

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM)	Case No. 334-2016
OF STEVEN L. EVENSON,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
CUSTOM AG SOLUTIONS, LLC,)	
a Montana limited liability company,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On August 24, 2015, Steven L. Evenson filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging Custom Ag Solutions, LLC, a Montana limited liability company (Custom Ag), owed him a total of \$2,382.53 in unpaid wages for the period of January 1, 2015 through July 31, 2015.

On September 17, 2015, Louis Bouma, Owner of Custom Ag, filed a response to Evenson’s claim in which he alleged Evenson had been overpaid during the first four months of his employment in 2015. Bouma included an accounting of what he claimed Evenson owed him, as well as copies of payroll records and checks issued to Evenson in 2015 and hours listed by Evenson as having been worked during that period.

On October 5, 2015, Evenson filed a reply to Bouma’s response in which he outlined the hours he worked for both Bouma and Bouma’s wife beginning in 2014 and continuing through July 2015.

On October 22, 2015, Bouma filed a reply to Evenson’s submission in which he addressed the allegations raised in Evenson’s reply, including the number of hours Evenson claimed to have worked during the period in question. Bouma also included a calculation of wages possibly owed to Evenson if taxes had not been withheld with the total of \$889.06. Bouma offered to pay that amount to either Evenson or the government but did not send a check in that amount to the Wage and Hour Unit.

On December 28, 2015, the Wage and Hour Unit issued a determination that concluded Custom Ag owed Evenson \$2,841.50 in unpaid wages for work performed during the period of his wage claim. Pursuant to Mont. Code Ann. § 39-3-206, the Wage and Hour Unit also imposed a 15% penalty on the unpaid amount which amounted to \$426.23.

On January 14, 2016, Bouma filed a Request for Redetermination on behalf of Custom Ag in which he outlined the reasons why he believed the Wage and Hour Unit's determination to be incorrect. Evenson did not appeal the determination.

On January 20, 2016, Windy Knutson, Compliance Specialist, mailed letters to both Bouma and Evenson informing them of a potential issue involving Evenson's employment status. Knutson advised the parties that the wage claim was being transferred to the Independent Contractor Central Unit (ICCU) for a determination as to whether Evenson was an independent contractor or an employee.

On June 24, 2016, the ICCU issued a decision finding that Evenson was an employee of Custom Ag from January 12, 2015 through July 31, 2015 and that services Evenson performed for Custom Ag from January 1, 2015 through January 12, 2015 was as an employee.

On July 27, 2016, the Wage and Hour Unit issued a redetermination that concluded Custom Ag owed Evenson \$2,841.50 in unpaid wages for work performed during the period of Evenson's wage claim. The Wage and Hour Unit imposed a penalty of 15% on the unpaid amount which amounted to \$426.23 for a total amount of \$3,267.73. Bouma timely requested a contested case hearing. Evenson did not appeal the redetermination.

Following mediation efforts, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH) on January 17, 2017. On January 20, 2017, OAH issued a Notice of Hearing and Telephone Conference setting the date and time for a telephone scheduling conference for February 3, 2017.

On January 26, 2017, Attorney Joseph D. Houston filed a Notice of Appearance on behalf of Custom Ag and a Request to Reschedule the Telephone Conference. On January 30, 2017, Hearing Officer Terry Spear issued an Order Resetting Telephone Conference granting Custom Ag's request to hold the telephone scheduling conference on March 3, 2017.

On March 3, 2017, Hearing Officer Terry Spear held a telephone scheduling conference with Evenson and Houston appearing, as well as Bouma and his wife also

participating. Hearing Officer Spear subsequently issued a Scheduling Order setting the pre-hearing deadlines, as well as the hearing date.

On March 13, 2017, Hearing Officer Spear conducted a telephone conference to address Custom Ag's motion to reschedule the hearing to accommodate a witness who would not be available for the hearing as scheduled. Hearing Officer Spear subsequently issued an order allowing Custom Ag's witness to appear telephonically on April 24, 2017 upon the agreement of the parties.

