



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

P.O. Box 44000 • Olympia, Washington 98504-4000

October 10, 2024

Via E-mail and U.S. Mail

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**RE: Amberleigh Brownson, OAH Docket No. 09-2023-LI-01951
Director No. 2024-013-WPA**

Dear Parties:

Please find the enclosed Director's Order, which is served on the date of mailing. A copy of the Initial Order is enclosed for your convenience.

Sincerely,

Joel Sacks
Director

cc: Judge Lisa Dublin
Haley Bobbitt, Tacoma OAH
Anastasia Sandstrom, AAG

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

In re:

AMBERLEIGH BROWNSON,

Appellant,

Determination of Compliance No.
DOC-230-23

OAH Docket No. 09-2023-LI-01951

No. 2024-013-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 appeal filed by Amberleigh Brownson, (Appellant), 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.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on March 18, 2024.
2. The Director received a timely filed petition for review from the Appellant.
3. The Director adopts and incorporates the Initial Order's "Issues," "Initial Order Summary," and "Evidentiary Hearing" sections.

NO. 2024-013-WPA

DIRECTOR'S ORDER

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

4. The Director adopts and incorporates the Initial Order's findings of facts 4.1 through 4.4 and 4.6 through 4.74.

5. Amberleigh Brownson began working for Leader Block in July 2020. She brought over 20 years of extensive, previous restaurant experience to Leader Block. She has started up and managed restaurants and also worked as a consultant for restaurant managers and owners.

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 Director adopts and incorporates the Initial Order's conclusions of law 5.1 through 5.19.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, and the Determination of Compliance is **AFFIRMED**. The Initial Order of March 18, 2024, is **AFFIRMED**.

DATED at Tumwater this 10th day of October, 2024.

Joel Sacks

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 10th day of October 2024, to the following via regular, postage prepaid:

Jessica So, AAG
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Leader Bloc, LLC
1730 Labounty Rd PMB 124, Ste. 9
Ferndale, WA 98248

DATED this 10th day of October, 2024, at Tumwater, Washington.

Lisa Deck

LISA DECK

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Amberleigh Brownson,

Appellant/Wage Claimant.

Docket No. 09-2023-LI-01951

INITIAL ORDER

Agency: Department of Labor and
Industries

Program: Wage Payments

Agency No. DOC-230-23

1. ISSUES:

1.1. Whether the Appellant/Wage Claimant, Amberleigh Brownson, can prove, by a 'preponderance of the evidence' (more likely than not), the Department of Labor and Industries' 'Determination of Compliance No. 230-23', dated June 8, 2023, is in error?

1.2. If the Appellant proves 'Determination of Compliance No. 230-23' is in error, what is the appropriate remedy?

2. INITIAL ORDER SUMMARY:

2.1. The Appellant/Wage Claimant, Amberleigh Brownson, **did not prove**, by a 'preponderance of the evidence', the Department of Labor and Industries' 'Determination of Compliance No. 230-23', dated June 8, 2023, is in error.

2.2. As a result, the Department's 'Determination of Compliance No. 230-23', is **affirmed**.

3. EVIDENTIARY HEARING:

3.1. Hearing Date: Wednesday, January 17, 2024

3.2. Admin. Law Judge: TJ Martin

3.3. Appellant: Amberleigh Brownson

3.3.1. Representative: The Appellant represented herself.

3.3.2. Witnesses: Amberleigh Brownson, Appellant
Yoon Oh, Birch Bay Manager
Elizabeth Fitzpatrick, Leader Block Front Manager
Joshua Amberson, Leader Block Bartender
Matthew Wright, Leader Block Bartender
Brett Wiltse, Leader Block Co-Owner
& General Manager

- 3.4. Agency: Department of Labor and Industries
- 3.4.1. Representative: Jessica So, Assistant Attorney General
- 3.4.2. Witnesses: Robert Pinkley, Leader Block Managing Owner
Doug Elliott, Leader Block Executive Chef
Alex Hall, CPA for Leader Block
Ana Gamino, Department Industrial Relations Agent
- 3.5. Exhibits: Appellant's Exhibit O, P, Q, S, T, V, and DD were admitted without objection.
Appellant's Exhibits A, B, C, D, F & L were discussed during the hearing and may have probative value so they are admitted.
Appellant's remaining Exhibits E, G-K, M to DD were taken 'under advisement' but not discussed at the hearing and are not admitted.
Department Exhibits 1 to 16 were admitted.
- 3.6. Court Reporter: Jacqueline Stopyak, Capitol Court Reporting

