

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 7-2019
OF SYLVIA ROSE LEARY,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
FRANK ROBBINS, KAREN ROBBINS,)	
individually and d/b/a ALPINE MOTEL,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On September 9, 2020, the Hearing Officer issued a Final Agency Decision after conducting a contested case hearing finding the Respondents owed Leary a total of \$5,267.56 in unpaid wages and penalties. The Respondent timely appealed the decision to the Montana Sixth Judicial District Court.

On March 22, 2021, District Court Judge Brenda R. Gilbert issued an Order Reversing Agency Decision and Remanding for Further Proceedings on the basis the Hearing Officer abused her discretion by allowing the Claimant to testify personally after the Claimant failed to timely disclose any witnesses pursuant to the Scheduling Order. The order directed the Hearing Officer to conduct further proceedings with the following restrictions: the Claimant not be allowed to testify, the Claimant only being allowed to cross-examine witnesses, and the Claimant being prohibited from offering any arguments that were not based upon exhibits within the Administrative Record.

On May 3, 2021, the Hearing Officer conducted a telephone conference in which the parties agreed to setting the matter for a telephone hearing for June 9, 2021. Documents 1 through 331, which included the entirety of the administrative record compiled by the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit), were admitted at the previous hearing. The parties agreed Documents 1 through 331 would remain in the record.

On June 9, 2021, the Hearing Officer convened a hearing in this matter. Leary appeared but did not testify. Karl Knuchel, Attorney at Law, represented Respondent. No new documentary evidence was offered by the Respondent. Respondent called only Deana Fry, Alpine Motel's Payroll Administrator, as its only witness at hearing held on June 9, 2021.

Pursuant to the order of the District Court, the Hearing Officer considered only the testimony of Chad Meador, who was the General Manager of the Alpine Motel at the time of the original hearing and who testified at the first hearing, and Fry, who testified at both hearings, as well as Documents 1 through 331 that were admitted at the first hearing and were stipulated to by the parties for the second hearing. The Hearing Officer did not consider the testimony Leary offered at the previous hearing. The Hearing Officer also did not consider any argument offered by Leary at the previous hearing that went beyond the Administrative Record during the previous hearing pursuant to the District Court's order.

After the final post-hearing brief was timely received, the Hearing Officer took the matter under advisement. This final agency decision is hereby issued in accordance with the order of the District Court.

II. ISSUE

Whether Frank Robbins, Karen Robbins, individually and d/b/a Alpine Motel, owe wages for work performed, as alleged in the complaint filed by Sylvia Rose Leary, and owe penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. In April 2016, Leary began working as a front desk clerk for the Alpine Motel. Leary was hired to work 40 hours per week, with an hourly wage of \$10.00. Docs. 271, 295.
2. Leary did not receive an employee handbook or any other policy manual at the time of her hire. Doc. 271. There was no written wage agreement. Doc. 302.
3. Leary's hourly rate increased to \$15.00 effective pay period July 2, 2016, through July 15, 2016. Doc. 116. Leary's "pay package was based on \$15 per hour for 40 hours, plus housing and electric plus phone, water, cable." Doc. 96.
4. Leary's hourly rate increased to \$20.00 effective pay period May 16, 2017, through May 31, 2017. Doc. 137. Leary's hourly rate decreased to \$15.00 effective

pay period November 16, 2017, through November 30, 2017, and remained at \$15.00 throughout the remainder of her employment. Docs. 149-60.

5. Alpine Motel had sales in excess of \$500,000.00 in 2019. Alpine Motel considered Leary to be engaged in interstate commerce during her employment. Docs. 293-94.

6. Leary became manager of the Alpine Motel in approximately July 2016. *See* Docs. 116, 269. Leary's duties included checking in and out guests, personnel, maintenance, inventory/ordering, and customer service. Doc. 267. Leary "managed the Motel, directed employees. The manual labor was done by others." Doc. 96.

