



STATE OF WASHINGTON  
**DEPARTMENT OF LABOR AND INDUSTRIES**

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

May 5, 2025

**Via E-mail and U.S. Mail**

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R & S L dba TEAM  
3405 W Court St  
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Maria Arceo  
9411 Palomino Dr  
Pasco, WA 99301

**In Re: R & S L, Inc., dba TEAM**  
**OAH Docket No. 04-2024-LI-02102**  
**Director Order No. 2025-014-EPO**

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:

R & S L, Inc., dba TEAM

Appellant,

Appeal of Citation and Notice of  
Assessment No. E-001-23

OAH Docket No. 04-2024-LI-02102

No. 2025-014-EPO

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 the R & S L, Inc., dba TEAM, (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 November 12, 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. 2025-014-EPO

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

4. The Director adopts and incorporates the Initial Order's Findings of Facts 4.1 through 4.81, 4.83 through 4.86, 4.90 through 4.111, 4.113 through 4.127, and 4.129 through 4.152.
5. Finding of Fact 4.82 is modified to read: Arceo tried to get a job with the School District, which was looking for bus drivers. But Arceo would need a license to drive a school bus, and the program costed between \$1,700 to \$5,000, which she couldn't afford. *Testimony of Arceo.*
6. Finding of Fact 4.112 is modified to read: In particular, Specialist Evans reviewed an Employer note, dated September 16, 2020, written by Office Manager Tasha Gunter, regarding Arceo's termination, which stated: "I brought her in to let her know she was no longer needed and that the drama and discussing the pay was not appropriate." *Testimony of Evans and Dept. Ex. 9; pg. 2.*
7. Finding of Fact 4.128 is modified to read: Specialist Evans calculated Arceo's Back Wages, from the Week of August 30, 2020, to the week of April 17, 2022, at \$15.00 per hour multiplied by 40 hours per week, equating to \$51,600.00 minus unemployment benefits and other wages of \$3,854.00, equaling a balance owed of \$47,746.00. *Dept. Ex. 20.*
8. The Director does not adopt the Initial Order's Findings of Fact 4.87 through 4.89.

## 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 49.58.060(3) and RCW 34.05.
2. There is no Washington State case law specifically addressing retaliation law under the Washington Equal Pay and Opportunities Act (EPOA), RCW 49.58. However, the elements of retaliation are largely consistent across various protected employment activities *See Allison v. Hous. Auth. of City of Seattle*, 118 Wn.2d 79, 88, 821 P.2d 34 (1991) (where statutes do not specifically set forth elements of a retaliation claim, courts may look to cases

interpreting similar anti-discrimination statutes). Under the Washington Law Against Discrimination, RCW 49.60, to establish a prima facie case of retaliation, an employee must show: (1) the employee took a statutorily protected action, (2) the employee suffered an adverse employment action, and (3) a causal link between the employee's protected activity and the adverse employment action. *Cornwell v. Microsoft Corp.* 192 Wn.2d 403, 411, 430 P.3d 229 (2018). An employee proves causation by "showing that retaliation was a substantial factor motivating the adverse employment decision." *Allison*, 118 Wn.2d at 96. A "substantial factor" must be a significant motivating factor, but need not be the sole factor, or even a determining factor, in the decision. *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 444, P.3d 541 (2014).

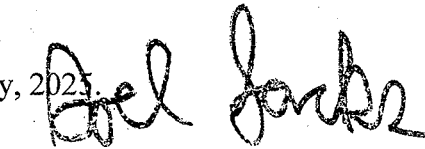
3. After the employee has established a prima facie case, the burden shifts to the employer to "articulate a legitimate nonpretextual nonretaliatory reason for the discharge." *Wilmot v. Kaiser Aluminum and Chem. Corp.*, 118 Wn.2d 46, 68, 821 P.2d 18 (1991). "[B]ut the burden of persuasion remains at all times with the employee." *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 134, 769 P.2d 298 (1989).
4. The Department of Labor & Industries is responsible for implementing and enforcing the provisions of the Washington Equal Pay and Opportunities Act, RCW 49.58.
5. The Department's authority includes enforcing RCW 49.58.020 (prohibits gender-based wage discrimination), RCW 49.58.040 (prohibits employers from requiring nondisclosure of wages as condition of employment, and prohibits an employer from retaliation against an employee for inquiring about, disclosing, comparing or otherwise discussing wages), and RCW 49.58.050 (prohibits retaliation for employees exercising their rights under EPOA).
6. The Director adopts and incorporates the Initial Order's Conclusions of Law 5.14 to 5.16, 5.18 through 5.28, 5.30 through 5.34, 5.36, 5.37, and 5.39 through 5.46.

7. Conclusion of Law 5.29 is modified to read: Specialist Evans calculated Arceo's Back Wages, from the week of August 30, 2020, to the week of April 17, 2022, at \$15.00 per hour multiplied by 40 hours per week, equating to \$51,600.00 minus unemployment benefits and other wages of \$3,854.00, equaling a balance owed of \$47,746.00. *Dept. Ex. 20.*
8. The Director does not adopt Conclusions of Law 5.1 through 5.13, 5.17, 5.35, and 5.38.

### III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Citation and Notice of Assessment is **AFFIRMED AS MODIFIED**, and the Initial Order of November 12, 2024, is incorporated by reference herein.

DATED at Tumwater this 5 day of May, 2025.



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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](mailto: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:

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R & S L, Inc. dba TEAM  
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Maria Arceo  
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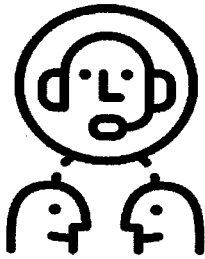
DATED this 5 day of May, 2025, at Tumwater, Washington.

  
\_\_\_\_\_  
LISA DECK



## Washington State Office of Administrative Hearings

Spanish version



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**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

R & S L, Inc., dba TEAM,

Appellant/Employer.

Docket No. 04-2024-LI-02102

**INITIAL ORDER**

Agency: Department of Labor and  
Industries

Program: Wage Payments

Agency No. E-001-23

**1. ISSUES:**

- 1.1. Whether R & S L, Inc. dba TEAM terminated Maria Arceo's employment for talking about her wages, in violation of Revised Code of Washington (RCW) 49.58.040?
- 1.2. Whether an assessment of lost earnings, totaling at least \$47,718.62, and interest of at least \$14,317.09, as provided by RCW 49.58.040 and RCW 49.58.060(2)(a) is appropriate?
- 1.3. Whether a penalty of at least, \$500.00, as provided by RCW 49.58.060(2)(b)(i) is appropriate?
- 1.4. Whether an assessment of interest on the unpaid wages, at a rate of one percent of the unpaid wage amount per month, from the date of the Citation and Notice of Assessment until payment is received by the Department, as provided by RCW 49.58.060(2)(a) is appropriate?
- 1.5. Whether the Department of Labor and Industries' 'Citation and Notice of Assessment No. E-001-23', dated December 7, 2023, should be affirmed, modified or set aside?

