



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

PO Box 44000 • Olympia Washington 98504-4400

May 13, 2025

Via E-mail and U.S. Mail

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In Re: Lamb Hanson Lamb Appraisal Associates, Inc., and Patrick Lamb
OAH Docket No. 05-2024-LI-02140
Director No. 2025-013-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

Enclosures

cc: Judge Dan Gerard
Haley Bobbitt, Tacoma OAH
Anastasia Sandstrom, AAG



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

In re:

LAMB HANSON LAMB APPRAISAL
ASSOCIATES, INC.; and PATRICK LAMB,
and the marital community

Respondents,

Appeal of Citation and Notice of Assessment
No. W-154-24

OAH Docket No. 05-2024-LI-02140

No. 2025-013-WPA

DIRECTOR'S ORDER

Joel Sacks, Director of the Washington State Department of Labor and Industries, having considered the appeal filed by the Washington State Department of Labor and Industries, (L&I), briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

The Appellant is L&I, and the Respondent is collectively "LHL": Lamb Hanson Lamb Appraisal Associates, Inc., and Patrick Lamb and his marital community.

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

NO. 2025-013-WPA

DIRECTOR'S ORDER

1

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

I. FINDINGS OF FACT

The Director adopts and incorporates by reference all Findings of Fact of the Initial Order, except 4.14, 4.16, 4.20, 4.22, 4.23, 4.25, 4.28, 4.29.

- 4.30. The Office of Administrative Hearings issued and served the Initial Order on November 8, 2024, reversing L&I's Citation and Notice of Assessment.
- 4.31. The Director received a timely filed petition for administrative review from L&I.
- 4.32. Gabe Cadwell tested positive for COVID on July 17, 2022, and he used the firm's "All Users" email address to notify LHL the following morning. Ex. 3 at 9. Cadwell followed up his positive test result with a COVID test at a medical facility on July 22, 2022, where he also tested positive. Ex. 18 at 3. The Initial Order's Finding of Fact No. 4.23 regarding Cadwell's positive test result dated only July 22, 2022, is in error because the documentary evidence establishes the complete timeline for Cadwell's testing as well as his notification to LHL of his illness.
- 4.33. Cadwell did not work a full 40-hour workweek the week of July 25, 2022, and spent a couple of days sick in bed. Tr. 71. The Initial Order concluded that during the period of July 25-28, 2022, "Cadwell was either ill or recovering from covid during that period." Initial Order's Conclusion of Law No. 5.7. Positive COVID tests and contemporaneous statements corroborate the claim of illness.
- 4.34. When Cadwell first learned that he had accrued 59.82 hours of paid sick leave, he indicated to the bookkeeper Andrea Marsden that he would likely not use any paid sick leave hours the week of July 17 through July 23, 2022, but might use some the following week. Ex. B at 2-3. He also asked whether any of the almost 60 hours he'd accrued could be used for vacation, since LHL did not offer any paid vacation leave. Ex. B at 3. Marsden replied that she didn't recommend using paid sick leave hours for vacation or non-sick days off. Ex. B at 4.
- 4.35. When Marsden was completing payroll for the pay period July 16 through July 29, 2022, she asked Cadwell to let her know if he wanted to use any hours of sick time for that pay period. Ex. 18 at 7. Cadwell replied, "Yes, can I use 32 hours if I have it due to the COVID issue?" Ex. 18 at 6. The Initial Order's Conclusion of Law No. 5.7 is therefore incorrect that Cadwell did not request leave because of illness. Marsden said she would add 32 hours to his spreadsheet. Ex. 18 at 6. The documentary evidence is that Marsden offered Cadwell his paid sick leave once she knew he was sick, and Cadwell asked Marsden questions about paid sick leave usage since he had never previously

been informed of it. Cadwell arranging with Lamb's accountant for 32 hours of sick pay was because he was sick. It is irrelevant that he also needed the money. (Initial Order's Finding of Fact No. 4.25). The Director gives due regard to the Administrative Law Judge's (ALJ's) opportunity to observe the witnesses on this point, but the documentary evidence and testimony establishes that Cadwell was ill (*see also* Initial Order's Conclusion of Law No. 5.7) and took leave because of illness.