4. FINDINGS OF FACT:

The following facts are established by a 'preponderance of the evidence':

Jurisdiction-

- 4.1. On June 8, 2023, the Department of Labor and Industries (Department) issued 'Determination of Compliance No. 230-03 (Determination), finding Leader Bloc, LLC, doing business as (dba) Leader Block Wine Company (Leader Block/Employer) did not owe Amberleigh Brownson (Appellant/Wage Claimant/Brownson) additional wages for overtime hours worked, from July 1, 2020 through July 6, 2022. *Department Exhibit (Dept. Ex.) 1.*
- 4.2. On June 20, 2023, Brownson appealed the Department's Determination. *Dept. Ex. 2.*
- 4.3. On September 12, 2023, the Office of Attorney General, on behalf of the Department of Labor and Industries, forwarded Brownson's appeal to the Office of Administrative Hearings (OAH) for an adjudicative proceeding.

[Continued]

Wage Claimant Brownson's Employment with Leader Block Restaurant-

- 4.4. Leader Bloc, LLC, owns and operates Leader Block Wine Company, located in Ferndale, Washington. It is licensed as a Full-Service Restaurant. Robert Pinkley (Pinkley) serves as Leader Block's sole governing individual. *Testimony of Robert Pinkley (Testimony of Pinkley) and Dept. Ex. 16.*
- 4.5. Amberleigh Brownson, began working for Leader Block, in July 2022. She brought over 20 years of extensive, previous restaurant experience to Leader Block. She has started up and managed restaurants and also worked as a consultant for restaurant managers and owners. *Testimony of Amberleigh Brownson (Testimony of Brownson).*
- 4.6. In July 2020, when Brownson started at Leader Block, her role was as a wine consultant, hired to train employees, but it evolved into a Manager and Director of Operations position, as a salaried employee, when Covid-19 hit, then later converted to an hourly employee. *Testimony of Brownson.*
- 4.7. From July 2020 to July 2022, Brownson worked as manager and Director of Operations at the Leader Block, managing the front of the house and was responsible for hiring employees. She also did wine tastings and met with wine representatives. *Testimony of Pinkley.*
- 4.8. Brownson created her own work schedule, as long it was limited to 40 hours per week. She was an hourly employee, at \$25.00 per hour, plus tips, most of the time, but changed to salary over time. Brownson varied her pay rate, if she was bartender or serving. *Testimony of Pinkley and Ex. 10.*
- 4.9. Brownson's work schedule usually followed the hours of restaurant, five to six days each week, which varied, due to the Covid-19 pandemic. It usually opened at noon or four, depending on lunch and/or dinner service, and closed at 9:00 p.m. on weekdays and 10:00 p.m. on weekends. The times Brownson would leave varied. *Testimony of Pinkley.*
- 4.10. Prior to working at Leader Block, Brownson worked as Birch Bay Restaurant's manager for a year and half. She often went above and beyond what was expected of her. *Testimony of Yoon Oh (Testimony of Oh).*
- 4.11. However, Yoon Oh never worked with Brownson at Leader Block. *Testimony of Oh.*
- 4.12. Elizabeth Fitzpatrick (Fitzpatrick), worked as Leader Block's Front House Manager, with Brownson. Fitzpatrick often worked 50 to 55 hours per week, alongside of Brownson. *Testimony of Elizabeth Fitzpatrick (Testimony of Fitzpatrick).*