On April 14, 2017, Hearing Officer Caroline A. Holien convened a hearing in this matter at the law offices of Christian, Samson & Jones, PLLC due to the unexpected unavailability of Hearing Officer Spear. Evenson appeared on his own behalf. Louis Bouma appeared on behalf of Custom Ag and was represented by Joseph D. Houston, Attorney at Law. Evenson, Louis Bouma, and Jon Bouma testified under oath. Juliette Bouma, wife of Louie Bouma, attended the hearing. Melissa Jones, Evenson's significant other, was excluded from the hearing room on Custom Ag's motion based upon the potential of her being called as a witness by Custom Ag. The parties stipulated to the admission of Administrative Record Documents (A.R. Docs) 1 through 173 and Respondent's Exhibits 174 through 183.

On April 24, 2017, the hearing officer convened a telephone hearing in which Denise Frigge, Bouma's long time tax preparer, testified under oath. The hearing officer also asked questions of Evenson and Louie Bouma after reminding them that they were still considered to be under oath from the last proceeding. The parties stipulated to the admission of Respondent's Exhibits 184 through 188.

The matter was deemed submitted at the end of hearing on April 24, 2017 after the parties declined to submit post-hearing briefs. Based on the evidence and arguments presented at the hearing, the hearing officer makes the following findings of fact, conclusions of law, and final agency decision.

II. ISSUE

Whether Custom Ag Solutions, LLC, a Montana limited liability company, owes wages for work performed, as alleged in the complaint filed by Steven L. Evenson, and owes penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. Custom Ag Solutions (Custom Ag) is a farming operation located in Stevensville, Montana. Custom Ag is owned and operated by Louie Bouma.

2. Steven L. Evenson began working for Custom Ag as an on call independent contractor on or about August 13, 2014. Evenson's duties included irrigation services; planting and harvesting crops; welding services; mechanical services on farm machinery; painting services; chemical application and disposal; home maintenance and renovation; yard maintenance; and landscaping. Evenson performed similar work for other farming operations located in the Bitterroot Valley.

3. Evenson has never held an Independent Contractor Exemption Certificate; nor has he ever carried workers' compensation insurance. While Evenson has worked for various farmers and ranchers in the Bitterroot Valley, he has never had a business or legal entity associated with him registered with the Montana Secretary of State.

4. Custom Ag initially paid Evenson \$13.00 per hour and subsequently raised Evenson's hourly wage to \$14.00. Custom Ag paid Evenson approximately two times per month.

5. Custom Ag issued an IRS Form 1099 to Evenson for the 2014 tax year.

6. If Evenson performed work for members of Bouma's family, including Bouma's wife and son, he was paid separately by that family member.

7. Evenson did not work a set schedule for Custom Ag and his hours varied from day to day and week to week. Evenson typically took a 30 minute lunch break each day for which he was not paid.

8. Bouma required Evenson to write down the hours he worked for Custom Ag in a notebook kept in the shop. Evenson wrote the time he started and stopped for the day and noted the total number of hours he worked that day. Evenson would then total the number of hours he worked during the pay period; write it on the time sheet; and circle that number. Bouma generally paid Evenson for the number of hours circled on his time sheet. Evenson also noted the hours he worked for Bouma's family members and for other farming operations in the area.

9. Evenson was required to give his hours to Bouma in order to get paid. Bouma typically paid Evenson the same day he got his hours using a checkbook he kept in his truck. The checking account was for Custom Ag Solutions, LLC and Bouma's name was listed on the check.

10. In early- to mid-April 2015, Evenson and Bouma discussed the possibility of Evenson "going on the books" and working as an employee.

11. Evenson and Bouma agreed that Bouma would begin withholding Federal Insurance Contributions Act (FICA) tax from Evenson's pay. Bouma informed Evenson that he would reduce his hourly wage from \$14.00 to \$12.00 to cover the costs associated with Evenson working as an employee, which included the employer's FICA share as well as workers' compensation insurance.

12. Bouma informed Evenson that he would be withholding additional amounts from Evenson's pay to cover the withholdings and workers' compensation insurance costs dating back to January 1, 2015 in an effort to "catch him up."

13. The Social Security withholding rate during the relevant period was 6.2%. The Medicare withholding rate was 1.45% for a total FICA withholding of 7.65%. Bouma understood that, as an employer, he was required to match the FICA withholding at a rate of 7.65%.

14. Bouma also understood that he was required to provide workers' compensation coverage for Evenson as an employee. Bouma determined the appropriate rate was 9.2%.