- 4.36. Patrick Lamb communicated to Cadwell on August 1, 2022, that Lamb didn't want to pay for sick leave. Ex. B at 13. Under Lamb's direction, Marsden removed the 32 hours from Cadwell's spreadsheet. Ex. 18 at 5.
- 4.37. Cadwell had a full-time work schedule of Monday through Friday, 9:00 a.m. to 5:00 p.m. Cadwell testified that as a full-time residential appraisal trainee, he typically worked a regular 40-hour work week, Monday through Friday, 9:00 a.m. to 5:00 p.m. Tr. 69. Cadwell occasionally worked weekends. Tr. 69. This testimony establishes a regular work pattern contrary to Initial Order's Finding of Fact No. 4.16. The Initial Order's Finding of Fact No. 4.16 is incorrect that Cadwell didn't testify that no one told him he was a 40-hour employee. Cadwell testified that Lamb asked Cadwell to work full-time employment when Lamb shifted Cadwell to full-time residential appraisal training, and Lamb asked him to quit his other contract work. Tr. 73.
- 4.38. Cadwell's job duties went beyond merely attending site visits and completing appraisal reports. Cadwell was expected to be marketing for work, prepping the appraisals, conducting research and completing other job-related tasks. Ex. 4 at 13. Giving due regard to the ALJ's ability to view the witnesses, Cadwell's testimony as to what his job duties were and that they exceeded the time of conducting a site visit and writing the corresponding appraisal report is supported.
- 4.39. The Director declines to adopt the Initial Order's Finding of Fact 4.16 and 4.22 about the hours worked by Cadwell. The Initial Order's Finding of Fact No. 4.16 is incorrect that the documentation proved that Cadwell averaged 24.67 hours a week. LHL did not maintain a record of Cadwell's hours actually worked, and Lamb did not record Cadwell's hours worked and did not know whether Cadwell worked 40 hours or not. Tr. 94-95; Ex. 25 at 1. Since Lamb did not require time records from Cadwell, Cadwell had no reason to report when he was working and when he was not working.
- 4.40. LHL used a formula for calculating hours in an "hours log" that does not correspond to actual hours worked. LHL reported 12 hours per appraisal to

Employment Security Department (ESD) for Cadwell based on the number of experience hours the Department of Licensing's WAC 308-125-075 allows to be credited per single family residential form report toward obtaining a state-issued license for real estate appraisers. As Lamb reports, "Gabe performed 74 appraisals over that time period. Applying the State-allocated time allowance of 12 hours per job equals 888 hours on the job. Dividing that by 9 months and then again by 4 work weeks per month equals an average work load of just under 25 hours per week." Ex. 25 at 1; *see also* Tr. 77-78, 97-98. Cadwell had no input into how many hours Lamb reported for him to ESD. Tr. 94.