**2. INITIAL ORDER SUMMARY:**

- 2.1. R & S L, Inc. dba TEAM terminated Maria Arceo's employment **in retaliation** for her talking about her wages with other employees, in violation of RCW 49.58.040.
- 2.2. An assessment of lost earnings, totaling at least \$46,638.62, and interest, to be calculated, as provided by RCW 49.58.040 and RCW 49.58.060(2)(a) **is appropriate with modifications.**
- 2.3. A \$500 penalty, as provided by RCW 49.58.060(2)(b)(i), **is appropriate.**
- 2.4. An assessment of interest on the unpaid wages, at a rate of one percent of the unpaid wage amount per month, from the date of the Citation and Notice of Assessment until payment is received by the Department, as provided by RCW 49.58.060(2)(a) **is appropriate.**

2.5. The Department of Labor and Industries' 'Citation and Notice of Assessment No. E-001-23', dated December 7, 2023, is **affirmed with modifications**.

### 3. EVIDENTIARY HEARING:

- 3.1. Hearing Date: September 10-12, 2024
- 3.2. Admin. Law Judge: TJ Martin
- 3.3. Appellant: R & S L, Inc. doing business as (dba) TEAM
- 3.3.1. Representative: Alicia McDonnell, Attorney
- 3.3.2. Witnesses: Greg Gutierrez, TEAM Regional Manager  
Tasha Gunter, TEAM Office Manager  
Randy Lustig, TEAM President  
Becky Valdez, TEAM Director of Operations
- 3.4. Agency: Department of Labor and Industries
- 3.4.1. Representative: Diana S. Cartwright, Senior Counsel
- 3.4.2. Witnesses: Cristina Evans, Department Equal Pay Specialist  
Jackie-Ferrer-Thomas, Department EPOA Industrial Relations Agent  
Maria Arceo, Wage Claimant
- 3.5. Exhibits: Appellant Exhibits 1-14 were admitted.  
Department Exhibits 1-45 were admitted.
- 3.6. Other: Paolo Balsa and Camilo Corrales, Four Corners Translation, LLC, provided Spanish/English interpretation services for Maria Arceo.

### 4. FINDINGS OF FACT:

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

#### ***Jurisdiction-***

- 4.1. On December 7, 2023, the Department of Labor and Industries (Department) issued 'Citation and Notice of Assessment No. E-001-23' (Citation and Notice of Assessment) to R & S, Inc. doing business as (dba) Total Employment and Management (TEAM) (Appellant/Employer/TEAM) for violating Revised Code of Washington (RCW) 49.58.040, for terminating Maria Arceo (Wage Claimant/Arceo) for discussing her wages. *Department Exhibit (Dept. Ex.) 1 [Same as Appellant's Exhibit (App. Ex.) 1]*.
- 4.2. On January 3, 2024, TEAM, appealed the Department's Citation and Notice of Assessment. *Dept. Ex. 2 [Same as App. Ex. 2]*.

### ***Retaliation Credibility Finding-***

- 4.3. The Appellant and the Department conflicted on material facts in the case. Namely, the reason for the Wage Claimant's discharge from employment. Therefore, a credibility finding is needed.
- 4.4. In entering this finding, this administrative tribunal need not be persuaded 'beyond a reasonable doubt' as the true situation, nor must the evidence be deemed 'clear, cogent, and convincing'. Rather, it is only necessary to determine what most likely happened. *In re Murphy*, Em. Sec. Comm'r Dec. 2d 750 (1984).
- 4.5. After reviewing the admitted exhibits and considering the testimonies of the parties, this administrative tribunal finds the Department's evidence more credible and logically persuasive than the Appellant's evidence, regarding the 'discussion of wages' as a basis for the Wage Claimant Maria Arceo's discharge, for the following reasons: (1) The Employer, through the testimony of Tasha Gunter, the Wage Claimant's supervisor, contends the Wage Claimant was discharged for 'an overall accumulation' of issues (*App. Ex. 13; pg. 2*). However, no such evidence exists in the Employer's records; (2) Further, Tasha Gunter, in her testimony, contends the Wage Claimant Arceo's refusal to pick up a worker was the 'last straw'. However, no such documentation exists in any Employer record; (3) However, when asked to write a statement to the Department regarding the Wage Claimant's termination, Gunter referenced Arceo 'bragging' about her wages as compared to others, as one of the reason leading to her discharge. (*Dept. Ex. 32; pg. 26*); (4) The Wage Claimant, Maria Arceo's testimony supported she was discharged for the discussing wages, recounting her discussion with Tasha Gunter; (5) Immediately following her discharge, Arceo called Greg Gutierrez, TEAM Regional Manager, who had heard from Gunter about the Wage Claimant discussing wages with other employees; (6) Finally, the Employer's log note, written by Gunter stated, 'I brought her [Arceo] in to let her know that she was no longer needed and that the drama and discussing the pay was not acceptable'. (*App. Ex. 10*).
- 4.6. Based on this credibility finding, this administrative tribunal finds the following 'Findings of Fact' more than likely happened:

### ***Wage Claimant Arceo's Work for Employer TEAM-***

- 4.7. R&S L, Inc., doing business as Total Employment and Management (TEAM), is a staffing organization, with its headquarters in Moses Lake, Washington. *Testimony of Randy Lustig (Testimony of Lustig) and Dept. Ex. 40*.
- 4.8. TEAM has seven offices, with six in Washington, including one in the Tri-Cities area, and one in Oregon. *Testimony of Becky Valdez (Testimony of Valdez)*.

- 4.9. Maria Arceo (Wage Claimant/Arceo), 47, lives in Pasco, Washington. She speaks Spanish as her first language, with limited English speaking ability. She earned a General Education Degree (G.E.D.) in 2014. *Testimony of Maria Arceo (Testimony of Arceo).*
- 4.10. On August 4, 2020, TEAM hired Arceo, at a rate of pay of \$15.00 per hour, to drive a van to transport workers to various agricultural fields in the Tri-Cities area. *Testimony of Arceo and App. Ex. 6.*
- 4.11. TEAM'S 'Worker Driver' job description outlined Arceo's responsibilities and duties as a driver. *App. Ex. 12.*
- 4.12. Arceo's hours of work were typically Monday through Sunday, from 5:00 a.m. to 9:00 a.m. then 5:00 p.m. to 9:00 or 10:00 p.m. However, the schedule varied sometimes. Extra hours were sometimes needed to pick up workers after hours, which happened two to three times per week. *Testimony of Arceo.*
- 4.13. Arceo typically drove ten or so workers to various fields to work each day then pick them up. *Testimony of Arceo.*
- 4.14. TEAM driver's schedule varied, based on the client and seasonal agricultural harvesting demands. Arceo primarily drove employees to and from Brittany Farms and Simplot. *Testimony of Tasha Gunter (Testimony of Gunter).*
- 4.15. Besides driving, Arceo's duties included writing down the hours of the workers, taking the temperatures of the employees, due to the Covid pandemic and taking care of the van, such as washing it, and sanitizing it. *Testimony of Arceo.*
- 4.16. Office Manager Tasha Gunter (Gunter), Office Reception Liz Miranda (Miranda), and Regional Manager Greg Gregorio (Gregorio) would text message Arceo with any extra work. *Testimony of Arceo.*
- 4.17. Arceo typically spoke with Miranda, the Office, since she spoke Spanish. *Testimony of Arceo.*