- 4.13. Joshua Amberson (Amberson) worked as a part-time bartender then later as the bar manager, while Brownson worked at Leader Block. He believes a Director of Operations would have to work more than 40 hours to do the job. *Testimony of Joshua Amberson (Testimony of Amberson).*
- 4.14. Matthew Wright (Wright) worked as a bartender at Leader Block, during the same time as Brownson. Wright speculated someone would have to work more than 40 hours to be successful as a restaurant Director of Operations. *Testimony of Matthew Wright (Testimony of Wright).*
- 4.15. Brett Wiltse (Wiltse) served as Leader Block's co-owner, by verbal agreement, and as general manager, while Brownson worked there. *Testimony of Brett Wiltse (Testimony of Wiltse).*
- 4.16. Leader Block Restaurant struggled to make ends meet financially during the Covid-19 pandemic. *Testimony of Wiltse.*
- 4.17. Wiltse was aware of Brownson working more than 40 hours per week. *Testimony of Wiltse.*
- 4.18. During the Covid-19 pandemic, Brownson and Leader Block employees had to take on many roles just to stay open. *Testimony of Brownson.*
- 4.19. Employees, including Brownson, would often stay late, after the close of business, sometimes to three or four in the morning, to drink, smoke and socialize. Pinkley knew of such gatherings since he lived in the building as well as had cameras in the restaurant. *Testimony of Pinkley.*
- 4.20. Dave Elliott (Elliott), the Executive Chef, would sometimes arrive at 5:00 a.m. or 6:00 a.m. to do meal preparation for the day and would find people were still there, drinking and socializing downstairs. There was no reason employees needed to still be in the restaurant between midnight and 4:00 a.m. or 5:00 a.m. *Testimony of Dave Elliott (Testimony of Elliott).*
- 4.21. Brownson sometimes called Elliott, during non-working hours, regarding work-related issues. *Testimony of Elliott.*
- 4.22. Employees submitted their time sheets, by 'clocking in' and 'clocking out', via 'Homebase', a P.O.S. system, to Brownson who then submitted them to the bookkeeper for payment. *Testimony of Pinkley and Testimony of Elliott.*
- 4.23. Employees who did not 'clock in' could not process restaurant orders. Brownson sometimes forgot to 'clock in' and 'clock out'. *Testimony of Brownson.*
- 4.24. Later, Brownson did not 'clock in' or 'clock out', since it had nothing to do with her 'hours worked'. *Testimony of Brownson.*
- 4.25. Employees working overtime were paid for those hours. *Testimony of Pinkley.*

- 4.26. Brownson contends she never put down her overtime hours worked since the business did not have money to pay it. *Testimony of Brownson.*
- 4.27. Brownson never reported working more than 40 hours in any given week. *Testimony of Brownson.*
- 4.28. If Brownson had worked overtime, she would have been paid for those hours. *Testimony of Pinkley.*
- 4.29. Pinkley was not aware of any hours, including any overtime hours worked, Brownson worked but was not paid for. Brownson never reported working more than forty hours. *Testimony of Pinkley.*
- 4.30. Pinkley denied ever promising Brownson a \$30,000 bonus, since it was prohibited to use federal tax credits for bonuses. *Testimony of Pinkley and Ex. L.*
- 4.31. Co-Owner Wiltse believed he was going to get a \$30,000 bonus, but never did. *Testimony of Wiltse.*
- 4.32. There were discussions about bonuses to employees, using the federal employee retention credits, but nothing was ever agreed upon or came out of those discussions by Pinkley. *Testimony of Alex Hall (Testimony of Hall).*
- 4.33. Alex Hall (Hall), C.P.A. and owner of Hall Tax, Inc. does all taxes and payroll for Leader Bloc, LLC. *Testimony of Hall.*
- 4.34. As C.P.A., Hall received payroll information and employee 'hours worked' from Leader Block, in particular, from Brownson, via email, for Hall to process and prepare payroll and checks to be issued. Employees were paid every two weeks. *Testimony of Hall and Ex. 10.*
- 4.35. Brownson had full 'administrator rights' to adjust timekeeping records of employees, prior to providing them to Hall to process for paychecks. *Testimony of Hall.*
- 4.36. Neither Hall Tax Inc. nor Alex Hall were ever asked to audit, review or to confirm the accuracy of employee 'hours work' from the P.O.S. timekeeping system being submitted by Brownson, on behalf of Leader Block. *Testimony of Hall.*
- 4.37. Brownson was consistently paid for 80 hours of work for every two weeks. No information was ever provided to Hall regarding Brownson was working more than 80 hours every two weeks. *Testimony of Hall.*
- 4.38. Leader Block employees were paid overtime, if they worked more than 40 hours in a week. Hall would have ensured overtime was paid at a rate of 1.5 times the regular hourly rate if an employee worked overtime. *Testimony of Hall and Ex. 10.*
- 4.39. Hall does not recall Brownson ever submitting time records showing she worked more than 40 hours or ever getting paid overtime. *Testimony of Hall.*