- 4.41. Neither the appraisal list in Exhibit 25, pages 2 and 3, nor the hours from the paystub shown in Exhibit 7, page 6, accurately reflect the actual hours Cadwell spent performing work tasks during the pay period of July 16, 2022, through July 2022.
- 4.42. Giving due regard to the ALJ's opportunity to view the witnesses, LHL's method of devising an "hour log" and the reporting to ESD bear no relation to the time a worker spends performing work tasks. Even if Lamb's testimony about his hours' calculation was not equivocal and the documents support Lamb's explanation of the method, this method did not track actual hours worked. The Initial Order's Findings of Fact No. 4.16 and 4.22 that Cadwell did not work 40 hours per week is rejected because the evidence established that actual hours were not tracked by LHL. The Initial Order Finding of Fact 4.20's last sentence that LHL tracked hours "for other purposes" is also rejected because LHL did not "track hours;" instead, Lamb calculated hours from a formula. (The remainder of the finding is adopted.)
- 4.43. Cadwell accepted two assignments from Lamb on July 25, 2022. One was for the property associated with Craig Coombs, the site visit for which was to be conducted right away, so Cadwell scheduled the visit for July 26, 2022. Ex. 12 at 11. The other was for the Bullit Estate, the appraisal for which was to be conducted the following week. Ex. 12 at 13. Cadwell emailed Lamb on July 25, 2022: "I can do both of the SFRs." Ex. 12 at 15. Cadwell performed the site visit for Coombs on July 26, 2022. The Initial Order's Finding of Fact No. 4.29 is incorrect that there was only offer of work from Coombs. The documentary evidence established that Cadwell performed the Coombs site visit on July 26, 2022, and accepted the Bullit job from Lamb, to be conducted the following week. Ex. 12 at 13, 15. The Initial Order's Finding of Fact No. 4.28 is incorrect that Cadwell did not advise Lamb of any unavailability when they communicated about the projects. The documentary evidence shows Cadwell told Lamb he could not visit the Bullit Estate that week. Ex. 12 at 13.

- 4.44. Cadwell worked approximately eight hours from July 25 to July 29, 2022. Ex. 12 at 11. He also took 32 hours for illness. Ex. 18 at 6. LHL did not have any time records of actual hours worked that refuted Cadwell's claim for those 32 hours. Tr. 54-57, 94-96.
- 4.45. LHL had no experience administering the use of paid sick leave hours. The accountant wrote, "Honestly, no one has used any sick time since I've worked here, including myself!" Ex. B at 4. Lamb testified, "This is my first instance of a sick pay claim. I don't get this. We don't have this. This is the number one that this has been attempted." Tr. 92-93.
- 4.46. LHL did not have any written paid sick leave policy that would have allowed LHL to require advance notification of absence or verification of illness after an absence of three days or more. Tr. 51.

II. CONCLUSIONS OF LAW

The Director adopts and incorporates by reference all Conclusions of Law of the Initial Order, except 5.7 to 5.10.

- 5.11. Based on the L&I'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.
- 5.12. The Director "shall exercise all the decision-making power that the reviewing officer [the Director] would have had to decide and enter the final order had the reviewing officer presided over the hearing In reviewing findings of fact by presiding officers [the ALJ], the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses."
- 5.13. A violation of the Minimum Wage Act (MWA)'s paid sick leave provisions is a violation of the Wage Payment Act, RCW 49, RCW 49.48.082-086 (WPA). RCW 49.48.082(12); RCW 49.46.020(4).
- 5.14. It is the employer's responsibility to keep records regarding employee hours. Employers shall "make, keep, and preserve such records of the persons employed... and of the wages, hours, and other conditions and practices of employment." RCW 49.46.040(3). An employer is required to keep records of "[h]ours worked each workday and total hours worked each workweek." WAC 296-128-010(6).
- 5.15. When interpreting and applying the MWA, Washington courts may consider decisions produced under the Fair Labor and Standards Act (FLSA) to be

persuasive authority. *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 298, 996 P.2d 582 (2000).