**TEAM Policies and Procedures-**

- 4.18. TEAM has two employee handbooks. One for internal employees (*App. Ex. 5 and Dept. Ex. 41*) and the other for employees placed at client jobs (*App. Ex. 6*). *Testimony of Valdez.*
- 4.19. The TEAM 'Policies & Procedures' handbook for internal staff (*App. Ex. 5*) addressed 'gossiping' (Policy 11 on pg. 29), 'Attitude' (Policy 8 on pg. 11) and 'Honesty' (Policy 14 on pg. 29). *Testimony of Valdez and App. Ex. 5.*
- 4.20. However, TEAM's internal employee handbook would not have applied to Arceo. *Testimony of Gunter.*

- 4.21. While internal employees received a handbook, external employees, such as Arceo, received a three-page 'Policies and Procedures' handout. *App. Ex. 6. Testimony of Valdez.*
- 4.22. On August 4, 2020, Arceo signed the TEAM's 'Policies and Procedures' handout, agreeing to follow such rules during her employment. *Testimony of Valdez and App. Ex. 6.*
- 4.23. On August 6, 2020, Arceo signed TEAM's policy, in Spanish, regarding Covid protection and safety measures. *App. Ex. 7 (English version- App. Ex. 8).*
- 4.24. TEAM does not have a policy, either in its internal handbook or three-page handout, prohibiting employees from discussing of wages with other employees. *Testimony of Valdez.*
- 4.25. TEAM did not give Arceo a copy of the Employer's Policies and Procedures in Spanish at the time of hire. *Testimony of Gunter.*
- 4.26. TEAM's 'Policies and Procedures', printed in English, are provided to new hires. *Testimony of Gunter and App. Ex. 6.*
- 4.27. TEAM employees are required to follow TEAM's policies as well as the policies of the client, where the TEAM employee is placed. *Testimony of Gunter.*
- 4.28. Tasha Gunter, TEAM's Office Manager in the Tri-Cities, oversaw daily operations, including the hiring and firing of employees. *Testimony of Gunter.*
- 4.29. Gunter recalled the first issue with Arceo was directing the work of other employees, but couldn't recall when or document the incident. *Testimony of Gunter.*
- 4.30. Gunter recalled a meeting regarding Arceo speeding, putting paper over the speedometer and talking about wages with other employees. *Testimony of Gunter.*
- 4.31. Gunter did not have firsthand knowledge about how fast Arceo had been driving. The Employer was not aware of Arceo receiving any speeding tickets. *Testimony of Gunter.*
- 4.32. Arceo said the paper over the speedometer was a map of the locations where she needed to drop off the other employees. *Testimony of Gunter.*
- 4.33. The purpose of the meeting was to address the other employees' concerns and to 'clear the air' between Arceo and the other employees. *Testimony of Gunter.*
- 4.34. In the meeting, Gunter denied telling Arceo she would be discharged if she continued to talk about wages with other employees. *Testimony of Gunter.*
- 4.35. On the Friday, September 11, 2020, an agricultural worker was having problems breathing due to local wildfires. Gunter called Arceo to pick up the driver, and claimed the pickup call was around 9:00 p.m. Arceo refused. *Testimony of Gunter.*

- 4.36. The refusal to pick up Rosario, who was having asthma issues due to the wildfires was 'the last straw'. *Testimony of Gunter.*
- 4.37. However, September 11, 2020 incident was not recorded in the Employer log until Tuesday, September 15, 2020 at 3:24 p.m. 09/15/20. *App. Ex. 9.*
- 4.38. On September 16, 2020, Gunter recorded a note in the Employer log regarding Arceo's termination, stating, 'I brought her [Arceo] in to let her know that she was no longer needed and that the drama and discussing the pay was not acceptable'. *Testimony of Gunter and App. Ex. 10.*
- 4.39. Gunter made no note of Arceo refusing to pick up the worker, in the Employer's log, when Gunter terminated Arceo. *App. Ex. 10.*
- 4.40. Gunter provided a statement to the Department in response to Arceo's Wage Complaint. She cited Arceo 'bragging about wages' as the basis for her discharge. *Dept. Ex. 32; pg. 25.*
- 4.41. Gunter issued no written reprimands to Arceo before she terminated her. *Testimony of Gunter.*
- 4.42. While Tasha like discussed Arceo's pending termination with Liz Miranda, Office Receptionist and Brittany Farming's accountant manager, the decision as solely Gunter's. *Testimony of Gunter.*
- 4.43. At the termination, Gunter fired Arceo for 'bragging about wages to other employees to get a rise out of them', which was negatively affecting other employees. *Testimony of Gunter.*
- 4.44. Greg Gutierrez (Gutierrez) serves as TEAM's Regional Manager in Moses Lake, Washington. However, he was not the W.C.'s supervisor. *Testimony of Greg Gutierrez (Testimony of Gutierrez).*
- 4.45. TEAM receives a complaint from Brittany Farms about Arceo 'acting like a crew boss' while at the locations. *Testimony of Gutierrez.*
- 4.46. Gutierrez had learned from Rosio Blanco (Blanco), from Brittany Farms, that Arceo was directing employees what fields to go to. *Testimony of Gutierrez.*
- 4.47. Gutierrez told Blanco to speak with Tasha Gunter about the complaint. *Testimony of Gutierrez.*
- 4.48. Blanco also complained about Arceo driving fast, not picking up workers and discussing wages. *Testimony of Gutierrez.*
- 4.49. Gutierrez was not involved in Arceo's termination, was aware of her termination since another driver was needed to pick up temporary employees, who had been dropped off by the W.C. at the various job sites. *Testimony of Gutierrez.*