15. Bouma calculated that the costs associated with Evenson working as an employee rather than as an independent contractor would be approximately \$2.45 per hour. Bouma determined that his FICA share, which was at 7.65%, and the workers' compensation rate of 9.2%, totaled 17.47%. Unwilling to pay more than the \$14.00 per hour Evenson had been receiving, Bouma reduced Evenson's pay by \$2.00 to cover the additional costs he would be expected to bear as an employer. As a result, Bouma decided that Evenson's hourly rate would be \$12.00.

16. On or about May 1, 2015, Bouma provided Evenson with several pre-printed forms entitled "Payroll Record." Bouma had completed a Payroll Record for each paycheck issued to Evenson beginning January 16, 2015 through April 17, 2015. On each Payroll Record, Bouma noted the difference between Evenson's gross wages paid for the period at \$14.00 and the gross wages owed to Evenson using an hourly wage of \$12.00.

17. On the Payroll Record dated January 16, 2015, the difference noted by Bouma was \$213.52, which was circled with a handwritten note stating, "Pulled out for said taxes due while working 'under the table'." With each Payroll Record completed, the difference increased until it was noted as being \$1,772.53 on the Payroll Record dated April 17, 2015. Doc. 56.

18. Beginning with the Payroll Record dated May 1, 2015, the difference was reduced by \$150.00, which Bouma kept as a payment on the total amount. As a

result, the difference was noted as being \$1,622.53. Doc. 57. Bouma continued the practice of taking \$150.00 from Evenson's pay with the Payroll Record dated May 15, 2015, with the difference being reduced to \$1,472.53. Bouma also took \$60.00 out for the Payroll Record dated June 15, 2015 and \$100.00 for the Payroll Record dated July 1, 2015. Docs. 60 & 61.

19. Evenson worked 1,005.50 hours for Custom Ag from January 12, 2015 through July 31, 2015 and earned a total of \$14,070.00 in wages (1,005.50 x \$14.00). Evenson was paid \$12,750.00 in wages for the period of his wage claim. Therefore, Evenson is owed \$1,320.00 in unpaid wages for work performed during the period of his wage claim (\$14,070.00 - \$12,750.00). See Attachment A.

20. As of July 1, 2015, Bouma calculated Evenson owed him \$1,312.53 and noted that on the Payroll Record. Doc. 61.

21. On July 31, 2015, Evenson informed Bouma that he was quitting the job. Evenson had discussed his displeasure with the job with one of Bouma's sons, who warned his father that Evenson was going to quit. Bouma gave Evenson two paychecks on the final day of his employment with Custom Ag.

22. Evenson was out of town for approximately one week after depositing his checks at a local bank. Evenson learned that Bouma had stopped payment on two checks. The first check (Check No. 4520) was in the amount of \$509.83. Doc. 150. The second check (Check No. 4516) was in the amount of \$461.33. Doc. 149. Both checks were written on Custom Ag Solutions, LLC account.

23. Bouma stopped payment on the checks because he believed Evenson owed him money for the withholdings that he had calculated in the Payroll Records dating from January 16, 2015 through April 17, 2015. Docs. 150 and 170. Evenson incurred various bank charges that resulted in his account being overdrawn.

24. As a result of Bouma's actions in cancelling payment on the two final paychecks issued to Evenson, a penalty of 110% is appropriate under Admin. R. Mont. 24.16.7556(1)(d).

25. In February 2016, Bouma filed the Employer's Annual Federal Tax Return for Agricultural Employees noting \$11,838.00 in wages were paid for 2015. The form also noted that \$1,467.91 was withheld for Social Security tax and \$343.30 was withheld for Medicare tax. The form also noted \$952.32 was withheld for Federal income tax for a total of \$2,763.53 in taxes withheld. Ex. 178.

26. Bouma also issued a W-2 Wage and Tax Statement to Evenson showing that \$11,838.00 in wages were paid in 2015. The W-2 form also noted \$952.32 in Federal income tax was withheld; \$733.95 in Social Security tax was withheld; and \$171.65 in Medicare tax was withheld. Ex. 178.