- 5.16. An employee has the initial burden of showing prima facie evidence of a wage payment law violation. 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 U.S. 680, 687-88, S.Ct. 1187, 90 L. Ed. 1515 (1946)). Thus, the employee “has the burden of proving that he performed work for which he was not properly compensated.” *Anderson*, 328 U.S. at 686-87. But, given that the FLSA and MWA require employers to keep records, wages, and hours, and given that employees seldom keep such records, much less trustworthy ones, “a proper and fair standard must be erected for the employee to meet in carrying out his burden of proof.” *Id.* at 687. Thus, “an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he provides sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.” *Id.*
- 5.11. After the employee meets their burden of proof, the burden shifts to the employer to show the precise amount of work performed, or to negate the employee’s evidence of hours worked. *Anderson*, 328 U.S. at 687-88. “If the employer fails to keep records, the burden is on the employer to prove the claimed hours were not worked.” *MacSuga*, 97 Wn. App. at 445. When an employer does not keep records, the employee need not prove the precise extent of their work. *Anderson*, 328 U.S. at 687-88; *Brock v. Seto*, 90 F.2d 1446, 1448-49 (9th Cir. 1986).
- 5.12. This burden-shifting standard applies to the two questions here: how many hours a week did Cadwell regularly work and how many hours did he work during the week of July 25, 2022.
- 5.13. Cadwell and L&I met their burden to show prima facie case about (1) the hours worked during the week of July 25, 2022, and (2) the hours worked during a typical work week. First, there was corroborating documentary evidence of illness in the form of emails and medical tests, including a contemptuous reporting of illness. Second, Cadwell testified that as a full-time residential appraisal trainee, he typically worked a regular 40-hour work week, Monday through Friday, 9:00 am to 5:00 pm. Tr. 69. Although the Director gives due regard to the ALJ’s opportunity to observe the witnesses, Cadwell was in the best position to know how much time he spent at work, and the Initial Order improperly disregarded the testimony that he gave up working other contracts to work full time for LHL.
- 5.14. After this prima facie case was established, the burden then shifted to LHL to prove with precision the hours worked both during the week of July 25th and

during the normal work week. LHL could not do this as it did not track hours worked both in a normal week and the hours worked during the week of July 25, 2022. It only used hours based on a formula. Lamb's formula method does not substitute for tracking time day to day, hour to hour with a timeclock or even a manual time recording method. Because there are no timekeeping records, LHL has not rebutted Cadwell's recollection of how much he worked as a means of establishing time he spent working on a weekly basis.

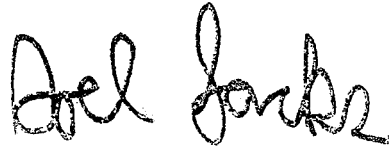
- 5.15. Although the Initial Order suggests that this case turns on the credibility of Lamb and Cadwell, credibility must be judged using the proper legal framework. The Initial Order did not place the burden on LHL to prove the hours worked after the prima facie case was proven as a matter of just and reasonable inference. The decision itself concluded that "Cadwell was either ill or recovering from covid during that period." Conclusion of Law No. 5.7. This conclusion itself demonstrates that Cadwell and L&I made a prima facie case about the reason for the leave. And admissions from Lamb that he told Cadwell that Cadwell was full time support the prima facie case. Tr. 73. Viewing the evidence under the proper legal framework, the Director finds Cadwell credible as to the preliminary question of hours worked, and LHL's testimony in rebuttal insufficient as a matter of law.
- 5.16. The Initial Order said that the reason Cadwell asked for leave was not because he was absent from work but because he "needed the money." Initial Order's Conclusion of Law No. 5.7; *see also* Initial Order's Finding of Fact No. 4.25. RCW 49.46.210(2)(b)(i) authorizes leave for "An absence resulting from an employee's . . . physical illness." This statute only requires that the illness be a reason for the leave; it does not preclude other reasons. Although the Director gives due regard to the ALJ's opportunity to observe the witnesses, such due regard does not mean that the Director has to accept findings that are contrary to the evidence and legal standard. And the Director decides the case de novo and may draw different inferences than the Initial Order. RCW 34.05.464(4). The Director found above and concludes here that the leave was for illness.
- 5.17. In July 2022, Cadwell had been employed longer than 90 days at LHL and was entitled to use accrued paid sick leave for authorized reasons. RCW 49.46.210
- 5.18. Cadwell was not able to work his regular full-time schedule during the workweek of July 24 to July 29, 2022, due to his illness. Since his absence was due to his illness, he was entitled to use accrued paid sick leave hours for the absence. RCW 49.46.210(1)(b)(i). He was not required to give advance notice of his absence because LHL did not have a written paid sick leave policy requiring him to do so. WAC 296-128-650(3). He was not required to provide LHL verification that any

absence exceeding three days was for an authorized purpose because LHL did not have a written paid sick leave policy requiring him to do so. WAC 296-128-660(2).

