

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)
OF MICHELLE L. WAGNER,)
)
 Claimant,)
)
 vs.)
)
 MATT ARMSTRONG d/b/a ENDLESS)
 LANDSCAPES,)
)
 Respondent.)

Case No. 241-2006

**FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND ORDER**

* * * * *

I. INTRODUCTION

On August 8, 2005, Michelle Wagner (Wagner) filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry, alleging that Matt Armstrong, d/b/a Endless Landscapes (Armstrong), owed her \$486.00 in unpaid wages for work performed during the period beginning June 27, 2005, and ending July 13, 2005. On August 9, 2005, the Wage and Hour Unit requested information from Armstrong, but he did not respond.

On August 23, 2005, the Wage and Hour Unit issued a determination finding that Armstrong owed Wagner \$486.00 in unpaid wages, and a penalty of \$534.60.

Armstrong appealed the determination and on September 13, 2005, the matter went to mediation and then came to hearing.

On January 3, 2006, the Hearing Officer held a telephone hearing in this matter. Wagner was present. Jennifer Downey, former laborer for Armstrong, appeared as a witness in her behalf. Matt Armstrong was present.

Documents 1 through 15, provided to the parties prior to the hearing, were admitted into the record without objection.

II. ISSUE

Whether Armstrong owes wages for work performed as alleged in the complaint and penalties or liquidated damages pursuant to Mont. Code Ann. §39-3-206.

III. FINDINGS OF FACT

1. Armstrong hired Wagner to work as a landscape laborer on June 27, 2005, and agreed to pay her \$9.00 per hour on a biweekly basis.

2. On the following dates, Wagner worked the following hours.

On June 27, 2005, Wagner worked:	11 hours
On June 28, 2005, Wagner worked:	5 hours
On June 30, 2005, Wagner worked:	8 hours
On July 5, 2005, Wagner worked:	5 hours
On July 6, 2005, Wagner worked:	10 hours
On July 8, 2005, Wagner worked:	4.5 hours
On July 12, 2005, Wagner worked:	10.5 hours

3. On July 12, 2005, Wagner gave Armstrong her hours on a sheet of notebook paper. He told her he would pay her the following day.

4. On July 13, 2005, Wagner quit because Armstrong told her he was not going to pay her for picking rocks, which she had been doing every day she worked, and because she was not getting enough hours. Armstrong did not pay her that day and has not since paid her.

IV. DISCUSSION AND ANALYSIS

Armstrong owes wages and penalties.

UNPAID WAGES

Montana law requires that employers pay employees wages for work performed within 10 days of when they become due in accord with the employment agreement. Mont. Code Ann. §39-3-204.

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. An employee can meet this burden by producing evidence that shows the extent and the amount of work "as a matter of just and reasonable inference." *Garsjo* 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.

The claimant worked a total of 54 hours during the 2 week period beginning June 27, 2005 and ending July 12, 2005. Since July 12, 2005, Armstrong has had 25 weeks to pay her the wages to which she is entitled, but has failed to do so. He maintains that she has claimed 2 hours of work that she did not do. He has not made any effort to pay her for the 52 hours he admits she worked. Moreover, he has not submitted any documentation or wage information to substantiate his claim that she worked only 52 hours. Wagner has submitted documentation to support her claim that she worked 54 hours during her employment.

Based upon *Garsjo, supra*, an employee can meet the burden of proving work performed without proper compensation by producing evidence that shows the extent and the amount of work "as a matter of just and reasonable inference." In the absence of any wage information from Armstrong, Wagner's wage information must be considered accurate. Therefore, Armstrong owes Wagner for 54 hours at the rate of \$9.00 per hour, or \$486.00 in unpaid wages.

PENALTY

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. § 39-3-206. Armstrong failed to pay Wagner for the total number of hours she worked, when they were due. Further, Armstrong failed to respond to the claim when asked to do so by the Wage and Hour Unit. He failed to

respond and pay the unpaid wages the Wage and Hour Unit determined that he owed Wagner. Therefore, Armstrong is subject to the statutory penalty. Pursuant to Admin. R. Mont. 24.16.7556 (1)(a), the maximum penalty of 110% of the unpaid wages, or \$534.60, applies.

V. CONCLUSIONS OF LAW

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

2. Armstrong owes Wagner \$486.00 in unpaid wages for work performed between June 27, 2005 and July 12, 2005, and \$534.60 in penalties for the unpaid wages.

VI. ORDER

Armstrong is hereby ORDERED to tender a cashier's check or money order in the amount of \$1,020.60, representing \$486.00 in unpaid wages and \$534.60 in penalty, made payable to Michelle Wagner, and mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59624-6518, no later than 30 days after service of this decision. Armstrong may withhold appropriate deductions for income taxes and social security on the wage portion but not the penalty portion.

DATED this 20th day of January, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ DAVID H. FRAZIER
David H. Frazier
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 service of the decision. See also Mont. Code Ann. § 2-4-702.

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.