7. Leary lived onsite so she could assist guests after hours when necessary. Doc. 96. There was no written agreement authorizing the Alpine Motel to withhold wages to cover rent or costs associated with Leary's housing.

8. Deana Fry was Alpine Motel's Payroll Administrator. Fry has performed payroll and accounting duties for Alpine Motel for several years.

9. Alpine Motel employees were paid on a semi-monthly basis, with payroll periods running from the first of the month to the 15th and 16th to the end of the month. *See also* Docs. 113-160; 307-331.

10. Leary would email a breakdown of employees' hours worked to Fry a few days before the end of each pay period. Leary would note those employees for whom housing costs were to be withheld from their pay. Leary included her hours in her emails to Fry. *See also* Docs. 162-237.

11. Fry would contact Leary if she reported more hours for an employee than that employee customarily worked. Fry would send Leary an email accounting for overtime hours after payroll was issued.

12. Fry called Leary once or twice with payroll questions. Fry and Leary have never met and typically communicated through email.

13. Leary never provided Fry with time cards for herself or other employees.

14. Fry presumed Leary and others working as the Alpine Motel manager had the authority to act on behalf of the Alpine Motel. Fry did not confirm the information she received from Leary or other managers with the owners of Alpine Motel.

15. The owners of the Alpine Motel never told Fry that she should not pay employees an overtime rate.

16. Alpine Motel issued pay stubs to Leary for each payroll check issued during the period beginning the workweek ending July 16, 2016, through workweek ending May 19, 2018. *See Docs. 113-160.*

17. Alpine Motel paid Leary overtime wages for hours worked in excess of 80 hours in a pay period. *See Docs. 116, 150-154, 156, and 157.* There was no showing that Alpine Motel properly paid Leary overtime wages for hours worked in a 40 hour workweek.

18. On or about May 16, 2017, Leary's hourly wage was increased from \$15.00 to \$20.00. Leary was paid at this hourly rate until the payroll period ending November 15, 2017. *Doc. 149.*

19. Leary's hourly rate was \$15.00 throughout the remainder of her employment.

20. On or about May 23, 2018, Leary separated from her employment with Alpine Motel.

21. Leary worked a total of 4,164.51 hours during the period of July 16, 2016, through May 31, 2018. Leary worked a total of 453.58 hours in overtime during that same period. *See Docs. 117-60. See also Add. A.*

22. Leary earned \$72,206.64 in wages during the period of July 16, 2016, through May 31, 2018. Leary was paid \$70,294.00 in wages during that same period.

23. Leary is owed \$1,912.64 in unpaid overtime wages for the period of her wage claim.

24. Liquidated damages in the amount of \$1,912.64 are appropriate in this matter to compensate Leary for the overtime wages she did not receive for work performed during the period of her wage claim, as well as recognizing the failure of the Alpine Motel to check whether its practice of unilaterally reducing employees' pay was in compliance with state and federal law.

25. Alpine Motel improperly withheld Leary's final wages of \$930.50 that were earned during the period of May 16, 2018 through May 31, 2018. A penalty

of 55% penalty on the amount of unpaid regular wages owed to Leary amounts to \$511.78 and is appropriate in this matter.

IV. DISCUSSION¹

A. Respondent's Argument that Leary's Claim Fails

In their Proposed Findings of Fact and Conclusions of Law and Order and in their Response to Claimant's Proposed Findings of Fact, Conclusions of Law, Respondent argued that Leary's claim must fail stating that because she was unable to testify, she was unable to refer to any exhibits in the record and was therefore unable to establish her claim. This argument is incorrect. The District Court's remand order precluded Leary from offering her own testimony. However, the remand order did not preclude Leary from representing herself and the order explicitly allowed Leary to cross examine the Respondent's witnesses and to offer argument that was "based upon exhibits within the Administrative Record." As noted above, the parties agreed that the Administrative Record, Documents 1 through 331, were to remain of record for the second hearing. The Hearing Officer considered the Administrative Record, as well as the testimony of Meador and Fry when coming to this decision. As explained below, a consideration of the Administrative Record and the testimony of Meador and Fry showed Leary was not paid the wages she was owed. Therefore, while the District Court's remand order precluded Leary from testifying and precluded her from offering argument unrelated to the Administrative Record, Leary's claim does not fail because she was still allowed to represent herself. Therefore, the following decision is hereby issued on Leary's claim that the Alpine Motel owes her unpaid wages for work performed during the period of July 16, 2016, through May 31, 2018.