- 4.50. After being fired, Arceo called Gregori, who said she shouldn't have been talking about wages with the other employees. *Testimony of Arceo.*
- 4.51. During the post-termination phone call, Gutierrez recalled saying there was nothing he could do. He wished her the best of luck and also told her Washington was an 'at will' state, meaning an employee could be terminated without any reason needed. *Testimony of Gutierrez.*
- 4.52. Gutierrez had heard from Gunter and others about the Arceo discussing wages with other employees. *Testimony of Gutierrez.*
- 4.53. When the other employees, who were field workers, initially asked Arceo about her wages, she declined to talk about her pay. However later, she did tell them how much she made, but denied 'bragging about it'. *Testimony of Arceo.*
- 4.54. Arceo remembered other employees becoming 'agitated' with her being paid \$15.00 per hour just to drive, while they were only making \$13.00 per hour working out in the fields all day. *Testimony of Arceo.*
- 4.55. Arceo denied telling workers where to go once at the various job sites. *Testimony of Arceo.*
- 4.56. Arceo refused to pick up one worker, who was having problems breathing, since it was at 1:00 a.m. and Arceo had to start work at 5:00 a.m. *Testimony of Arceo.*
- 4.57. Arceo recalled a meeting with Tasha, Liz and three other workers. The workers were complaining about Arceo driving the van badly and how much she was being paid and treating them badly. Arceo denied treating the other employees badly. *Testimony of Arceo.*
- 4.58. The meeting was the first time Management raised the issue about her discussion of wages with other workers. *Testimony of Arceo.*
- 4.59. Arceo did not recall any other meetings regarding complaints or job performance. *Testimony of Arceo.*
- 4.60. Arceo recalled the other employees turning against her after the meeting, since she denied the allegations the other workers made against her. *Testimony of Arceo.*
- 4.61. Two weeks after the meeting with Tasha Gunter, Liz Miranda and the other workers, Tasha called Arceo into the office to fire her. Tasha didn't explain at the time, but then explained it was due to her conversation with other workers about her \$15.00 per hour rate. *Testimony of Arceo.*
- 4.62. Arceo did not sign any paperwork, she was just fired. She didn't ask for another job. She called Gutierrez immediately afterward. Gutierrez was upset but wouldn't give her the job back. *Testimony of Arceo.*

4.63. Arceo did not have any previous verbal coachings or discipline regarding her job performance. She recalled previously being told she was doing a 'good job'. *Testimony of Arceo.*

4.64. Arceo denied speeding, putting paper over the speedometer, but did say she printed out paper directions, which she put on the dash. She did not have any other job performance issues and had received no previous warnings. *Testimony of Arceo.*

4.65. Gregorio told Arceo not to talk with workers, just drive the van. *Testimony of Arceo.*

***Wage Claimant Arceo's Termination-***

4.66. On September 16, 2020, Gunter fired Arceo. *Testimony of Arceo; Ex. 9; pg. 2; and Ex. 11; pg. 12.*

4.67. Gunter never brought up Arceo's refusal to pick up a worker, as the basis of Arceo being terminated. *Testimony of Arceo.*

4.68. After Arceo was terminated, Gunter, the following day, supplemented the Employer's internal log note, on September 17, 2020, raising the issue of client complaints, which was not raised when Arceo was terminated. *App. Ex. 11.*

4.69. TEAM has never fired someone solely for discussing wages. Usually, any discharge is tied to gossiping and other issues. *Testimony of Lustig.*

4.70. TEAM has fired employees over 'performance issues'. *Testimony of Lustig.*

4.71. TEAM President Lustig does not recall reading documentation regarding Arceo having tardiness issues or refusing jobs. *Testimony of Lustig.*

4.72. TEAM President Lustig was 'sure she was given warnings before being fired'. *Testimony of Lustig.*

4.73. TEAM President Lustig first learned about issues with Areco from one of TEAM's clients, who brought up disruptions being caused by Areco at the jobsite. *Testimony of Lustig.*

4.74. TEAM President Lustig believe Arceo had terminated for tardiness, gossiping, refusing jobs, an 'exhaustive list', but admitted he is not involved with the firing Arceo. *Testimony of Lustig.*

4.75. On March 8, 2022, nearly a year and half after Arceo's termination, in response to the Department's Wage Complaint investigation, Gutierrez provided a written statement outlining the issues regarding Arceo's employment with TEAM. *App. Ex. 14.*

[Continued]



***Wage Claimant Arceo's Subsequent Job Search and Mitigation of Damages-***

- 4.76. The Appellant and the Department differed on the material point of whether the Wage Claimant, Maria Arceo, took sufficient steps to mitigate her damages by seeking other employment following her discharge by the Appellant/Employer. Based on this difference on this point, a credibility finding is warranted.
- 4.77. Based on the evidence and testimony, this administrative tribunal finds the Department's version of events more credible, that the Wage Claimant took reasonable steps to mitigate her damages, for the following reasons: (1) The Wage Claimant credibly testified to difficulty finding another job due to the pandemic, and two surgeries, which left her unable to work. Further, when she was able to work, she made the requisite job searches necessary to qualify for unemployment benefits (at least three searches per week); (2) The Department was satisfied with the Wage Claimant's attempts to find other suitable employment; and (3) The Employer failed to present evidence, such a subpoenaing the Wage Claimant's job search logs or history, to demonstrate she failed to take reasonable steps to find other employment after her discharge. For these reasons, this administrative tribunal finds the Department's and Wage Claimant's reasonable mitigation persuasive, as established, by the following finding of fact:
- 4.78. The Wage Claimant, Maria Arceo, with her spouse, Emilio Arceo, have six children, ages 28, 26, 25, 24, 17 and 11. Three of their children still live at home, including one with special needs. *Testimony of Emilio Arceo (Testimony of E. Arceo).*
- 4.79. One week after her termination, Arceo began looking for another job. *Testimony of Arceo.*
- 4.80. Arceo had difficulty finding a job once she disclosed she had been terminated. *Testimony of Arceo.*
- 4.81. Arceo applied for other driver jobs, but were denied, when the perspective employer learned she had been terminated. *Testimony of Arceo.*
- 4.82. The School District was looking for bus drivers, which Arceo tried to get a job, but needed a passenger licensed, costing \$1,7000 to \$3,000, which she couldn't afford. *Testimony of Arceo.*
- 4.83. Arceo worked three days as a caregiver, but it was for only \$12.00 per hour, 'off the books'. *Testimony of Arceo.*
- 4.84. In 2020, Arceo applied for unemployment benefits, with the assistance of WorkSource, but didn't receive benefits until 2021, due to the pandemic backlog. *Testimony of Arceo.*