Discussion Regarding Future Ownership by Brownson-

- 4.40. As far back as 2018, Brownson, Pinkley and Wiltse had discussions regarding Brownson either purchasing Leader Block or obtaining a partnership interest in the business. However, no such ownership or partnership agreement was ever reached between Brownson, Pinkley and Wiltse. No documents were ever signed by the parties evidencing an agreement. *Testimony of Brownson.*
- 4.41. Pinkley and Brownson had discussions about Brownson becoming a partner, or purchasing the restaurant. However, no agreement was ever reached between Pinkley and Brownson. *Testimony of Pinkley and Exs. A D, & F.*
- 4.42. Brownson never paid money into the restaurant for an ownership interest nor was any agreement of 'sweat equity' in exchange for business interest shares agreed upon between Brownson and Pinkley and Wiltse. *Testimony of Brownson.*
- 4.43. There was no agreement Brownson's 'sweat equity' equate to a share in the business. *Testimony of Pinkley and Ex. B.*
- 4.44. Wiltse believed Brownson was getting a partnership interest through her 'sweat equity'. *Testimony of Wiltse.*
- 4.45. Brownson conveyed to local media she was a 'partner' of the business. *Testimony of Pinkley and Ex. C.*
- 4.46. Elizabeth Fitzpatrick, a co-worker with Brownson, was aware of partnership talks between Brownson and Pinley and Wiltse. *Testimony of Fitzpatrick.*
- 4.47. Joshua Amberson doesn't recall any discussions about a partnership involving Brownson. *Testimony of Amberson.*
- 4.48. Matthew Wright recalls Brownson possibly becoming an owner, but could not recall specific details. *Testimony of Wright.*
- 4.49. Wiltse recalled discussions regarding Brownson becoming a part owner. *Testimony of Wiltse.*
- 4.50. Alex Hall participated in the discussions about making Brownson a partner or part owner, but doesn't recall the specifics of the discussions. *Testimony of Hall.*
- 4.51. Pinkley had a belief Brownson would 'buyout' him out of the business and become owner at some point, but it did not occur. *Testimony of Pinkley.*
- 4.52. On July 6, 2022, Leader Block Wine Co. & Eatery terminated Brownson's employment. *Dept. Ex. 7; Page (pg.) 66.*

[Continued]

Department Investigation-

- 4.53. On August 25, 2022, Brownson filed a 'Worker Rights Complaint', with supporting documentation, with the Department, alleging her former employer, Leader Bloc, LLC, dba Leader Block Wine Company owed her for 2,898.00 regular and overtime hours worked, at a rate of \$29.00 per hour, equating to \$108,519.00 in outstanding wages owed, from July 1, 2020 to July 6, 2022. *Testimony of Ana Gamino (Testimony of Gamino) and Dept. Ex. 4.*
- 4.54. On August 25, 2022, the Department acknowledged receipt of Brownson's Wage Complaint and outlined the Wage Complaint investigation process, including the length of time needed to complete the investigation. *Dept. Ex. 5.*
- 4.55. From September 1, 2022 to November 16, 2022, Department Industrial Relations Agent Ana Gamino (Agent Gamino) investigated Brownson's Wage Complaint. She kept a contemporaneous log of her investigation. *Testimony of Gamino and Dept. Ex. 3.*
- 4.56. On September 7, 2022, Agent Gamino spoke with Brownson regarding her Wage Complaint and also provided her with a Supervisor Ownership Questionnaire and Wage Transcription Sheets for Brownson to fill out to recreate her 'hours worked' and wages for her former employer, Leader Block Wine Company. During the conversation, Agent Gamino also requested the Appellant submit any additional information by September 17, 2022. *Testimony of Gamino and Dept Ex. 6.*
- 4.57. During the telephone conversation with Agent Gamino, Brownson claimed she was offered and promised a partnership/ownership interest in Leader Block Wine Company, which did not happen. *Testimony of Gamino.*
- 4.58. The following day, on September 8, 2023, Brownson sent an email to Agent Gamino, with attached: (1) Employer website information; (2) Text messages between Brownson and the Employer; (3) Employer Profit & Loss printouts; (4) Complete Wage Transcription Sheets, from July 1, 2022 to July 9, 2022; (5) W-2 Wage and Tax Statements for 2020 to 2021; (6) Employer Payroll Summary regarding Brownson, for July 1, 2020 to July 5, 2022; (7) Employee Paystubs from July 16, 2020 to June 30, 2022; and (7) An August 5, 2022 letter to Brownson from Robert Pinkley' attorney. *Testimony of Gamino and Dept. Ex. 7.*
- 4.59. On September 9, 2022, Agent Gamino also sent a letter to Leader Block Wine Company, notifying the company of Brownson's Wage Complaint, which alleged she was owed \$101,081.27 for wages earned, from July 1, 2020 to July 6, 2022. Agent Gamino attached the Wage Complaint and Wage Transcription Sheet and requested any information, including all documentation, such as Brownson's time records and pay stubs, in the possession of the Employer. *Testimony of Gamino and Dept. Ex. 8; pg. 2-17.*