B. Montana Wage Protection Act

Montana law provides, ". . . every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and a person for whom labor has been performed may not withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable, except as provided in § 39-3-205." Mont. Code Ann. § 39-3-204.

¹ 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.

The requirement to pay minimum wage and overtime does not apply to “resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility.” Mont. Code Ann. § 39-3-406(l). The burden of proving that an employee is excluded from overtime requirements falls upon the employer who asserts it. *Kemp v. Board of Personnel Appeals*, 1999 MT 255, 296 Mont. 319, 989 P.2d 317. To meet this burden, an employer must present evidence to show that the employee falls “plainly and unmistakably within the exemption’s terms.” *Id.* at ¶ 16, citing *Public Employees Ass’n v. Dept. of Transportation*, 1998 MT 17, 287 Mont. 229, 954 P.2d 21.

The evidence shows Leary’s position as the manager of the Alpine Motel was a resident manager position as contemplated by Mont. Code Ann. § 39-3-406(1)(l). Leary was clearly required to live on the premises of the Alpine Motel so she would be available to serve customers during the motel’s off hours. Further, given Frank Robbins’ decision to withhold her final paycheck to cover her lodging costs, it is clear living at the motel was a term of Leary’s employment. *See* Docs. 96, 295. Therefore, Leary was a “resident manager” within the meaning of Mont. Code Ann. § 39-3-406(1)(l). *See, e.g., Moore v. Imperial Hotels Corp.*, 1998 MT 248, ¶¶ 7, 24, 291 Mont. 164, 967 P.2d 382. As such, Leary is excluded from the minimum wage and overtime provisions of Mont. Code Ann. §§ 39-3-404, -405. *See* Mont. Code Ann. § 39-3-406(1)(l).

Exclusion from Montana’s Wage Protection Act does not exclude Leary from coverage under the Fair Labor Standards Act (FLSA). The issue then becomes whether Leary was covered under the FLSA, and, if so, whether she was compensated at a rate not less than the applicable minimum wage rate for every hour worked, and what amount of overtime she is due.

C. Fair Labor Standards Act

The FLSA “protect[s] all covered workers from substandard wages and oppressive working hours, labor conditions that are detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency and general well-being of workers.” *Barrentine v. Arkansas-Best Freight Sys. Inc.*, 450 U.S. 728, 739, 101 S. Ct. 1437, 1444, 67 L. Ed. 2d 641 (1981). In furtherance of this end, the Supreme Court “has consistently construed the Act liberally to apply to the furthest reaches [of the economy] consistent with congressional direction.” *Irizarry v. Catsimatidis*, 722 F.3d 99, 103 (2d Cir. 2013) (quoting *Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 296, 105 S. Ct. 1953, 1959, 85 L. Ed. 2d 278 (1985) (internal quotation marks omitted)).

A claimant has the burden of proving three elements in a FLSA claim:

- (1) The existence of an employer-employee relationship;
- (2) Coverage under the Act; and
- (3) A violation of one or more of the statutory standards.

See Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 686–87 (1946).

1. Leary was an employee of Alpine Motel

There is no dispute Leary was an employee of Alpine Motel. Therefore, the next issue is whether the FLSA provides coverage under the facts of this case.

2. Alpine Motel is subject to the FLSA as a covered enterprise

The FLSA provides labor protections to employees who are either (1) “employed by an enterprise engaged in commerce or in the production of goods for commerce,” or (2) “engaged in commerce or in the production of goods for commerce.” *See* 29 U.S.C. §§ 206(a), 207(a)(1). Either individual or enterprise coverage is enough to invoke FLSA protection. *Martin v. Bedell*, 955 F.2d 1029, 1032 (5th Cir. 1992).