- 4.85. Arceo got unemployment benefits for a month and half, which required her to apply for three jobs per week. She later had to repay \$500, due to an overpayment. (Ex. 18). *Testimony of Arceo.*
- 4.86. Arceo received \$3,800 in unemployment benefits. *Testimony of Arceo.*
- 4.87. In 2020 and 2021, Arceo looked for jobs. In 2021, she didn't look for work due to taking care of her special needs child and due to her surgery. *Testimony of Arceo.*
- 4.88. In June 2022, Arceo broke her hand and was unable to work. *Testimony of Arceo.*
- 4.89. WorkSource also provided training to Arceo to drive buses, a program she had previously looked into but had no funds for, which Work Source was able to help her. *Testimony of Arceo.*
- 4.90. In 2020 and 2021, Arceo looked for work on Craigslist and other sources. *Testimony of Arceo.*
- 4.91. Arceo tried to get a job driving with Uber. However, her vehicle was 'too old' and needed insurance. *Testimony of Arceo.*
- 4.92. In June 2022, Arceo broke her arm, which required surgery and was unable to work. It took her one year to recover from the surgery. *Testimony of M. Arceo.*
- 4.93. Emilio Arceo is a truck driver, who was away often. *Testimony of E. Arceo.*
- 4.94. Maria Arceo tried to help her husband with his job at time, but wasn't paid for her work. *Testimony of E. Arceo.*
- 4.95. Emilio Arceo observed his spouse, Maria Arceo, conduct at least two to three job searches per week, including going to Work Source. *Testimony of E. Arceo.*
- 4.96. While Maria Arceo was looking for a job, all of her six children were living at home. *Testimony of E. Arceo.*
- 4.97. Maria Areco had to get a credit card to pay off some debts, while she was look for work. *Testimony of E. Arceo.*
- 4.98. On June 14, 2022, Maria Arceo fell and broke her elbow, which required surgery. *Depot. Ex. 45.*
- 4.99. Due to her elbow surgery, Maria Arceo was unable to work and required her husband to take care of her and the children. *Testimony of E. Arceo.*
- 4.100. In April 2024, Specialist Ferrer-Thomas followed up with Arceo regarding her job search efforts, which included going through Work Source, trying to get a license to drive school buses (*Dept. Ex. 44*), Craigslist searches, tried to become a caregiver, and other possible jobs. Arceo was unable to find employment. *Testimony of Ferrer-Thomas.*

4.101. Arceo tried to get rehired by TEAM, but was denied. *Testimony of Ferrer-Thomas.*

4.102. She resumed looking for jobs in 2023. *Testimony of Arceo.*

***Department's Investigation of Maria Arceo's Wage Complaint-***

4.103. On January 5, 2022, Arceo filed an 'Equal Pay and Opportunities Act Complaint', in Spanish, with the Department of Labor and Industries, alleging she was discharged from TEAM for discussing wages. *Testimony of Arceo and Testimony of Cristina Evans (Testimony of Evans) and Dept. Ex. 4 [Same as App. Ex. 3].*

4.104. From January 24, 2022, to October 10, 2022, Department Equal Pay Specialist Cristina Evans (Specialist Evans) investigated Arceo's Wage Complaint. *Testimony of Evans and Dept. Ex. 3.*

4.105. Specialist Evans is a Department Management Analyst, specializing in Equal Pay complaints. *Testimony of Evans.*

4.106. On January 24, 2022, Luz Gonzalez-Virgen, from the Department, called Arceo regarding her complaints. Arceo alleged the Employer's workers were paid differently based on legal status. However, her complaint focused on three issues: (1) Retaliation for discussing pay; (2) Denied career opportunities, based on gender [not investigated by the Department]; and (3) Safety violations [sent to another Department]. *Testimony of Evans.*

4.107. On February 8, 2022, Specialist Evans emailed Arceo regarding her complaint. Arceo responded the next day. *Testimony of Evans and Dept. Ex. 5.*

4.108. On February 17, 2022, Specialist Evans forwarded Arceo's complaint to TEAM, requesting a response from the employer. *Testimony of Evans and Dept. Ex. 6.*

4.109. On the same day, Specialist Evans also emailed Arceo with a copy of the email sent to her former employer. *Dept. Ex. 7.*

4.110. On March 14, 2022, Specialist Evans sent an email to TEAM's legal counsel, following up her previous February 17, 2022 email. *Dept. Ex. 8.*

4.111. On March 17, 2022, TEAM responded to Arceo's wage complaint. Specialist Evans confirmed the Employer's official response. *Testimony of Evans and Dept. Exs. 9 & 10.*

4.112. In particular, Specialist Evans reviewed an Employer note, dated September 16, 2022, written by Office Manager Tasha Gunter, regarding Arceo's termination, which stated: 'I brought her in to let her know she was no longer needed and that the drama and discussing the pay was not appropriate'. *Testimony of Evans and Dept. Ex. 9; pg. 2.*

4.113. Terminating someone for discussing wages is illegal. *Testimony of Evans.*

- 4.114. On April 19, 2022, Specialist Evans sent an email and letter to Arceo, forwarding the Employer's response and requested a reply by April 25, 2022. *Dept. Ex. 11.*
- 4.115. On May 5, 2022, Specialist Evans sent an email to Arceo, regarding a lack of response from the Wage Claimant. She requested Arceo respond by May 9, 2022. Specialist Evans also attached a Notice of Extension. *Dept. Ex. 12.*
- 4.116. On the same day, Specialist Evans sent an email to TEAM, attaching a Notice of Extension. *Dept. Ex. 13.*
- 4.117. On the same day, May 5, 2022, TEAM counsel sent an email to Specialist Evans, regarding representation. *Dept. Ex. 14.*
- 4.118. On May 18, 2022, Specialist Evans sent an email to Arco regarding the Employer's lack of response and plan to move forward with a conference and conciliation. *Testimony of Evans and Dept. Ex. 15.*
- 4.119. On the same day, TEAM legal counsel sent an email to Specialist Evans regarding a substitution of counsel. *Dept. Ex. 16.*
- 4.120. Between June 1, 2022 and June 23, 2022, Specialist Evans and TEAM legal counsel exchanged emails regarding Arceo's rate of pay and status of investigation. *Testimony of Evans and Dept. Ex. 17.*
- 4.121. On June 27, 2022, Arceo sent the Department her bank statements and her 2022 1099-G tax form, during the time she was receiving unemployment. *Testimony of Evans and Dept. Ex. 18.*
- 4.122. Arceo provided her medical records to the Department, regarding her surgeries. *Testimony of Arceo and Dept. Ex. 45.*
- 4.123. The Department determined any wages owed to Arceo would be offset by any unemployment benefits she received. *Testimony of Evans.*
- 4.124. Arceo also provided the Department with text messages between her and the former Department supervisor, Gunter, regarding her wage complaint. *Testimony of Evans and Dept. Ex. 19.*
- 4.125. On June 28, 2022, Specialist Evans sent an email to TEAM legal counsel, regarding proposed settlement terms and attached wage calculations. *Testimony of Evans and Dept. Exs. 20 & 22.*
- 4.126. As a part of the Department's investigation of Arceo's Wage Complaint, Specialist Evans compiled a 'Back Wage Calculation Sheet'. *Testimony of Evans and Dept. Ex. 20.*