IV. DISCUSSION¹

An employee seeking unpaid wages has the initial burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.* (1946), 328 U.S. 680; *Garsjo v. Department of Labor and Industry* (1977), 172 Mont. 182, 562 P.2d 473. To meet this burden, the employee must produce evidence to “show the extent and amount of work as a matter of just and reasonable inference.” *Id.* at 189, 562 P.2d at 476-77, citing *Anderson*, 328 U.S. at 687, and *Purcell v. Keegan* (1960), 359 Mich. 571, 103 N.W. 2d 494, 497; see also, *Marias Health Care Srv. v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that the lower court properly concluded that the plaintiff’s wage claim failed because she failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

Once an employee has shown as a matter of just and reasonable inference that he is owed wages, “the burden shifts to the employer to come forward with evidence of the precise amount of the work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee, and if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee, even though the amount be only a reasonable approximation’” *Garsjo*, 172 Mont. at 189, 562 P.2d at 477, quoting *Purcell v. Keegan*, *supra*, 359 Mich. at 576, 103 N.W. 2d at 497.

Neither party disputed that Evenson performed work for Custom Ag during the period of January 12, 2015 through July 31, 2015. A review of Evenson’s time records, as well as the written and oral arguments offered by the parties during the adjudication process and at hearing, shows Evenson worked a total of 1,005.50 hours during the period of his wage claim. The evidence further shows that Evenson’s hourly wage during the relevant period was \$14.00 and not \$15.00 as indicated by Evenson during the Wage and Hour Unit’s investigation of his claim. Finally, the evidence shows Evenson earned a total of \$14,070.00 in wages (1,005.50 x \$14.00) and was paid \$12,750.00 in wages for the period of his wage claim. Therefore, Evenson is owed \$1,320.00 in unpaid wages for work performed during the period of his wage claim (\$14,070.00 - \$12,750.00).

¹Statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

The next issue to address is whether Bouma could reduce Evenson's hourly wage to cover the employer's FICA share and workers' compensation costs. Bouma argued he was justified in reducing Evenson's hourly wage from \$14.00 to \$12.00 due to the change in Evenson's status from independent contractor to employee, which resulted in extra costs to him as an employer that he was unwilling to bear. Bouma contends he reduced Evenson's hourly wage by an amount he determined would cover the additional costs that he incurred as an employer associated with FICA and workers' compensation.

FICA taxes are composed of the old-age, survivors, and disability insurance taxes, also known as Social Security taxes, and the hospital insurance tax, also known as Medicare taxes. Different rates apply for these taxes. Internal Revenue Service, *Topic 751 - Social Security and Medicare Withholding Rates*, <https://www.irs.gov/taxtopics/tc751.html> (last visited June 5, 2017). The current tax rate is 6.2% for Social Security and 1.45% for Medicare. *Id.* (IRS publication numbers omitted).

The FICA statutory scheme generally requires payment of taxes by employees on wages received and payment of taxes by employers on those same wages. *Xianli Zhang v. United States*, 640 F.3d 1358, 1360 (Fed. Cir. 2011). "The former are assessed under I.R.C. § 3101, the latter under I.R.C. § 3111. In each instance, the taxes are assessed on wages paid or received "with respect to employment (as defined in section 3121(b))." I.R.C. §§ 3101, 3111. As used in this context, "employment" means "any service, of whatever nature, performed . . . by an employee for the person employing him, irrespective of the citizenship or residence of either, . . . within the United States." I.R.C. § 3121(b)." *Id.* at 1360-1361.

The "employer share" of FICA taxes consists of two separate taxes -- the Social Security tax in the amount of 6.2% of wages (up to the Social Security wage base) and the Medicare tax in the amount of 1.45% of wages. The "employer share" is a match of the employee withholding rate. 26 U.S.C. § 3111(a) and (b) provides:

(a) Old-age, survivors, and disability insurance. In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 6.2 percent of the wages (as defined in section 3121(a) [26 USCS § 3121(a)]) paid by the employer with respect to employment (as defined in section 3121(b) [26 USCS § 3121(b)]).

(b) Hospital insurance. In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to

1.45 percent of the wages (as defined in section 3121(a) [26 USCS § 3121(a)]) paid by the employer with respect to employment (as defined in section 3121(b) [26 USCS § 3121(b)]).

Instructive in this case is the holding of the Sixth Circuit Court of Appeals in *In re Laub Baking Co.*, 642 F.2d 196 (6th Cir. Ohio Mar. 11, 1981). In that case, the court provided explanation as to the nature of the employer's FICA share. The court noted:

Unlike those withheld employee taxes, the taxes in issue in the present case are not "carved out" of employee wages. Rather, §§ 3111 and 3301 of the revenue code each impose an "excise tax" on employers with respect to having individuals in their employ. These taxes are taxes on the employer, not taxes on the employee that are withheld from the employee's wages and paid by the employer on behalf of the employee. The mere fact that computation of these employer taxes is based on the amount of wages that are paid to employees does not alter this fact.