An “[e]nterprise engaged in commerce or in the production of goods for commerce” means an enterprise with two or more employees that, in relevant part:

- (i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and
- (ii) is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated). . . .

29 U.S.C. § 203(s)(A)(i)-(ii).

Frank Robbins completed Respondent’s Answer to Wage Claim on behalf of Alpine Motel. Robbins answered yes to the question, “Did the Claimant deal in Interstate Commerce? (such as individuals involved in interstate trucking, credit card transactions, Mail and/or Telephone Transaction with Other States).” Docs. 293-94. Robbins also confirmed in this response that Alpine Motel had sales in excess of \$500,000.00 in 2019. There was no evidence offered at hearing showing

this information to be inaccurate and was, in fact, confirmed by Meador in his testimony at the previous hearing. It is therefore determined that Alpine Motel is subject to the FLSA as a covered enterprise.

3. Leary is not exempted from FLSA coverage

The FLSA is a remedial act. As such, exemptions to its coverage are narrowly construed. The employer bears the burden of proving the employee is exempt from the requirements of the FLSA. *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392, 80 S. Ct. 453, 4 L. Ed. 2d 393 (1960) (“We have held that these exemptions are to be narrowly construed against the employers seeking to assert them and their application limited to those establishments plainly and unmistakably within the terms and spirit.”); *see also Donovan v. Nekton, Inc.*, 703 F.2d 1148, 1151 (9th Cir. 1983) (An “employer who claims an exemption from the FLSA has the burden of showing that the exemption applies.”).

Alpine Motel offered no evidence or argument that Leary was subject to any exemption from the requirement she be paid overtime pay at not less than time and one-half the regular rate for any hours worked in excess of 40 hours per week. The only exemption that may apply under the facts of this case is that allowed for bona fide administrative employees. Alpine Motel bears the burden of proving this exemption applies, and it is construed narrowly against them. *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120, 1124-25 (9th Cir. 2002).

The Code of Federal Regulations provides that the term “employee employed in a bona fide administrative capacity” means any employee:

- (1) Compensated on a salary or fee basis pursuant to § 541.600 at a rate per week of not less than the 40th percentile of weekly earnings of full-time nonhourly workers in the lowest-wage Census Region (or 84 percent of that amount per week, if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities. Beginning January 1, 2020, and every three years thereafter, the Secretary shall update the required salary amount pursuant to § 541.607;
- (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; *and*

(3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

29 C.F.R. 541.200(a)(1)-(3) (emphasis added).

Leary's monthly salary of approximately \$2,400.00 (\$15.00/hour x 40 hours x 4 weeks) meets the salary criteria of (a)(1), which was set at a minimum of \$455.00 per week during the period in question.²

Work "directly related to the management or general business operations of the employer," is defined as "assisting with the running or servicing of the business." 29 C.F.R. § 541.201(a). The "essence" of this definition is "the running of the business, and not merely . . . the day-to-day carrying out of its affairs." *Bratt v. County of Los Angeles*, 912 F.2d 1066, 1070 (9th Cir. 1999) (internal quotation marks omitted). 29 C.F.R. § 541.201(b) provides:

[w]ork directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities.

Courts have noted, "[t]his list distinguishes between work that any employer needs performed-such as accounting, human resources, and regulatory compliance-and work that is particular to an employer's industry . . . The former is part and parcel of running a business and therefore exempt administrative work. The latter is not." *Bollinger v. Residential Capital, LLC*, 863 F. Supp.2d 1041, 1048 (W.D. Wash. 2012). "[E]xempt administrative work is about running a business, not implementing its day-to-day operations." *Bollinger*, 863 F.Supp.2d at 1049 (quoting *Bratt*, 912 F.2d at 1070).