- 4.60. In addition, on September 9, 2022, after speaking with Robert Pinkley, the Employer Owner, Agent Gamino sent an email to Doug Elliott, Leader Block's Executive Chef, requesting a response regarding Brownson's Wage Complaint and any further information he could provide. *Dept. Ex. 8; pg. 1.*
- 4.61. During her investigation, Agent Gamino did not speak with Brett Wiltse, Elizabeth Fitzpatrick, Joshua Amberson or David Elliott. *Testimony of Gamino.*
- 4.62. Also on September 9, 2022, Brownson sent an email to Agent Gamino with attached payroll records with the 'hourly pay rates' and 'hours worked' for each employee during Brownson's employment. *Testimony of Gamino and Dept. Ex. 9.*
- 4.63. On September 27, 2022, Robert Pinkley, Owner, on behalf of The Leader Block Wine Company, LLC, provided a 'Employer Response' to Brownson's Wage Complaint, including all payroll records regarding Brownson, during her employment, in the possession of the Employer's C.P.A., Alex Hall. *Testimony of Hall, Testimony of Gamino and Dept. Ex. 10.*
- 4.64. Agent Gamino learned Brownson was reporting her own hours to the bookkeeper and paid based on her 'hours worked' she provided. *Testimony of Gamino.*
- 4.65. On October 2, 2022, Agent Gamino provided Brownson with a copy of the Employer's Response to Brownson's Wage Complaint, including letters from Robert Pinkley and also from Alex Hall and an audit response. *Testimony of Gamino and Dept. Ex. 11; pg. 1.*
- 4.66. On October 3, 2022, Agent Gamino sent a letter to Brownson, requesting any additional information before the Department issued its decision regarding Brownson's Wage Complaint. *Testimony of Gamino and Dept. Ex. 11; pg. 2-3.*
- 4.67. On the same day, October 3, 2022, Brownson emailed Agent Gamino to clarify her Wage Complaint dealt solely with unpaid overtime hours worked and did not allege fraud. She also included screenshots of text messages between her and the employer. *Testimony of Gamino and Dept. Ex. 12.*
- 4.68. In talking with Agent Gamino, Brownson claimed she was told by her employer to not report all of her 'hours worked' in exchange for a partnership share of the Employer's business. *Testimony of Gamino.*
- 4.69. On October 24, 2022, Brownson sent an email to Agent Gamino clarifying she should have been paid 1.5 times her regular hourly rate when working overtime. Brownson also included more screenshots between her and the employer. *Testimony of Gamino and Dept. Ex. 13.*
- 4.70. On November 1, 2023, Agent Gamino notified Brownson and Leader Block that she would need an additional 75 days to complete the Department's investigation of Brownson's Wage Complaint. *Dept. Ex. 14.*

4.71. After concluding her investigation, Agent Gamino determined Brownson had been paid by her employer, Leader Block Wine Company, for all hours she reported to have worked. No evidence existed showing Brownson worked more hours than she reported, based on her payroll records. *Testimony of Gamino.*

4.72. On November 16, 2022, Agent Gamino issued her 'Agent Summary' regarding her investigation of Brownson's Wage Complaint. Based on her investigation of Brownson's Wage Complaint, Agent Gamino recommended a 'Determination of Compliance' to be appropriate since:

In reviewing the documentation provided by the claimant and the owner, it is determined that the additional hours claimed were not substantiated and further wages are not due.