Id. at 199.

Employers are required by the Workers' Compensation Act to obtain and maintain workers' compensation insurance for their employees under a choice of three plans, one of which is available through the State Fund. Mont. Code Ann. § 39-71-401. "It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of the employer's workers, and the making or attempt to make any premium deduction is a misdemeanor." Mont. Code Ann. § 39-71-406.

An uninsured employer is subject to a penalty assessed by the Uninsured Employers' Fund (UEF). Mont. Code Ann. § 39-71-504(1). See *Bozeman v. Employment Rel. Div. Uninsured Employers' Fund*, 2001 MT 72, 305 Mont. 40, 23 P.3d 193 (court noting that, in order for the workers' compensation system to work, employers must maintain insurance in compliance with the statute). See also *Buerkley v. Aspen Meadows Limited Partnership*, 1999 MT 97, P12, 980 P.2d 1046 (stating that Mont. Code Ann. § 39-71-401 requires any employer of any employee to be bound by the provisions of one of the compensation plans defined under the Workers' Compensation Act); *Dahl v. Uninsured Employers' Fund*, 1999 MT 168, 295 Mont. 173, 983 P.2d 363 (Mont. Code Ann. § 39-71-401(1) precludes a separate entity from providing workers' compensation insurance for an employer's employees).

The hearing officer has been unable to find any statutory authority or case law in support of the proposition that the employer may shift the burden of the “employer share” of FICA to the employee; nor is she able to find any authority allowing the employer to shift the costs associated with maintaining workers’ compensation insurance for its employees. It is clear that both burdens are to be borne by the employer, not by the employee. It is therefore determined that Bouma improperly reduced Evenson’s hourly wage beginning on or about May 1, 2015 to cover costs that were properly his to bear as the employer.

The next issue to address is whether Bouma could impose an overage upon Evenson for deductions Bouma made to his pay beginning on or about May 1, 2015 and going back to January 1, 2015. It is undisputed that Bouma paid Evenson \$14.00 per hour during the period of January 1, 2015 through May 1, 2015 without any withholdings being made. Bouma argued that it was necessary for him to refigure Evenson’s pay for that period using an hourly wage of \$12.00 to determine the amount he contends Evenson was overpaid during that period due to there having been no withholdings made to his pay.

The Montana Supreme Court addressed a similar issue in *Langager v. Crazy Creek Prods.*, 1998 MT 44, 287 Mont. 445, 954 P.2d 1169. In *Langager*, the court held “that once an employee has accrued paid vacation pursuant to the terms of his or her employment contract, an employer may not then impose conditions subsequent which would, if unmet, effectively divest an employee of that accrued vacation.” *Id.* at ¶ 30.

That principle applies in this case despite this case involving wages earned rather than accrued vacation time. Evenson performed work for Bouma from roughly January 1, 2015 through May 1, 2015 at the hourly rate of \$14.00. Bouma was not at liberty to retroactively reduce Evenson’s hourly wage, which effectively divested Evenson of wages previously earned, so Bouma could avoid paying what was legally required of him as an employer doing business in the State of Montana. Therefore, Bouma’s cancelling the final paychecks issued to Evenson in July 2015 to cover the amount he contends Evenson owed him was improper and resulted in Evenson being denied wages owed to him for work performed.

Bouma argued at hearing that his decisions regarding Evenson’s pay were due to an agreement between the two men that Bouma would make the necessary withholdings from Evenson’s pay, as well as reduce his hourly wage to cover costs the employer incurred related to Evenson’s employment. Bouma argued that Evenson, by virtue of accepting the Payroll Records and cashing his paychecks, accepted the new terms of employment.

While there was clearly an agreement between Bouma and Evenson that Evenson become an employee of Custom Ag, any agreement the men may have had shifting the employer's burden regarding FICA and workers' compensation to the employee is unenforceable as being contrary to the public policy of the State of Montana. "Any person may waive the advantage of a law intended solely for that person's benefit. A law established for a public reason cannot be contravened by a private agreement." Mont. Code Ann. § 1-3-204. See also *Hoehne v. Sherrodd, Inc.*, 205 Mont. 365, 668 P.2d 232 (an employee's failure to assert his right to receive overtime compensation does not constitute a waiver because it would be contrary to public policy). Further, Mont. Code Ann. § 39-3-208 provides:

Any contract or agreement made between an employer and an employee the provisions of which violate, evade, or circumvent this part is unlawful and void, but the employee may sue to recover the wages earned, together with the penalty specified in 39-3-206 or separately to recover the penalty if the wages have not been paid.