- 5.19. LHL owes Cadwell for 32 hours of sick leave at \$50.00 per hour, totaling \$1,600.00, plus interest.¹
- 5.20. LHL violated the paid sick leave provisions of the MWA by denying Cadwell's request to use his accrued paid sick leave hours to cover his absence due to illness during the week of July 25 through July 29, 2022.
- 5.21. Citation and Notice of Assessment No. W-154-24 is affirmed, assessing \$1,600.00 in wages owed, interest, and a penalty of \$1,000.00. Interest is not owed from the date of the Initial Order to the date the Director's Order was served.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, and the Citation and Notice of Assessment is AFFIRMED, and the Initial Order of November 8, 2024, is incorporated by reference herein. This matter is remanded to L&I to take action consistent with this Director's Order.



JOEL SACKS
Director

¹ Even if it is true that Cadwell only worked 24.67 a week, he would still be owed that time in sick leave at \$50 an hour at \$1,233.50, plus interest.

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:

Patrick Lamb
Lamb Hanson Lam Appraisal
Associates, Inc.
4742 42nd Ave SW, Ste. 201
Seattle, WA 98116
PLamb@LHLappraisal.com

Gabe Cadwell
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Kaitlin Loomis, AAG
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lniolyfax@atg.wa.gov

DATED this 13 day of May, 2025, at Tumwater, Washington.



LISA DECK

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of the assessment of
Wage Payment and/or Minimum Wage
Act violations against:

Lamb Hanson Lamb Appraisal
Associates, Inc.; and
Patrick Lamb, and the marital
community thereof, as an individual,

Appellants/Employers.

Docket No. 05-2024-LI-02140

INITIAL ORDER

Agency: Dept. of Labor and Industries
Program: Wage Payments
Agency No. W-154-24

1. ISSUES

- 1.1. Did Lamb Hanson Lamb Appraisal Associates, Inc. and/or Patrick Lamb (collectively, the Appellants) fail to pay sick leave hours to Gabe Cadwell for the period beginning July 25, 2022, through July 28, 2022, as alleged in Citation and Notice of Assessment W-154-24, dated February 15, 2024?
- 1.2. If so, did that conduct violate the Washington Minimum Wage Act (Chapter 49.46 RCW) and/or regulations supporting it, and/or other Washington Wage Payment laws (Chapter 49.48 RCW) and/or other regulations supporting them?
- 1.3. If so, do the Appellants owe wages, interest, and/or penalties?
- 1.4. If so, in what amount or amounts?

2. ORDER SUMMARY

- 2.1. Yes. The Appellants did not pay sick leave hours to Gabe Cadwell for the period beginning July 25, 2022, through July 28, 2022, as alleged in Citation and Notice of Assessment W-154-24, dated February 15, 2024.
- 2.2. However, that conduct did not violate the Washington Minimum Wage Act (Chapter 49.46 RCW) and/or regulations supporting it, and/or other Washington Wage Payment laws (Chapter 49.48 RCW) and/or other regulations supporting them.
- 2.3. Accordingly, the Appellants do not owe wages, interest, or penalties.

