



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

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

December 10, 2024

Via E-mail and U.S. Mail

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Applegate Orchards Inc.
Attn: Cheri Horst
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cheri@bluemfarms.com

Manuel Espinoza
3719 W Sylvester St
Pasco, WA 99301
espinoza.manuel1959@icloud.com

RE: Manuel Espinoza
OAH Docket No. 11-2023-KI-01984
Director No. 2024-017-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

Enclosures

cc: Haley Bobbitt, Tacoma OAH
Anastasia Sandstrom, AAG

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

In re:

MANUEL ESPINOZA,

Appellant,

Appeal of Citation and Notice of
Assessment No. W-277-23

OAH Docket No. 11-2023-LI-01984

No.2024-017-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 appeal filed by Manuel Espinoza, (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 May 31, 2024.
2. The Director received a timely filed petition for review from the Appellant.
3. The Director adopts and incorporates by reference Findings of Fact Nos. 4.1 to 4.38.

NO.2024-017-WPA

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DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

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

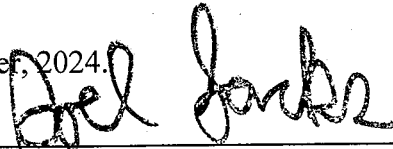
II. CONCLUSIONS OF LAW

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 by reference Conclusions of Law No. 5.1 to 5.16

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, and the Determination of Compliance is **AFFIRMED**.

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



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 10 day of ^{December} 2024, to the following via regular, postage prepaid:

Christina Dallen, AAG
Office of the Attorney General
800 Fifth Ave, Ste. 2000
Christina.Dallen@atg.wa.gov
Carrisa.Parvin@atg.wa.gov
lniolyeservice@atg.wa.gov

Applegate Orchards Inc.
Attn: Cheri Horst
1052 Lake Road
Burbank, WA 99323
cheri@bluemfarms.com

Manuel Espinoza
3719 W Sylvester St
Pasco, WA 99301
espinoza.manuel1959@icloud.com

DATED this 10 day of December, 2024, at Tumwater, Washington.

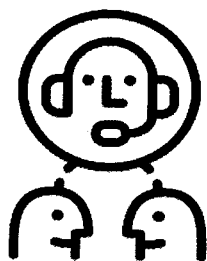


LISA DECK



Washington State Office of Administrative Hearings

Spanish version



¿Necesita un intérprete?

Este es un documento importante que afecta sus derechos legales. Es urgente. Si necesita ayuda con la lectura del documento, contáctenos al **(800) 583-8271** y le proporcionaremos un intérprete de forma gratuita.

Versión en Inglés

Do you need an interpreter?

This is an important document affecting your legal rights. It is time sensitive. If you need help reading the document, call us at **(800) 583-8271**. We will provide an interpreter for free.

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Manuel Espinoza,

Appellant/Wage Claimant.

Docket No. 11-2023-LI-01984

INITIAL ORDER

Agency: Department of Labor and
Industries

Program: Wage Payments

Agency No. W-277-23

1. ISSUES:

- 1.1. Whether Manuel Espinoza can establish the Department of Labor and Industries' 'Determination of Compliance No. W-277-23', dated June 27, 2023, was in error?
- 1.2. Whether the Department of Labor and Industries' 'Determination of Compliance No. W-277-23', dated June 27, 2023, should be affirmed, modified, or reversed?

2. INITIAL ORDER SUMMARY:

- 2.1. Manuel Espinoza failed to establish the Department of Labor and Industries' 'Determination of Compliance No. W-277-23', dated June 27, 2023, was in error.
- 2.2. The Department of Labor and Industries' 'Determination of Compliance No. W-277-23', dated June 27, 2023, is **affirmed**.

3. EVIDENTIARY HEARING:

- 3.1. Hearing Date: February 27, 2024 and April 1, 2024
- 3.2. Administrative Law Judge: TJ Martin
- 3.3. Appellant: Manuel Espinoza
 - 3.3.1. Representative: The Appellant represented himself.
 - 3.3.2. Witnesses: The Appellant did not call any witnesses.
- 3.4. Agency: Department of Labor and Industries
 - 3.4.1. Representative: Ryan Gompertz, Assistant Attorney General
 - 3.4.2. Witnesses: Cheri Horst, Appelgate Orchards H.R. Manager
Paulina Luke, Department of Labor & Industries
Industrial Relations Agent
- 3.5. Exhibits: Department Exhibits 1-10 were admitted.
The Appellant did not submit any exhibits.