Dept. Ex. 15.

4.73. On June 8, 2023, the Department Director issued 'Determination of Compliance No. 230-03, finding Leader Bloc, LLC, dba Leader Block Wine Company did not owe Amberleigh Brownson additional wages and overtime hours for work performed, from July 1, 2020 through July 6, 2022. *Dept. Ex. 1.*

4.74. On June 20, 2023, Brownson appealed the Department's Determination. *Dept. Ex. 2.*

5. CONCLUSIONS OF LAW:

Based upon the above 'Findings of Fact', the following 'Conclusions of Law' are made:

Jurisdiction-

5.1. The Office of Administrative Hearings has jurisdiction over the persons and subject matter of the present case based on Revised Code of Washington (RCW) 49.48.084(3) and Chapters 34.05 RCW.

Burden and Standard of Proof Challenging a 'Determination of Compliance'-

5.2. In contesting a 'Determination of Compliance', the appealing party has the burden of proof, to establish by a 'preponderance of the evidence', a 'more likely than not' standard of proof, the Department's 'Determination of Compliance' is in error. *MacSuga v. County of Spokane*, 97 Wn. App. 435, 445-446, 983 P.2d 1167 (1999).

5.3. In the present case, the Appellant/Wage Claimant, Amberleigh Brownson, has the burden to prove, by a 'preponderance of the evidence', the Department's 'Determination of Compliance No. 230-03 is in error.

[Continued]

Department Requirement to Investigate Brownson's Wage Complaint-

- 5.4. If an employee files a wage complaint, the Department is required to investigate. RCW 49.48.083(1) and WAC 296-128-820.
- 5.5. In the present case, on August 25, 2022, Amberleigh Brownson filed a 'Worker Rights Complaint' with the Department, alleging her former employer, Leader Block Wine Company, failed to pay her for overtime hours worked, from July 1, 2022 to July 6, 2022. As a result, the Department investigated Brownson's wage complaint.

Brownson's Overtime Hours and Alleged Wages Owed-

- 5.6. The Department of Labor & Industries is responsible for implementing and enforcing the provisions of Chapters 49.46, 49.48 and 49.52 of the RCW and Title 296 Washington Administrative Code (WAC), pertaining to wages, for the purpose of protecting the immediate and future health, safety, and welfare of the people of the State of Washington.
- 5.7. The Department's authority includes enforcing wage payments such as: (a) Payment of minimum wages (RCW 49.46.020 and Chapter 296-128 WAC); (b) Payment of overtime wages in excess of more than 40 hours of work in a week (RCW 49.46.130); (c) Payment of final wages (RCW 49.48.010); and (d) Withholding of lawful deductions from wages (RCW 49.52.060); and (e) Enforcement of any wages as authorized by statute, ordinance, and/or contract (RCW 49.52.050).
- 5.8. RCW 49.46.130(1) establishes the requirement for all employers to pay employees, at a rate of one and one-half times the regular rate of pay for all hours worked over 40 hours in a work week.
- 5.9. If the employer who pays an employee less than wages to which such employee is entitled shall be liable to such employee for the full amount of such wages. RCW 49.46.090(1).
- 5.10. The present appeal pertains to Wage Claimant Amberleigh Brownson's contention she worked 2,898.00 overtime hours, from July 1, 2020 to July 6, 2022, equating to \$108,519.00, in outstanding wages owed, of which she was not compensated.
- 5.11. Appellant Brownson has failed to establish, by a 'preponderance of the evidence', the Department erred when it issued 'Determination of Compliance No. 230-03', finding such overtime wages were not owed, for several reasons:
- 5.12. First, Brownson does not dispute she was paid for all hours she reported on her timecards during her employment at Leader Block.