3. HEARING

- 3.1. Hearing Date: September 9, 2024
- 3.2. Administrative Law Judge: Terry A. Schuh
- 3.3. Appellants: Lamb Hanson Lamb Appraisal Associates, Inc.; and Patrick Lamb

- 3.3.1. Representative: Patrick Lamb, President/CEO
- 3.3.2. Witness: Patrick Lamb
- 3.4. Agency: Department of Labor and Industries
 - 3.4.1. Representative: Cindy Gaddis, Assistant Attorney General
 - 3.4.2. Witnesses:
 - 3.4.2.1. Alfredo Di Tolla, Industrial Relations Agent, Department of Labor and Industries
 - 3.4.2.2. Gabriel Cadwell, Wage Claimant
- 3.5. Exhibits: Exhibits 1 through 34, offered by the Department of Labor and Industries were admitted into the record as evidence. Exhibits B (emails only, without commentary) and C, offered by the Appellants, were admitted into the record as evidence.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

- 4.1. The Department of Labor and Industries (the Department) served Citation and Notice of Assessment 154-24 on Lamb Hanson Lamb Appraisal Associates, Inc. (Lamb, Inc.) and Patrick Lamb (Mr. Lamb or Lamb) (collectively, the Appellants) on February 15, 2024. Ex. 1.
- 4.2. On February 26, 2024, the Department received the Appellants' appeal, dated February 19, 2024. Ex. 2.

The Department investigated a wage complaint filed by Mr. Cadwell

- 4.3. On February 21, 2023, Gabe Cadwell (Mr. Cadwell or Cadwell) filed a Worker Rights Complaint Form with the Department. Alfredo Di Tolla Testimony (Mr. Di Tolla or Di Tolla); Ex. 3. The basis for Mr. Cadwell's complaint was that he had not received sick pay to which he was entitled. Di Tolla Testimony; Ex. 3, pp. 3, 7.
- 4.4. On March 7, 2023, Mr. Cadwell's complaint was assigned to Mr. Di Tolla for investigation. Di Tolla Testimony; Ex. 4, p. 1.
- 4.5. Mr. Di Tolla gathered information from both Mr. Cadwell and Lamb, Inc. regarding Mr. Cadwell's wage complaint. Di Tolla Testimony; Exs. 6-9.
- 4.6. Mr. Cadwell reported to Mr. Di Tolla that he claimed 32 hours of sick leave at \$50.00 an hour for the period beginning July 6, 2022, through July 29, 2022. Di

Tolla Testimony, Exs. 3, 7. Mr. Cadwell specifically claimed for the period of July 25-28, 2022, because he was ill with covid. Ex. 7.

- 4.7. Mr. Lamb told Mr. Di Tolla that Mr. Cadwell was not scheduled to work 40 hours during the period for which he claimed sick leave pay. Di Tolla Testimony. However, Mr. Cadwell told Mr. Di Tolla that he was scheduled to work eight hours each day. Ex. 10.
- 4.8. Mr. Cadwell did not provide any documents demonstrating that he was employed 40 hours a week with Lamb, Inc., much less during the period at issue here. Di Tolla Testimony.
- 4.9. Lamb, Inc. did not pay the claimed sick leave. Ex. 7, p. 6.
- 4.10. At the conclusion of his investigation, Mr. Di Tolla recommended that the Department issue to Lamb, Inc. and to Mr. Lamb a Citation and Notice of Assessment. Di Tolla Testimony; Ex. 34; see Ex. 1