- 4.127. Damages are typically calculated from the date of termination to 90 days after the wage complaint is filed, based on a supervisor decision, since the Wage Claimant did not have an end date, in which she obtained other employment. *Testimony of Evans.*
- 4.128. Specialist Evans calculated Arceo's Back Wages, from the Week of August 30, 2022 to the week of April 17, 2022, at \$15.00 per hour multiplied by 40 hours per week, equating to \$51,600.00 minus unemployment benefits and other wages of \$3,854.00, equaling a balance owed of \$47,746.00. Dept. Ex. 20.
- 4.129. [At the evidentiary hearing, Diana Cartwright, Department Senior Counsel, stating the calculation was off by \$1,000 due to the wrong date. She recommended the requested amount was actually \$46,638.62.]
- 4.130. Between June 28, 2022 and June 30, 2022, Specialist Evans and TEAM legal counsel exchanged emails regarding the Department's wage calculation and extension of time for the employer to respond. Dept. Ex. 21.
- 4.131. On July 11, 2022, Specialist Evans and TEAM legal counsel exchanged emails regarding the deadline to respond to the settlement proposal. She forwarded the settlement exchange to Arceo. *Testimony of Evans and Dept. Exs. 23 & 24.*
- 4.132. On August 1, 2022, Specialist Evans sent an email to TEAM legal counsel with settlement proposal. Dept. Ex. 25.
- 4.133. On August 18, 2022, Specialist Evans received a response from Arceo regarding possible settlement, since she disagreed with the Employer's offer. *Testimony of Evans and Dept. Ex. 27.*
- 4.134. On the same day, August 18, 2022, Specialist Evans responded to TEAM legal counsel's August 15, 2022 email, regarding original settlement offer. *Testimony of Evans and Dept. Ex. 28.*
- 4.135. On September 1, 2022, Specialist Evans sent a final demand letter to TEAM. *Testimony of Evans and Dept. Ex. 29.*
- 4.136. On September 9, 2022, TEAM legal counsel requested an extension of time to respond to the Department's demand letter. Dept. Ex. 30.
- 4.137. On September 14, 2022, Specialist Evans forwarded the communications with TEAM regarding possible settlement. Dept. Ex. 31.
- 4.138. On September 16, 2022, TEAM, from the Employer's former attorney, responded to the Department's final demand letter, regarding the mitigation of damages. *Testimony of Evans and Dept. Ex. 32.*

- 4.139. Tasha Gunter provided a statement to the Department, regarding Arceo 'gossiping', She did dispute her note (*Dept. Ex. 9; pg. 2*) regarding Arceo's termination for discussing pay with other employees. *Testimony of Evans and Dept. Ex. 32; pg. 25.*
- 4.140. On September 19, 2022, Specialist Evans requested Employment Security Department records from TEAM. *Dept. Ex. 33.*
- 4.141. On September 20, 2022, TEAM legal counsel sent Specialist Evans requested ESD records regarding Arceo's employment with the Employer. *Dept. Ex. 34.*
- 4.142. After her termination from TEAM, Arceo worked for the Gourmet Trading Company in the Second Quarter of 2021 and for the Washington Potato Company, in the Third Quarter of 2020. These wages were included to offset any damages. *Testimony of Evans and Dept. Ex. 34; pg. 6.*
- 4.143. On October 4, 2022, the Department emailed Arceo regarding her employment with the Washington Potato Company. *Testimony of Evans and Dept. Ex. 35.*
- 4.144. On October 4, 2022, Arceo sent an email to Specialist Evans, regarding her other employment, for Brittany Farms, in 2020. *Testimony of Evans and Dept. Ex. 36.*
- 4.145. On October 10, 2022, Specialist Evans sent an email to TEAM legal counsel, regarding amounts owed to Arceo, offset by Arceo's other employment after her termination by TEAM. *Testimony of Evans and Dept. Ex. 37.*
- 4.146. During the Department's investigation, Specialist Evans compiled a 'Back Pay Wage Calculation Sheet' and 'Wage Payment Act Interest Calculator'. *Testimony of Evans and Dept. Ex. 38.*
- 4.147. On October 27, 2022, Specialist Evans issued an 'Equal Pay and Opportunities Act Citation and Notice of Assessment Summary'. *Dept. Ex. 39 [Same as App. Ex. 3].*
- 4.148. Jackie Ferrer-Thomas, (Specialist Ferrer-Thomas) another Equal Pay Specialist, took over for Specialist Evans. *Testimony of Ferrer-Thomas.*
- 4.149. Since the Department and TEAM could not successfully resolve the dispute, the Employer was cited. *Testimony of Ferrer-Thomas.*
- 4.150. Specialist Ferrer-Thomas did not conduct any of the investigation, which was done by Specialist Evans. *Testimony of Ferrer-Thomas.*

***Department Citation and Notice of Assessment-***

- 4.151. On December 7, 2023, the Department issued 'Citation and Notice of Assessment No. E-001-23' to R & S, Inc. dba TEAM, for violating RCW 49.58.040, for terminating Maria Arceo for discussing her wages. *Dept. Ex. 1.*
- 4.152. On January 3, 2024, TEAM, represented by Employer Solutions Law, appealed the Department's Citation and Notice of Assessment. *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 present, administrative appeal based on Washington Administrative Code (WAC) 296-128-800(6) and Chapter 34.05 RCW.

### ***Timeliness of Retaliation Complaint-***

5.2. WAC 296-128-780 requires an employee, who believes he/she/they were subject to retaliation by their employer, to file a wage complaint with the Department within 180 days of the retaliatory action.

5.3. In the present case, Maria Arceo alleged her former employer, TEAM, retaliated against her for discussing wages, when it terminated her on September 2, 2022. She filed a wage complaint with Department on January 5, 2022 (*Dept. Ex. 4*), beyond the 180-day statutory requirement.

5.4. However, the Department acquiesced as to the deadline and proceeded with an investigation of Arceo's Wage Complaint.

5.5. Further, the Appellant/Employer did not raise any objection to the missed 180-day deadline during the Department's investigation or during the present, administrative appeal, thereby waiving such an objection.

5.6. Finally, WAC 296-128-780 encompasses much permissible language, such a 'may file', rather than strict complaint of 'shall file'. The regulation also allows the Department, 'in its discretion', to extend the 180-day deadline based on 'recognized equitable principles or because of extenuating circumstances', though these reasons were never raised by the Department.

5.7. WAC 296-128-780 also allows the extension of the 180-day deadline 'when there is evidence that the employer has concealed or misled the employee regarding the alleged retaliatory action'. However, the Department never raised this issue as well.

5.8. For these reasons, neither the Department nor the Appellant/Employer objected to the Wage Claimant filing her Wage Complaint after the 180-day deadline, as required by WAC 296-128-780. As such, the present, administrative appeal will be decided on its substantive merits.

[Continued]

### ***Burden and Standard of Proof-***

- 5.9. Under the Fair Labor Standards Act (FLSA), as well as the Washington State Minimum Wage Act (MWA), RCW 49.46 and Wage Payment Act (WPA), RCW 49.48 (WPA), and Washington Equal Pay and Opportunities Act (EPOA), RCW 49.58, a wage claimant 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, 445-446, 983 P.2d 1167 (1999), citing *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-688, S.Ct. 1187, 90 L.Ed. 1515 (1946). This prima facie showing must be supported by a 'preponderance of the evidence'.
- 5.10. A 'preponderance of the evidence' is evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition to it. *Yamamoto v. Puget Sound Lumber Co.*, 84 Wash. 411, 146 P. 861 (1915).
- 5.11. After establishing its initial case, the employer then has the burden to 'articulate a legitimate nonpretextual nonretaliatory reason for the discharge'. *Wilmot v. Kaiser Aluminum and Chemical Corp.*, 118 Wn.2d 46, 68, 821 P.2d 18 (1991).