The evidence shows Leary's duties were similar to those of Meador, who held Leary's same position after Leary separated from her employment with Alpine Motel. Those duties included managing the daily operations of the motel, e.g. checking guests in and out; payroll and personnel; maintenance; and other duties necessary to keep the motel operational. Alpine Motel offered no evidence showing Leary's primary duty included the exercise of discretion and independent judgment

² The rate is currently \$684.00 per week. 29 C.F.R. 541.200(a)(1).

with respect to matters of significance. Therefore, Alpine Motel has failed in its burden of showing Leary is exempted from FLSA coverage. Leary is left with the burden of showing a violation of one or more of the FLSA's statutory standards. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 686–87 (1946).

D. Leary's Hours

With coverage under the FLSA established and no applicable exemptions argued by the Respondent, the question becomes the amount of work, if any, which Leary performed without proper compensation.

Federal law requires any hours worked over 40 in the workweek, be paid at time and one-half the employee's regular rate. *See* 29 USC § 207(a)(2).

An employee seeking unpaid wages under the FLSA has the initial burden of proving work performed without proper compensation. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 686-87 (1946). 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. *Anderson*, 328 U.S. at 687. To ensure employees are paid overtime when it is owed, the law requires employers to keep records of employee's hours. 29 U.S.C. § 211(c). In *Anderson*, *supra*, the U.S. Supreme Court held that when the employer fails to record the employee's hours, the employee's records may be used to determine the amount of time worked. *Anderson*, 328 U.S. at 687. As the Supreme Court stated in *Anderson*:

[W]here the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes a more difficult problem arises. . . . In such a situation we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

Anderson, 328 U.S. at 687-88.

The Montana Supreme Court adopted the U.S. Supreme Court's approach to determining an employee's claims for unpaid overtime when the employer's records

are inadequate in *Garsjo v. Dep't Labor & Indus.*, 172 Mont. 182, 189, 562 P.2d 473, 477. In *Garsjo*, the court held, "The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation as contemplated" *Id.*

The Montana Supreme Court confirmed this to be the proper approach in *Arlington v. Miller's Trucking, Inc.*, 2015 MT 68, 378 Mont. 324, 343 P.3d 1222. In *Arlington*, the court was tasked with determining whether an employee was owed unpaid wages when both the employee and the employer failed to maintain adequate records regarding the number of hours worked. The court noted the FLSA imposes the ultimate responsibility of ensuring the maintenance of accurate records of hours worked upon the employer. *Arlington*, ¶ 17. An employee's failure to track his or her hours does not absolve the employer of this duty. *Arlington*, ¶ 18. "If plaintiff's evidence of hours worked is inaccurate or imprecise because the employer's time-keeping practices made it difficult to ascertain the truth, the employer rather than the employee must suffer the consequences." *Id.* "[I]f 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." *Mitchell v. Caldwell*, 249 F.2d 10, 11 (10th Cir. 1957) (emphasis added) (citing *Anderson, supra*; *Porter v. Poindexter*, 158 F.2d 759 (10th Cir. 1947); *Handler v. Thrasher*, 191 F.2d 120 (10th Cir. 1951)).

The parties submitted Leary's pay stubs to the Wage and Hour Unit for the period in question. Pursuant to the District Court's order, Leary was not allowed to testify and she was limited in offering any argument that was not based upon exhibits within the Administrative Record. The parties stipulated to the admission of the entirety of the Administrative Record, including the pay stubs submitted during the adjudicative process. No evidence was offered showing the information contained in those pay stubs were inaccurate or otherwise not worthy of credence.

On their face, the pay stubs show Leary worked a total of 4,164.51 hours during the period of July 16, 2016, through May 31, 2018. Of those hours worked, 453.58 were overtime. All but one of the paystubs show that, when overtime hours are listed, Leary was paid her regular hourly rate for all hours worked.

Alpine Motel argued Leary never claimed overtime during her employment. However, Fry testified she paid Leary overtime when she claimed to have worked more than 80 hours in a pay period. Fry was clearly on notice that Leary was

working overtime and issued payment based upon overtime wages when Leary reported hours worked in excess of 80 hours in a pay period.