Mr. Cadwell was not absent from work during the relevant period of time

- 4.11. Mr. Cadwell worked as a residential appraiser trainee for Lamb, Inc. Cadwell Testimony.
- 4.12. Lamb, Inc. provides appraisal services. Lamb Testimony. Lamb, Inc. has operated for four generations and trained hundreds of appraisers. Lamb Testimony.
- 4.13. Mr. Lamb is an appraiser with 22 years of experience. Lamb Testimony.
- 4.14. Mr. Cadwell had no work schedule. Cadwell Testimony.
- 4.15. Mr. Cadwell was never asked to track or submit hours. Cadwell Testimony. All he submitted were his appraisals. Cadwell Testimony.
- 4.16. The parties dispute whether Mr. Cadwell worked 40 hours a week. Mr. Cadwell testified that he was characterized as full time, 40 hours a week, and that he typically worked Monday through Friday, 9:00 to 5:00, and some weekends. However, Mr. Cadwell also testified that no one told him he was a 40-hour employee, he just assumed it. Mr. Lamb testified that Mr. Cadwell was not an hourly employee, much less an employee employed 40 hours a week, that Lamb Inc. records demonstrate that Mr. Cadwell averaged 24.67 hours worked in 2022 (referencing Ex. 25, p. 3), and that Employment Security Records confirm that Mr. Cadwell worked less than 30 hours a week (referencing Ex. C). On this point, I find Mr. Lamb's testimony to be more credible than Mr. Cadwell's, primarily for two reasons. One, Mr. Cadwell's testimony was equivocal whereas Mr. Lamb's was unequivocal. Two, Mr. Lamb's testimony was corroborated by documents. Accordingly, I find that Mr. Cadwell did not work 40 hours a week.

- 4.17. Mr. Cadwell was not on-call or on standby. Lamb Testimony.
- 4.18. Mr. Cadwell was not obliged to report to or appear at the office. Lamb Testimony.
- 4.19. Mr. Cadwell chose to accept or to reject offers of work from Lamb, Inc. Lamb Testimony.
- 4.20. Mr. Cadwell was paid by commission for appraisals he performed, not by the hour or by salary. Cadwell Testimony; Lamb Testimony; see, e.g., Ex. 7, p. 6. The hours calculation on page six of exhibit seven have nothing to do with Mr. Cadwell's pay, which was a percentage of the fee charged to the customer. Lamb Testimony. Lamb, Inc. tracks hours for other purposes. Lamb Testimony.
- 4.21. Mr. Lamb offered Mr. Cadwell appraisal assignments as they arose. Mr. Cadwell could accept or refuse. Lamb Testimony.
- 4.22. Mr. Cadwell averaged less than 30 hours a week. Lamb Testimony.
- 4.23. On or about July 22, 2022, Mr. Cadwell tested positive for Covid. Ex. 18, p. 3; Ex. B, p. 1-2.
- 4.24. Mr. Cadwell contacted Lamb, Inc.'s accountant regarding sick pay and learned that he had accumulated paid sick leave. Di Tolla Testimony; Ex. 18, pp 6-7; Ex. B, pp. 2-3.
- 4.25. Mr. Cadwell arranged with Lamb's accountant for 32 hours of sick pay for period of July 25-28, 2022, because he needed the money. Ex. 18, pp. 6-7. The accountant reported the hours to Mr. Cadwell's payroll account but told Mr. Cadwell that paid sick leave should be restricted to absences for illness. Ex. B, p. 4.
- 4.26. Mr. Cadwell did not inform Mr. Lamb of his request to the accountant for sick pay. Lamb Testimony.
- 4.27. Mr. Cadwell did not refuse work from Lamb, Inc. during the period of July 25-28, 2022. Lamb Testimony.
- 4.28. Mr. Cadwell did not advise Mr. Lamb of any unavailability when they communicated during the period of and before July 25-28, 2022. Lamb Testimony; Ex. 12, p. 1. Mr. Cadwell did not inform Mr. Lamb that he was sick. Lamb Testimony; Ex. 12, p. 1.
- 4.29. Mr. Cadwell accept, scheduled, and performed a site visit for appraisal on July 25, 2022 – the only offer of work he received from Lamb, Inc. for the period of July 25-28, 2022. Lamb Testimony; Di Tolla Testimony; Ex. 12, p. 1-19; Ex. B, pp. 5-8.

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5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. I have jurisdiction to hear and decide this matter under Revised Code of Washington (RCW) 49.48.084(3) and Washington Administrative Code (WAC) 296-128-800(6); Chapter 34.05 RCW; and Chapter 10-08 WAC.

