1034 (1994).

- 5.65. A provision is ambiguous if its plain language “is susceptible to more than one reasonable interpretation.” *See Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 852, 50 P.3d 256 (2002).
- 5.66. When two possible different definitions apply, this can show that a provision is ambiguous. *See Gorre v. City of Tacoma*, 184 Wn.2d 30, 42, 357 P.3d 625 (2015).
- 5.67. WAC 296-128-532(2) provides that:

What does salary basis mean? Salary is where an employee regularly receives for each pay period of one week or longer (but not to exceed one month) a predetermined monetary amount (the salary) consisting of all or part of his or her compensation, which amount will not be less than required to be paid pursuant to WAC 296-128-510 through 296-128-530. The salary shall not be subject to deduction because of variations in the quantity or quality of the work performed, except as provided in this section. Under RCW 49.46.130 (2)(a), salaried employees may receive additional compensation or paid time off and still be considered exempt.

- 5.68. “Salary” means a “predetermined monetary amount (the salary) consisting of all or part of his or her compensation.” WAC 296-128-532(2). And “compensation” can mean pay or wage(s).¹ It can also mean “something (as money) that is given or received in return for goods or services.” *Id.*
- 5.69. Because compensation can be reasonably interpreted to mean the total amount paid, including benefits, or just the amount paid for the rate of pay (*i.e.* the set amount of money that compensates the employee for their work performed), WAC 296-128-532(2) is ambiguous. This ambiguity is resolved by L&I’s policy.
- 5.70. The Department’s policy distinguishes between the compensation for work performed and benefits:

¹ <https://www.merriam-webster.com/thesaurus/compensation>.

The salary only includes the recurring, set amount of money that compensates the employee for their work performed, and does not include any benefits, perks, or bonuses or any other compensation that can vary based on productivity or hours worked.

Dep't of Lab. & Indus., Admin. Policy ES.A.9.9, *Salary Thresholds for Exemption from Minimum Wage Act for White-Collar Workers* (June 26, 2020).

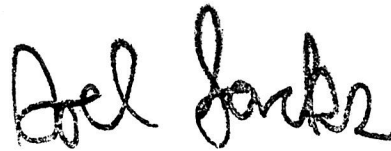
- 5.71. The wellness wage and subsequent payment for insurance are benefits, which do not count towards the salary limit. This distinction is supported by Barnacle's listing the rate of pay and wellness wages/insurance on separate lines.
- 5.72. Barnacle concedes that it is not labels that are looked at, it is the purpose and substance of the consideration expended. The substance of the wellness wages and insurance is that they were for benefits.
- 5.73. Barnacle argues that the wellness wages were paid on a fixed and recurring basis intended to compensate the workers for their work. But the purpose was to provide benefits, and benefits may be paid on a fixed and recurring basis, and it doesn't transform the benefits into a salary.
- 5.74. Contrary to Barnacle's argument, the administrative policy is not an unpromulgated rule. The Administrative Procedure Act allows agencies to adopt administrative policies. RCW 34.05.230. Such policies are "advisory only." *Id.* The Director cites the administrative policy above as persuasive authority, of which the courts give deference. *See Fiore v. PPG Indus., Inc.*, 169 Wn. App. 325, 335 n.3, 279 P.3d 972 (2012).
- 5.75. The administrative exception does not apply because the salary test is not met for it. WAC 296-128-520.
- 5.76. Contrary to Barnacle's argument, no issue was uninvestigated. But, in any event, the course of the investigation is irrelevant before the Director because both OAH

and the Director view the appeal de novo. RCW 49.48.084(3); RCW 34.05.464(4). And Barnacle shows no prejudice as to any procedure in the investigation as it had a full opportunity to litigate the merits. *See Motley-Motley, Inc. v. State*, 127 Wn. App. 62, 79, 110 P.3d 812 (2005).

- 5.77. Contrary to Barnacle's argument, there is no bona fide dispute created when Anderson could view the amount of the salary threshold. The willfulness penalties are affirmed.

III. DECISION AND ORDER

The Initial Order's paragraphs 6.1 through 6.9 are adopted and incorporated by reference. Consistent with the above Findings of Fact and Conclusion of Law, and the Citations and Notices of Assessment are affirmed, and the Initial Order of October 9, 2024, is incorporated by reference herein.



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 it 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, hereby declare under penalty of perjury under the laws of the State of Washington, that the **DIRECTOR'S ORDER** was mailed on the date listed below to the following via regular, postage prepaid, U.S. Mail:

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Tara Anderson

NO. 2025-016-WPA

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DIRECTOR'S ORDER

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DATED this 10 day of June 2025 at Tumwater, Washington.



LISA DECK