An employer is said to have constructive knowledge of its employee's overtime work when it has reason to believe that its employee is working beyond his shift. 29 C.F.R. § 785.11. The employer's knowledge "is measured in accordance with his 'duty . . . to inquire into the conditions prevailing in his business.'" *Gulf King Shrimp Co. v. Wirtz*, 407 F.2d 508, 512 (5th Cir. 1969) (quoting *People ex rel. Price v. Sheffield Farms-Slawson-Decker Co.*, 225 N.Y. 25, 121 N.E. 474 (N.Y. 1918)).

The evidence shows Alpine Motel paid Leary overtime for hours worked in excess of 80 in a pay period. However, overtime must be paid when hours worked are in excess of 40 hours per workweek. *See* Mont. Code Ann. § 39-3-405 and 29 USC § 207; *see also* Admin. R. Mont. 24.16.2512 ("For his overtime work he must be paid, in addition to his straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week.").

Based upon the pay stubs submitted by the parties and Fry's sworn testimony, the evidence shows Leary performed work for which she was not compensated. Therefore, Alpine Motel must now produce evidence to negate the evidence showing Leary is owed unpaid overtime wages.

Alpine Motel failed to maintain any records independent of those offered by the parties. The witnesses Alpine Motel called at hearing - Meador and Fry - had no independent, first-hand knowledge as to the work performed by Leary during the period of her wage claim. Alpine Motel failed to offer substantial and credible evidence disproving the evidence previously submitted showing Leary performed work for which she was not compensated.

There are no time cards or time sheets showing the precise number of hours Leary worked each day and/or week, and the work week is not defined. Therefore, the daily hours were calculated by taking the hours reported for each pay period and dividing that number by the number of days in the pay period. The amount owed to Leary for regular wages was determined by multiplying all hours worked up to 40 hours per week by her regular rate. Leary's rate of pay changed from \$15.00 to \$20.00 and both rates applied to the workweek ending May 2, 2018. Therefore, the weighted average was used for that period. *See* Title 29 CFR § 778.115. The overtime wages found to be owed in Addendum A were determined by taking the number of hours Leary worked in excess of 40 hours per week, multiplied by her overtime rate that is equal to one and a half of her regular rate. *See* Add. A.

The preponderance of evidence shows Leary worked a total of 4,164.51 hours during the period of July 16, 2016, through May 31, 2018. 453.58 of those hours include hours worked in excess of 40 hours per week that should have been paid at an overtime rate of one and a half of Leary's regular rate. The evidence further shows Leary earned a total of \$72,206.64 in wages during the period of July 16, 2016, through May 31, 2018, and was paid \$70,294.00 in wages for that period. Relying upon the evidence set forth in Documents 1 through 331, as well as the sworn testimony of Meador and Fry, Alpine Motel has failed to negate the reasonableness of the inference drawn from the documentary evidence. *See 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. Therefore, Leary is owed \$1,912.64 in unpaid overtime wages for the period of her wage claim.

1. Unauthorized Overtime

Alpine Motel argued Leary had not received prior authorization to work the overtime hours listed in her claim for unpaid wages. Again, the employer knew or should have known that Leary was working overtime, given many of her pay stubs show she was paid her regular rate for more than 40 hours in several of the weeks in her wage claim. Clearly, the employer was aware Leary was working overtime on a regular and consistent basis and did nothing to stop her. The CFR addresses such cases:

Work not requested but suffered or permitted is work time. [. . .] The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time.

* * *

In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

29 C.F.R. 785.11, 785.13; *See also Handler v. Thrasher*, 191 F.2d 120, 123 (10th Cir. 1951). Thus, any argument that Leary was not permitted or authorized to work overtime fails.

2. Leary's Housing Costs

Alpine Motel argues Leary was required to have rents withheld from her paycheck to cover the cost of her lodging. No rental agreement was produced; nor is

there any evidence showing Leary ever agreed to or actually had lodging costs withheld from her pay.