Worker Rights Complaint (wage complaint)

- 5.2. An employee's written assertion that the employer violated one or more wage payment requirements is called a wage complaint. RCW 49.48.082(11). Accordingly, Mr. Cadwell's Worker Rights Complaint at issue here is a wage complaint.
- 5.3. If an individual files a wage complaint, the Department must investigate. RCW 49.48.083(1). Therefore, the Department was required to investigate the wage complaint filed by Mr. Cadwell.
- 5.4. The Department relies upon Chapters 49.52, 49.46, and 49.48 RCW, as well as Chapter 296-128 WAC.

Mr. Cadwell was not eligible for paid sick leave because he was not absent from work

- 5.5. The purpose of paid sick leave is to provide employees means to care for their health and that of their families. RCW 49.46.200.
- 5.6. "An employee is authorized to use paid sick leave for . . . [a]n *absence* resulting from . . . a physical illness . . . or health condition"; or to accommodate the employee's need care, treatment, or preventative medical care. RCW 49.46.210.
- 5.7. Here, Mr. Cadwell was not absent from work. Lamb, Inc. had only one work assignment available for the period of July 25-28, 2022, which if offered to Mr. Cadwell and which he accepted. Mr. Cadwell was either ill or recovering from covid during that period. However, he did not tell Mr. Lamb that he was ill, much less unavailable for work, and he did not decline the only offer of work Lamb, Inc. made to him for that week. When Mr. Cadwell asked the accountant to pay him sick leave, it was not because he had been absent or intended to be absent from work because he was ill. Rather, he requested sick leave because he needed the money. Paid sick leave does not create a bank of *funds* from which to withdraw when financial need beckons. Rather, it is a bank of *paid leave* for when an employee needs time off to address an illness – either his own or that of a family member. That was not the case here for Mr. Cadwell. He did not ask for time off nor did he take time off. Therefore, he was not eligible for paid sick

leave. Thus, Lamb, Inc. was correct to decline to honor his request for paid sick leave.

5.8. Accordingly, the Appellants did not violate paid sick leave law, or any other provision of the Minimum Wage Act, the Wage Payment Act, or any other Washington wage payments laws.

5.9. Therefore, the Appellants do not owe wages, interest, or a penalty.

5.10. Thus, Citation and Notice of Assessment No. W-154-24 should be set aside.

6. INITIAL ORDER

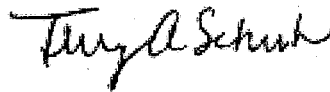
IT IS HEREBY ORDERED THAT:

6.1. The Department of Labor and Industries action is **SET ASIDE**.

6.2. Citation and Notice of Assessment No. W-154-24 is **SET ASIDE**.

6.3. Lamb Hanson Lamb Appraisal Associates, Inc. and Patrick Lamb are not liable for the payment of wages, interest, or a penalty.

Issued from Olympia, Washington on the date of mailing.



Terry A. Schuh
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

APPEAL RIGHTS

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.

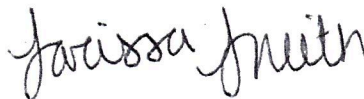
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 05-2024-LI-02140

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.

Lamb Hanson Lamb Appraisal Associates, Inc. 4742 42nd Ave SW Suite No. 201 Seattle, WA 98116 Appellant/Employer	<input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail PLamb@LHLappraisal.com
Patrick Lamb 4742 42nd Ave SW Suite No. 201 Seattle, WA 98116 Appellant/Employer	<input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail PLamb@LHLappraisal.com
Cindy Gaddis, AAG Office of the Attorney General MS: 40121; PO Box 40121 Olympia, WA 98504-0121 Agency Representative	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail cindy.gaddis@atg.wa.gov Kat.Moysiuk@atg.wa.gov Iniolyeservice@atg.wa.gov
Gabe Cadwell 4413 47th Ave. SW Seattle, WA 98116 Intervenor/Wage Claimant	<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: Friday, November 08, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Larissa Smith
Legal Assistant 2