### ***Department's Legal Authority and Requirement to Investigate-***

- 5.12. The Department of Labor & Industries is responsible for implementing and enforcing the provisions of Chapters 49.46, 49.48, 49.52 and 49.58 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.
- 5.13. 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); (e) Enforcement of any wages as authorized by statute, ordinance, and/or contract (RCW 49.52.050) and (f) Washington Equal Pay and Opportunities Act (RCW 49.58).
- 5.14. In Chapter 49.58 RCW, 'Washington Equal Pay and Opportunities Act', Washington State legislature pronounced:
- (1) The legislature finds that despite existing equal pay laws, there continues to be a gap in wages and advancement opportunities among workers in Washington, especially women. Income disparities limit the ability of women to provide for their families, leading to higher rates of poverty among women and children. The legislature finds that in order to promote fairness among workers, employees must be compensated equitably.



**Further, policies that encourage retaliation or discipline towards workers who discuss or inquire about compensation prevent workers from moving forward. (Emphasis Added).**

RCW 49.58.005.

5.15. RCW 49.58.060, in relevant part, establishes:

(1) Upon complaint by an employee, the director must investigate to determine if there has been compliance with RCW 49.58.020, 49.58.040, and 49.58.050, and the rules adopted under this chapter. The director, upon complaint, may also initiate an investigation on behalf of one or more employees for a violation of RCW 49.58.020, 49.58.040, and 49.58.050, and the rules adopted under this chapter [Chapter 49.58].

RCW 49.58.060(1).

***Employer TEAM Retaliated Against Wage Claimant Arceo-***

5.16. RCW 49.58.040 makes it unlawful for an employer to discharge or in any other retaliate against an employee for:

- (a) Inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee;
- (b) Asking the employer to provide a reason for the employee's wages or lack of opportunity for advancement; or
- (c) Aiding or encouraging an employee to exercise his or her rights under this section.

RCW 49.58.040(2)(a)-(c).

5.17. Washington Administrative Code (WAC) 296-128-770 'Retaliation' establishes:

(1) It is unlawful for an employer to interfere with, restrain, or deny the exercise of any employee right provided under or in connection with chapter 49.46 RCW. This means an employer may not use an employee's exercise of any of the rights provided under chapter 49.46 RCW as a negative factor in any employment action such as evaluation, promotion, or termination, or otherwise subject an employee to discipline for the exercise of any rights provided under chapter 49.46 RCW.

...

(3) It is unlawful for an employer to take any adverse action against an employee because the employee has exercised their rights provided under chapter 49.46 RCW. Such rights include, but are not limited to: Filing an action, or instituting or causing to be instituted any proceeding under or related to chapter 49.46 RCW; exercising their right to paid sick leave, minimum wage, overtime, tips and gratuities; or testifying or intending to testify in any such proceeding related to any rights provided under chapter 49.46 RCW.

(4) Adverse action means any action taken or threatened by an employer against an employee for their exercise of chapter 49.46 RCW rights, which may include, but is not limited to:...(b) Termination.

WAC 296-128-770(1), (3) & (4).

5.18. In order to prove 'retaliation', an employee must show engagement in protected activity, the employer was on notice of such a right, then the employee suffered an adverse employment action, as a result. The employee must establish a casual link between the protected activity and the adverse action. *Cornwell v. Microsoft*, 192 Wn. 2d 403 (2018).

5.19. To establish a claim of retaliation, the employee must show that they exercised a protected right, that they were discharged for doing so, and that a "causal connection" existed between the employee's exercise of the protected right and the employer's decision to discharge. See, *Wilmot v. Kaiser Aluminum and Chemical Corp.*, 118 Wn.2d 46, 68, 821 P.2d 18 (1991) (considering workers' compensation law rather than the law at issue here).

5.20. If the employee satisfies the foregoing, the employer must:

Articulate a legitimate nonpretextual nonretaliatory reason for the discharge. The employer must produce relevant admissible evidence of another motivation, but need not do so by the preponderance of the evidence standard necessary to sustain the burden of persuasion, because the employer does not have that burden."

*Wilmot* at 70 (citations omitted).

5.21. For the Department to prove retaliation, it must prove three elements: (1) The Employee engaged in a protected activity; (2) The employee suffered an adverse employment action; and (3) A causal link exists between the protected activity and the adverse employment action.

5.22. In the present case, the Department has established, by a 'preponderance of the evidence' (more likely than not), Wage Claimant Arceo discussed her wages with other employees, a protected activity; (2) Employer TEAM terminated, an adverse employment action, her for wage discussions with other employees; and (3) A casual link, via the timing of the wage discussions and Arceo' discharge, was established.

5.23. In order to refute 'retaliation', the employer must 'articulate a legitimate nonpretextual nonretaliatory reason for the discharge'. *Wilmot*.

[Continued]

- 5.24. In the present case, Employer TEAM has failed to establish a legitimate nonpretextual nonretaliatory reason for Arceo's discharge. As the evidence has established, Arceo credibly testified Gunter, at the time of discharge, on September 16, 2020, cited Arceo 'bragging about her wages to other employees'. Further, Gunter cited the issue a 'causing drama about her wages' as one of the sole factors for her discharge. Gunter went so far as to make mention of Areco's discussion of wage to other employees, in the Employer's log, regarding Areco's termination. Specifically, 'I brought her in to let her know that she was no longer needed and that the drama and discussing the pay was not acceptable'. (*App. Ex. 10*). Only after Arceo's termination, the following day, did Gunter go back and add notes to the log about Arceo's job performance. (*App. Ex. 11*).
- 5.25. At the evidentiary hearing, Employer Team argued Wage Claimant Arceo was discharged for 'disrupting business operations', 'poor job performance' and that she 'not a good fit' at TEAM. However, documentation of such a reason is wholly lacking. In fact, prior to her discharge, Arceo had never received a verbal warning, 'coaching' or written reprimand regarding her job performance.
- 5.26. Further, TEAM provided no proof Arceo had violated any written employment policies and any references to 'speeding' or 'covering the speedometer with paper' were not substantiated.
- 5.27. Therefore, R & S L, Inc. dba TEAM terminated Maria Arceo's employment **in retaliation** for talking her about her wages with other employees, in violation of RCW 49.58.040.