Employers may make a reasonable deduction for “board, room, and other incidentals supplied by the employer. . .” under certain conditions. Mont. Code Ann. § 39-3-204(1).

Except as provided in subsections (2) and (3), every employer of labor in the State of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks and a person for whom labor has been performed may not withhold from any employee any wages, earned or unpaid for longer than 10 business days after the wages are due and payable except as provided in § 39-3-204. However, a reasonable deduction may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are part of the conditions of employment, or as otherwise provided for by law.

“Other incidentals” have been defined to:

“. . . include items the employer furnishes to the employee that are not required for the performance of the employee’s duties. These would include items such as furnished transportation that is not required for work purposes, electricity, water or gas furnished for the non-commercial use of the employee, or fuel, such as kerosene, coal, firewood, for the employee’s non-work use. These types of incidentals may properly be deducted from the employee’s wages, provided the employee agrees to the deductions, and the agreement is voluntary and uncoerced.”

In re Wage Claim of Beth Sauer, Case No. 1552-2011 (Mont. DOLI 2001).

However, an employer may not simply withhold wages. There must be an agreement between the parties that such a deduction is a condition of the employment.

An employer cannot withhold the wages or any portion thereof due and owing to an employee as wages earned, and apply such wages to an account which the employee has with the employer unless the account existing between the employer and employee is for board, room or

other incidentals which the employer has agreed may be deducted as a condition of the employment.

Att’y Gen’l Op. No. 25, Vol. 11 (March 25, 1953).

Alpine Motel has failed to produce sufficient evidence that Leary ever agreed to having her housing costs deducted from her wages. Therefore, Alpine is not entitled to an offset based upon Leary’s housing costs.

3. Leary’s Final Wages

Montana Code Ann. § 39-3-205(1) provides:

Except as provided in subsection (2) or (3), when an employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee.

The evidence shows Alpine Motel improperly withheld Leary’s final paycheck. Therefore, Alpine Motel owes Leary \$930.50 in unpaid regular wages for the period of May 16, 2018, through May 31, 2018.

E. Penalties

A claimant is allowed to pursue claims under both state law and the FLSA. However, a claimant may not recover damages under both. *See Roman v. Maietta Constr.*, 147 F.3d 71, 76 (1st Cir. 1998) (finding plaintiff who recovered under the FLSA for his claim cannot recover again under state law). *See also Reich v. Tiller Helicopter Services, Inc.*, 8 F.3d 1018, 1033 (5th Cir. 1993) (Secretary of Labor permitted to sue employer under both §§ 216(c) [providing for legal relief] and 217 [providing for equitable relief] “subject to the principle of unjust enrichment that precludes the Secretary from obtaining more than one recovery for back wage liability.”)

While the Montana Supreme Court has not addressed the issue of whether recovery can be had exclusively under the FLSA or the MWPA or both, other courts within the 9th Circuit have held that, while the plaintiff is to be made whole and not enjoy a windfall at the defendant’s expense, the plaintiff is entitled to whatever

remedy is greater. *See Allen v. WTD Indus.*, 2000 U.S. Dist. LEXIS 22382,**14, 15 (Ore. D. Ct. 2000).

1. Leary's Overtime

Leary is excluded from the protections of the MWPA based upon her position having been that of a resident manager as defined under Mont. Code Ann. § 39-3-406(1). However, Leary is not exempted from coverage under the FLSA. Therefore, the penalties provided for under the FLSA are appropriate under the facts of this case. The penalty imposed under the FLSA includes liquidated damages equal to the amount of wages found to be due owing under the FLSA. *See* 29 U.S.C. § 216(b). Therefore, liquidated damages are appropriate and will be imposed.