In this case, any acquiescence Evenson may have evinced to the terms dictated by Bouma cannot constitute a waiver of the advantages of laws established for a public reason, including the federal laws regarding FICA and the state laws regarding workers' compensation insurance. Both statutory schemes clearly outline the rights and responsibilities of the employee, as well as the employer and do not allow the employer to shift its responsibilities to the employee regardless of any agreement between the parties.

It is therefore determined that Bouma improperly reduced Evenson's hourly wage and improperly cancelled Evenson's final paychecks in order to recover those costs he identified as his having incurred as a result of Evenson performing work for Custom Ag as an employee. It is further determined that Evenson has shown as a matter of just and reasonable inference that Custom Ag owes him \$1,327.00 in unpaid wages. Custom Ag has failed to offer sufficient evidence to negate the reasonable inference drawn from the evidence presented by Evenson.

V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. Steven L. Evenson was a farm worker as defined under Mont. Code Ann. § 39-3-402(5) and was therefore exempt from the payment of overtime as provided under Mont. Code Ann. § 39-3-405(2).

3. Custom Ag Solutions, LLC, a Montana limited liability company, owes Steven L. Evenson \$1,327.00 in unpaid regular wages. A penalty of 110% is appropriate under Admin. R. Mont. 24.16.7556 as the employer cancelled payment on the final two paychecks issued to Evenson. The penalty on the unpaid regular wages is \$1,459.70. Mont. Code Ann. § 39-3-206.

VI. ORDER

Custom Ag Solutions, LLC, a Montana limited liability company, is hereby ORDERED to tender a cashier's check or money order in the amount of \$2,786.70, representing \$1,327.00 in wages and \$1,459.70 in penalty, made payable to Steven L. Evenson, and mailed to the **Employment Relations Division, P.O. Box 201503, Helena, Montana 59620-1503**, no later than 30 days after service of this decision. The respondent may deduct applicable withholding from the wage portion, but not the penalty portion.

DATED this 9th day of June, 2017.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINE A. HOLIEN
CAROLINE A. HOLIEN
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702. Please send a copy of your filing with the district court to:

Department of Labor & Industry
Wage & Hour Unit
P.O. Box 201503
Helena, MT 59624-1503

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.

ATTACHMENT A

PAY PERIOD	HOURS WORKED	WAGES OWED	WAGES PAID
01/12/15 - 01/20/15	48	\$672.00	\$679.00
01/21/15 - 01/30/15	44	\$616.00	\$630.00
02/02/15 - 02/13/15	60	\$840.00	\$840.00
02/16/15 - 02/20/15	33.5	\$ 469.00	\$469.00
03/02/15 - 03/11/15	83.5	\$1,169.00	\$1,162.00
03/18/15 - 03/27/15	84	\$1,176.00	\$1,200.00
04/01/15 - 04/15/15	82.5	\$1,155.00	\$990.00
04/16/15 - 04/30/15	101	\$1,414.00	\$1,212.00
05/01/15 - 05/15/15	101.5	\$1,421.00	\$1,332.00
05/18/15 - 05/30/15	59.5	\$833.00	\$714.00
06/01/15 - 06/15/15	61	\$854.00	\$732.00
06/16/15 - 06/30/15	94.5	\$1,323.00	\$1,158.00
07/01/15 - 07/15/15	64 ¹	\$896.00	\$780.00
07/16/16 - 07/31/15	88.5 ²	\$1,239.00	\$852.00
TOTAL	1,005.50	\$14,077.00	\$12,750.00

¹Evenson's time entries show he worked 10.5 hours at the house for Louie Bouma's wife and was paid \$140.00. Since Evenson's wage claim does not include any claim against Mrs. Bouma, who paid Evenson directly for time worked at the house, any discrepancies in pay will not be addressed in this decision.

²Evenson's time entries show he worked 18 hours at the house and was paid \$252.00, minus \$100.00 in satisfaction of a cash advance.