- 3.6. Spanish/English Interpreters: Ines Venturini and Sonia Fitzgerald,
Four Corners Translation, LLC
- 3.7. ALJ-called Witness: To develop the record fully, the ALJ called
Shirley Mason, Applegate Orchards Owner,
as a witness.

4. FINDINGS OF FACT

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

Jurisdiction-

- 4.1. On July 27, 2023, the Department of Labor and Industries (Department) issued 'Determination of Compliance No. 277-23' (Determination of Compliance), finding Applegate Orchards, Inc. (Employer/Applegate Orchards) did not fail to pay \$20,000 in agreed wages to Manuel Espinoza (Appellant/Wage Claimant/Espinoza), in violation of the Washington State Wage Payment Act and/or Minimum Wage Act. *Department Exhibit (Dept. Ex.) 1.*
- 4.2. On August 7, 2023, the Department received Espinoza's appeal of the Department's Determination of Compliance.

Appellant Espinoza's Work for Applegate Orchards-

- 4.3. Applegate Orchards, Inc. (Applegate Orchards) located in Burbank, Washington, is owned and operated by Shirley Mason (Mason). *Dept. Ex. 2; Pages (pgs.) 5-10.*
- 4.4. Applegate Orchards, a seasonal blueberry farm, hires anywhere from 1 to 300 employees each season, based on need. *Testimony of Cheri Horst (Testimony of Horst).*
- 4.5. On February 1, 2021, Owner Mason hired Espinoza as a foreman at a rate of \$21.00 per hour. *Testimony of Manuel Espinoza (Testimony of Espinoza), Testimony of Shirley Mason (Testimony of Mason), Testimony of Horst and Dept. Ex. 8; pg. 1.*
- 4.6. After a 90-day probationary period, Mason verbally promoted Espinoza to a overtime exempt, salaried foreman position. *Testimony of Espinoza, Testimony of Mason and Testimony of Horst.*
- 4.7. Owner Mason agreed to pay Espinoza a salary of \$55,000 per year, since he had no previous blueberry or foreman experience. However, he had worked on a ranch for four years. *Testimony of Mason.*
- 4.8. Espinoza contends Mason, with her son, Brandon, a manager, present, agreed to pay him a \$65,000 yearly salary. *Testimony of Espinoza.*
- 4.9. Mason denied agreeing to pay Espinoza a \$65,000 yearly salary, since the other Applegate Orchard foremen were paid \$55,000 per year. *Testimony of Mason.*

- 4.10. If Mason, as owner, had agreed to pay Espinoza a \$65,000 yearly salary, Mason would have discussed it with Cheri Horst (Horst), Applegate Orchard's Office Manager and H.R. Manager, who also did the company's payroll. Mason never discussed paying Espinoza a \$65,000 yearly salary, only a salary of \$55,000 was ever discussed. *Testimony of Horst.*
- 4.11. Neither Mason nor Espinoza never entered into or signed a written contract regarding his employment. *Testimony of Espinoza, Testimony of Mason and Testimony of Horst.*
- 4.12. Upon receiving his first, bi-monthly salaried paycheck, on a Friday, Espinoza calculated it did not add up to a \$65,000 yearly salary. He signed for his paycheck, but did not raise the issue with either Mason or Horst. *Testimony of Espinoza.*
- 4.13. The following Monday, Espinoza went to Mason and raised the issue about his pay. With her son, Brandon present, Espinoza contends Mason told him she would give him a \$10,000 bonus at the end of the year. *Testimony of Espinoza.*
- 4.14. Mason denied ever telling Espinoza she would give him a \$10,000 bonus at the end of the year. *Testimony of Mason.*
- 4.15. Horst, Appelgate's H.R. Manager, did not know anything about any bonus offered by Mason to Espinoza. *Testimony of Horst.*
- 4.16. The \$10,000 yearend bonus was only verbally discussed and not put in writing. *Testimony of Espinoza.*
- 4.17. When Espinoza did not receive his 2021 yearend bonus, he continued to work there. *Testimony of Espinoza.*
- 4.18. Espinoza never received a \$10,000 yearend bonus in either 2021 or 2022. *Testimony of Espinoza.*
- 4.19. Espinoza never discussed the \$10,00 bonus matter with Horst, who does the company's payroll. *Testimony of Espinoza.*
- 4.20. Espinoza signed all of his paychecks, during his employment at Applegate Orchards. *Testimony of Espinoza.*
- 4.21. Applegate Orchards paid Espinoza for all wages and salaries owed to him. *Testimony of Mason and Testimony of Horst.*
- 4.22. On December 11, 2023, Espinoza worked his last day at Appelgate Orchards. *Testimony of Espinoza, Dept. Ex. 4; pg. 1 and Dept. Ex. 8; pg. 1.*
- 4.23. At the evidentiary hearing, the administrative law judge called Applegate Owner, Shirley Mason, to testify regarding the wage dispute.