- 5.13. Second, Brownson never reported working more than 40 hours on any of her paychecks, of which she was not compensated. If she had, Leader Block would have been legally obligated to pay them.
- 5.14. Third, Brownson contends she agreed not to report overtime, essentially, providing 'sweat equity', in exchange for a partnership share of Leader Block. However, as all of the witnesses, including Brownson, admitted, that while there were partnership discussions between Leader Block Owner Pinkley and Brownson, no 'sweat equity for partnership share' agreement was ever reached. Brownson admitted no such agreement exists. Therefore, a bona fide dispute exists between the Appellant and the Employer. As a result, there was no enforceable agreement between the parties. The Department only has jurisdiction to enforce overtime hours worked only if those hours were reported and then not paid by the employer, which is not present in this case.
- 5.15. Unfortunately, for the Appellant Brownson, the entire situation of 'sweat equity for a partnership share' dispute could have been avoided two ways: (A) She could have billed for all overtime she worked, since Leader Block would have been legally-obligated to pay; or (B) She and Leader Block ownership could have put any 'sweat equity in exchange for partnership interest' agreement into a written, legally-enforceable contract. However, any dispute regarding such a contract would have to be resolved in an Article III Court (i.e. Superior Court), since the Department of Labor and Industries does not have jurisdiction over such contract disputes.
- 5.16. Finally, regarding any discussion of a \$30,000 discretionary bonus, like any 'sweat equity' agreement, no evidence establishes the payment of such a discretionary bonus was ever reached or documented between the parties for such a bonus to take effect.
- 5.17. As a result, Wage Claimant Amberleigh Brownson failed to establish she worked 2,898.00 overtime hours, from July 1, 2020 to July 6, 2022, equating to \$108,519.00, in outstanding overtime wages owed, of which she was not compensated.
- 5.18. Based on the above 'Findings of Fact' and 'Conclusion of Law', the Appellant/ Wage Claimant, Amberleigh Brownson, **did not prove**, by a 'preponderance of the evidence', the Department of Labor and Industries' 'Determination of Compliance No. 230-23', dated June 8, 2023, is in error.
- 5.19. As a result, the Department's 'Determination of Compliance No. 230-23', is **affirmed**.

[Continued]

6. INITIAL ORDER:

THIS ADMINISTRATIVE TRIBUNAL ORDERS;

6.1. The Appellant/Wage Claimant, Amberleigh Brownson, **did not prove**, by a 'preponderance of the evidence', the Department of Labor and Industries' 'Determination of Compliance No. 230-23', dated June 8, 2023, is in error.

6.2. As a result, the Department's 'Determination of Compliance No. 230-23', is **affirmed**.

Issued from Olympia, Washington on the date of mailing.



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Review with the Director of the Department of Labor and Industries.¹ You may e-mail your Petition for Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for Review 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:

7273 Linderson Way SW
Tumwater, WA 98501

If you e-mail your Petition for Review, please do not mail, or deliver a paper copy to the Director.

Whether you e-mail, mail, or deliver the Petition for Review, the Director *must actually receive* the Petition for Review during office hours at the Director's office **within 30 days** of the date this Initial Order was mailed to the parties. You must also provide a copy of your Petition for Review to the other parties at the same time.

If the Director does not receive a Petition for Review **within 30 days** from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.²

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

¹ RCW 49.48.084 and RCW 34.05.464.

² RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 09-2023-LI-01951

I certify that true copies of this document were served on those listed below, from Olympia, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by Email.

Amberleigh Brownson 150 8th St Blaine, WA 98230 <i>Appellant Wage Claimant</i>	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
Jessica So, AAG Department of Labor & Industries 800 Fifth Avenue, Suite 2000 Seattle, WA 98104 <i>Agency Representative</i>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail Jessica.So@atg.wa.gov Kirsten.Swan@atg.wa.gov Iniseaeservice@atg.wa.gov
Leader Bloc, LLC dba Leader Block Wine Co 1730 Labounty Rd PMB 124, Ste 9 Ferndale, WA 98248 <i>Intervenor Employer</i>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail

Date: Monday, March 18, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Tamara Roberson
Legal Assistant 2