***Lost Earnings and Back Pay Calculations-***

- 5.28. As a part of its investigation, the Department calculated Wage Claimant Arceo's lost earnings, due to her improper and illegal termination.
- 5.29. Specialist Evans calculated Arceo's Back Wages, from the week of August 30, 2022 to the week of April 17, 2022, at \$15.00 per hour multiplied by 40 hours per week, equating to \$51,600.00 minus unemployment benefits and other wages of \$3,854.00, equaling a balance owed of \$47,746.00. *Dept. Ex. 20*.
- 5.30. However, at the evidentiary hearing, Diana Cartwright, Department Senior Counsel, stating the calculation was off by \$1,000 due to the wrong date. She recommended the requested amount was actually \$46,638.62.
- 5.31. At the evidentiary hearing, the Department and Wage Claimant established, by a 'preponderance of the evidence', upon her termination, Arceo began looking for other work. However, due to the on-going pandemic, the job market was difficult, at best. Adding to the difficulty, Arceo did not receive callbacks when the prospective employer learned of her termination. Arceo tried to get rehired by TEAM, but was

refused. She also pursued getting certification to drive school buses, but could not afford the necessary training. Adding further problems, Arceo underwent two surgeries which prevented her from working. When she was able and available to work, she attempted to find a job, via Work Source, Craig's List, and other job postings, but could find nothing.

- 5.32. Areco did qualify for unemployment benefits, which offset her back pay wage calculations. However, to receive unemployment benefits, she needed to make at least three job searches, which she did.
- 5.33. The Employer has the burden of showing the Wage Claimant failed to mitigate damages once unemployed. However, TEAM failed to show Wage Claimant Arceo did not take reasonable steps to mitigate her economic damages.

***Citation and Notice of Assessment-***

- 5.34. RCW 49.58.060 authorizes if violation occurred and cannot be resolved:

[T]he director may issue a citation and notice of assessment and order the employer to pay to the complainant actual damages; statutory damages equal to the actual damages or five thousand dollars, whichever is greater; interest of one percent per month on all compensation owed; payment to the department of the costs of investigation and enforcement; and any other appropriate relief.

RCW 49.58.060(2)(a).

- 5.35. WAC 296-128-780 'Enforcement-Retaliation' requires the Department to investigate any retaliation complaint. If the Department finds the allegation is substantiated, it will issue a citation and notice of assessment to the employer. If the Department finds the allegation is not substantiated, it will issue a determination of compliance.

***Penalty-***

- 5.36. RCW 49.58.060 establishes:

[I]n addition to the citation and notice of assessment, the director may order payment to the department of a civil penalty. For purposes of a civil penalty for violation of RCW 49.58.020 and 49.58.050, the violation as to each affected employee constitutes a separate violation.

RCW 49.58.060(2)(b).

- 5.37. Further, RCW 49.58.060(2)(i) provides: 'For a first violation, the civil penalty may not exceed five hundred dollars.'
- 5.38. Finally, WAC 296-128-790 'Enforcement-Retaliation-Civil Penalties' authorizes the employer to pay a civil penalty if the Department finds the employer retaliated against an employee.

5.39. In the present case, the Department established R & S L, Inc. dba TEAM retaliated against Maria Arceo by terminating her for talking about her wages, in violation of RCW 49.58.040. No evidence exists in the record of previous retaliation violation by the employer. Therefore, a five hundred (\$500) civil penalty is **appropriate**.

***Interest-***

5.40. In addition to issuing a citation and notice of assessment against a violating employer, RCW 49.58.060 authorizes, in addition to actual damages, 'interest of one percent per month on all compensation owed...' RCW 49.58.060(2)(a).

5.41. In the present case, since a violation has been established, interest of one percent per month on all compensation owed is **appropriate**.

***Department Citation and Notice of Assessment-***

5.42. R & S L, Inc. dba TEAM terminated Maria Arceo's employment in **retaliation** for talking her about her wages with other employees, in violation of RCW 49.58.040.

5.43. An assessment of lost earnings, totaling at least \$46,638.62, and interest, to be calculated, as provided by RCW 49.58.040 and RCW 49.58.060(2)(a) is **appropriate with modifications**.

5.44. A \$500 penalty, as provided by RCW 49.58.060(2)(b)(i), is **appropriate**.

5.45. An assessment of interest on the unpaid wages, at a rate of one percent of the unpaid wage amount per month, from the date of the Citation and Notice of Assessment until payment is received by the Department, as provided by RCW 49.58.060(2)(a) is **appropriate**.

5.46. The Department of Labor and Industries' 'Citation and Notice of Assessment No. E-001-23', dated December 7, 2023, should be **affirmed with modifications**.

**6. INITIAL ORDER:**

**THIS ADMINISTRATIVE TRIBUNAL ORDERS;**

6.1. R & S L, Inc. dba TEAM terminated Maria Arceo's employment in **retaliation** for her talking about her wages with other employees, in violation of RCW 49.58.040.

6.2. An assessment of lost earnings, totaling at least \$46,638.62, and interest, to be calculated, as provided by RCW 49.58.040 and RCW 49.58.060(2)(a) is **appropriate with modifications**.

6.3. A \$500 penalty, as provided by RCW 49.58.060(2)(b)(i), is **appropriate**.

6.4. An assessment of interest on the unpaid wages, at a rate of one percent of the unpaid wage amount per month, from the date of the Citation and Notice of Assessment until payment is received by the Department, as provided by RCW 49.58.060(2)(a) is **appropriate**.

6.5. The Department of Labor and Industries' 'Citation and Notice of Assessment No. E-001-23', dated December 7, 2023, should be **affirmed with modifications**.

Issued from Olympia, Washington on the date of mailing.



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TJ Martin  
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.<sup>1</sup> You may e-mail your Petition for Review to the Director at [directorappeal@lni.wa.gov](mailto: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.<sup>2</sup>

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

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<sup>1</sup> RCW 49.48.084 and RCW 34.05.464.

<sup>2</sup> RCW 49.48.084 and Chapter 34.05 RCW.

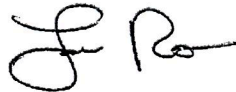
## CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 04-2024-LI-02102

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.

R & S L, Inc., dba TEAM 3405 W Court St Pasco, WA 99301 <b><i>Appellant Employer</i></b>	<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
Alicia McDonnell Employer Solutions Law 2700 Richards Road #201 Bellevue, WA 98005 <b><i>Appellant Representative</i></b>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
Diana Cartwright, AAG Department of Labor and Industries 800 Fifth Avenue, Suite 2000 Seattle, WA 98104 <b><i>Agency Representative</i></b>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail <a href="mailto:Diana.Cartwright@atg.wa.gov">Diana.Cartwright@atg.wa.gov</a> <a href="mailto:Melanie.Ruha@atg.wa.gov">Melanie.Ruha@atg.wa.gov</a> <a href="mailto:Iniseaeservice@atg.wa.gov">Iniseaeservice@atg.wa.gov</a>
Maria Arceo 9411 Palomino Dr Pasco, WA 99301 <b><i>Intervenor Wage Claimant</i></b>	<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: Tuesday, November 12, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Tamara Roberson  
Legal Assistant 2