



## II. ISSUE

Is the claimant due additional wages and penalty as provided by law?

## III. FINDINGS OF FACT

1. Haun began his employment with Mote on or about August, 2008. He worked until November 9, 2008. Haun was paid at the rate of \$20.00 per hour until October when due to economic conditions his wages were reduced to \$18.00 per hour.

2. Haun seeks unpaid wages in the amount of \$1,090.00 for the time period of October 24, 2008 to November 9, 2008.

3. Mote testified, and the hearing officer finds, that Haun is owed wages for 74 hours at the rate of \$18.00 an hour totaling \$1,332.00. Mote has paid Haun \$500.00 of that amount leaving a balance of unpaid wages due in the amount of \$832.00.

4. Pursuant to Admin. R. Mont. 24.16.7556, Haun is owed a 55% penalty on the unpaid wages in the amount of \$457.60 (\$832.00 x 55%).

## IV. DISCUSSION<sup>2</sup>

### A. Wages owed

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 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 or she 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

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<sup>2</sup> Statements 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.

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.

Mote admitted at hearing that Haun worked a total of 74.00 hours for which he was not paid. Mote’s testimony is unchallenged. Mote further testified that due to economic conditions Haun’s rate of pay was reduced. Given the economic downturn, Mote’s testimony is credible.

Haun bears the burden of proof in this matter to show by a preponderance of the evidence that he is entitled to the additional wages he claims to be due. *Berry v. KRTV Communications* (1993), 262 Mont. 415, 426, 865 P.2d 1104, 1112. In this matter Haun, by not appearing at hearing, failed to carry his burden to show that he worked more hours at a greater rate of pay than Mote testified to at hearing. The hearing officer can only rely on the actual substantial evidence introduced or admitted at hearing. Haun is owed wages in the amount of \$832.00.

#### B. *Penalty*

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. § 39-3-206. The law requires that Mote pay at least a 55% penalty on the unpaid wages he owes Haun. Admin R. Mont. 24.16.7566. The hearing officer finds that Haun is owed a 55% penalty on the wages owed in the amount of \$457.60.

**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. Mote owes Haun unpaid regular wages in the amount of \$832.00 and a penalty in the amount of \$457.60.

**VI. ORDER**

Donald J. Mote is hereby ORDERED to tender a cashier's check or money order in the amount of \$1,289.60, representing \$832.00 in wages and \$457.60 in penalty, made payable to Patrick A. Haun.

All payments required above shall be mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59624-6518, no later than 30 days after service of this decision.

DATED this 6th day of May, 2009.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ DAVID A. SCRIMM  
David A. Scrimm, Hearing Officer  
Hearings Bureau

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.

Haun FOF dsp