- 4.24. At the evidentiary hearing, Espinoza did not call any witnesses to testify on his behalf to collaborate his version of events.

Department Investigation-

- 4.25. On April 3, 2023, Espinoza filed a 'Workers Right Complaint' with the Department of Labor and Industries, alleging his former employer, Applegate Orchards, owed him \$20,000 in agreed, unpaid wages. *Testimony of Paulina Luke (Testimony of Luke) and Dept. Ex. 4.*
- 4.26. On the same day, the Department acknowledged receipt of Espinoza's Wage Complaint, outlining the expected timeframe and possible outcome of the Department's investigation of his wage complaint. *Testimony of Luke and Dept. Ex. 5.*
- 4.27. From April 6, 2023 to June 6, 2023, Department Industrial Relations Agent Paulina Luke (Agent Luke) investigated Espinoza's Wage Complaint. *Testimony of Luke and Dept. Ex. 3.*
- 4.28. On April 18, 2023, Agent Luke sent notification to Applegate Orchards of Espinoza's Wage Complaint. In the Department correspondence, Agent Luke requested Applegate Orchards provide all employment records relating to Espinoza, including: timecards, payroll records, employment contracts, check copies and any other documentation. *Testimony of Luke and Dept. Ex. 7.*
- 4.29. On April 24, 2023, the Department received several payroll records from Espinoza regarding his employment at Applegate Orchards. *Dept. Ex. 6.*
- 4.30. Agent Luke reviewed Espinoza's paystubs, which at \$2,115.20 per paycheck, twice monthly, equaled a \$55,000 yearly salary. *Testimony of Luke and Dept. Ex. 6.*
- 4.31. On May 1, 2023, Applegate Orchards provide a response to Espinoza's wage complaint, including 171 pages of employment records relating to Espinoza's employment at Applegate Orchards. *Testimony of Luke and Dept. Ex. 8.*
- 4.32. Agent Luke reviewed Applegate Orchard's employment records relating to Espinoza. Based on the records, she determined Espinoza had been paid twice monthly at a rate equaling a \$55,000 per year salary. *Testimony of Luke.*
- 4.33. On May 24, 2023, Agent Luke emailed Espinoza regarding Applegate Orchard's response to his wage complaint and requested any additional information Espinoza wanted to provide in response. *Testimony of Luke and Dept. Ex. 9.*
- 4.34. On June 2, 2023, Agent Luke sent a '60 Day Notice' correspondence to Espinoza and Applegate Orchards, requesting additional time, beyond the standard 60 days, to complete her investigation of Espinoza's wage complaint. *Testimony of Luke and Dept. Ex. 10.*

- 4.35. If an employer agrees to pay a non-discretionary bonus to an employee, the employer would be liable for those wages. *Testimony of Luke.*
- 4.36. Agent Luke did not speak with Appelgate Owner, Shirley Mason, or with her son, Brandon, a manager at Appelgate Orchard, during her investigation. *Testimony of Luke.*
- 4.37. On June 6, 2023, Industrial Relations Agent Pauline Luke issued her 'Agent Summary', outlining her investigation of Espinoza's Wage Complaint. Luke recommended the Department issue a Determination of Compliance, since Espinoza had been paid for all work performed. *Testimony of Luke and Dept. Ex. 2; pg. 1-4.*
- 4.38. On July 27, 2023, the Department issued 'Determination of Compliance No. 277-23', finding Appelgate Orchards did not fail to pay agreed wages to Manuel Espinoza, in violation of the Washington State Wage Payment Act and/or Minimum Wage Act. *Testimony of Luke and Dept. Ex. 1.*

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, 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, Manuel Espinoza, has the burden to prove, by a 'preponderance of the evidence', the Department's 'Determination of Compliance No. W-277-23' is in error.

Bona Fide Dispute Regarding Wages-

- 5.4. 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.

- 5.5. 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).
- 5.6. If the employer pays an employee less than wages to which such employee is entitled, the employer shall be liable to such employee for the full amount of such wages. RCW 49.46.090(1).
- 5.7. RCW 49.52.050 makes it unlawful for an employer to willfully withhold an agreed wage, which includes any wage an 'employer is obligated to pay such employee by any statute, ordinance, or contract'. RCW 49.52.050(2).
- 5.8. RCW 49.48.082(13) defines "willful" as a "[K]nowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.52.050(2)."
- 5.9. A 'willful' withholding of wages requires a showing of: (1) The wage withholding is the result of a 'knowing and intentional act'; (2) Is not the result of a 'bona fide dispute' as to the obligation of payment. A bona fide dispute is a fairly debatable disagreement over whether the wages were agreed upon and to be paid. *Yakima County v. Yakima County Law Enforcement Officer Guild*, 157 Wn. App. 304 (2010) and *Backman v. NW Publ'g Ctr., LLC*, 147 Wn. App. 791 (2008).
- 5.10. Further, an employer does not willfully withhold wages where he/she/they have a bona fide belief that such wages are not required to pay by obligation. *Moore v. Blue Frog Mobile, Inc.* 153 Wn. App. 1 (2009).
- 5.11. In the present case, the Appellant/Wage Claimant, Manual Espinoza argues he is owed \$65,000 per year, for 2021 and 2022, yet he was only paid \$55,000 per year.
- 5.12. However, the employer, Applegate Orchards, contends it and Espinoza agreed to paying him a salary of \$55,000 per year, like the other foremen. No written contract or agreement or employment contract evidence which salary was agreed upon between the parties.
- 5.13. As a result, a 'fairly debatable disagreement over the wages' constituting a 'bona fide dispute' exists between the Wage Claimant Espinoza and the Employer Applegate Orchards.
- 5.14. However, Espinoza, who has the burden to prove, by a 'preponderance of the evidence' ('more likely than not' standard of proof), he is owed \$65,000 per year in wages, for 2021 and 2022, failed to meet his burden of wages being obligated to be paid to him.

5.15. As a result, the Appellant/Wage Claimant, Manuel Espinoza, failed to establish the Department of Labor and Industries' 'Determination of Compliance No. W-277-23', dated June 27, 2023, was in error.

5.16. The Department of Labor and Industries' 'Determination of Compliance No. W-277-23', dated June 27, 2023, is **affirmed**.

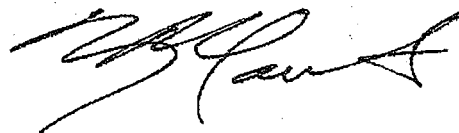
6. INITIAL ORDER

THIS ADMINISTRATIVE TRIBUNAL ORDERS:

6.1. Manuel Espinoza failed to establish the Department of Labor and Industries' 'Determination of Compliance No. W-277-23', dated June 27, 2023, was in error.

6.2. The Department of Labor and Industries' 'Determination of Compliance No. W-277-23', dated June 27, 2023, 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. 11-2023-LI-01984

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.

| | |
|---|---|
| Manuel Espinoza 3719 W Sylvester St Pasco, WA 99301 <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: espinoza.manuel1959@icloud.com |
| Ryan Gompertz, AAG Office of the Attorney General MS: TB-14 800 5th Ave Ste 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: ryan.gompertz@atg.wa.gov kirsten.swan@atg.wa.gov lniseaeservice@atg.wa.gov |
| Applegate Orchards Inc. Attn: Cheri Horst 1052 Lake Road Burbank, WA 99323 <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: cheri@bluemfarms.com |

Date: Friday, May 31, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Mallory Jordan
Legal Assistant 2