Alpine Motel may only avoid the imposition of liquidated damages if it can show it acted in good faith and on reasonable belief that it was complying with the law. *See* 29 U.S.C. § 216(b). The onerous burden to demonstrate good faith rests with the employer: “[D]ouble damages are the norm, single damages the exception. . . .” *Brock v. Wilamowsky*, 833 F.2d 11, 19 (2d Cir. 1987) (quoting *Walton v. United Consumers Club, Inc.*, 786 F.2d 303, 310 (7th Cir. 1986)). Even if an employer carries the burden, liquidated damages may still be awarded. *See Mireles v. Frio Foods, Inc.*, 899 F.2d 1407, 1416 n. 8 (5th Cir. 1990); *See also Tacke v. Energy W., Inc.*, 2010 MT 39, ¶¶ 25-30, 355 Mont. 243, 249, 227 P.3d 601, 607. Although liquidated damage awards are discretionary, there is a strong presumption in favor of liquidated damages. *See* 29 U.S.C. § 260; *Shea v. Galaxie Lumber & Constr. Co.*, 152 F.3d 729, 733 (7th Cir. 1998).

The sheer fact Leary regularly worked more than 40 hours in a week being paid only her regular hourly rate is sufficient to find liquidated damages are appropriate in this case. The employer had the opportunity to rectify the situation each pay period when Leary submitted hours in excess of 40 in a week. It failed to do so.

Given the lack of consideration of its legal duties, Alpine Motel has failed to establish it acted in good faith and reasonable belief in its practice of paying Leary her regular hourly rate for hours worked in excess of 40 each week. As noted above, Leary has shown she is owed \$1,912.64 in unpaid overtime wages for the period of her wage claim. Therefore, liquidated damages in the amount of \$1,912.64 are proper in this case. *See* 29 U.S.C. §§ 216, 260.

2. Leary's Final Wages

The FLSA does not require an employer to issue an employee's final paycheck in a set period of time. However, Montana law requires all unpaid wages owed to an employee are due and payable the next regular payday or 15 days from the date of the separation from employment, whichever occurs first. Mont. Code Ann. § 39-3-205(1).

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. § 39-3-206. Imposition of the penalty is mandatory. *Id.* For cases involving minimum wage and overtime claims, a penalty of 110% will be imposed where a determination has been made that overtime wages are owed and the employer fails to pay the amounts due within the time frame prescribed by the determination. Admin. R. Mont. 24.16.7561. The sole exception to this rule is where none of the special circumstances described in Admin. R. Mont. 24.16.7556 apply. In those cases, a reduced penalty in the amount of 55% may be imposed.

Given that Montana law specifically mandates the imposition of a penalty when an employer fails to pay wages when they are due, the penalty provided for under Admin. R. Mont. 24.16.7561 must be imposed. None of the special circumstances listed in Admin. R. Mont. 24.16.7556 applies. Therefore, the 110% penalty provided for under Admin. R. Mont. 24.16.7561 shall be reduced to 55%. Leary has shown she is owed \$930.50 in unpaid regular wages for the pay period of May 16, 2018, through May 31, 2018. Leary is owed a penalty in the amount of \$511.78 (\$930.50 x 55%). *See* Admin R. 24.16.7566(1)(a).

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.*; *See also State v. Holman Aviation*, 176 Mont. 31, 575 P.2d 925 (1978).

2. Sylvia Leary was an employee of Frank Robbins and Karen Robbins, individually and d/b/a Alpine Motel. Sylvia Leary worked as a "resident manager" within the meaning of Mont. Code Ann. § 39-3-406(1)(l) and is excluded from the minimum wage and overtime provisions of Mont. Code Ann. §§ 39-3-404, -405.

3. Frank Robbins and Karen Robbins, individually and d/b/a Alpine Motel is an enterprise engaged in interstate commerce and is subject to the FLSA.

4. Sylvia Leary is not exempted from the minimum wage and overtime requirements of the FLSA. 29 C.F.R. 213(b)(1); Mont. Code. Ann. § 39-3-406(2)(d).

5. The evidence shows Sylvia Leary performed work for the employer during the period of her wage claim for which she was not properly compensated.

6. Frank Robbins and Karen Robbins, individually and d/b/a Alpine Motel failed to negate the reasonableness of the inference raised from Leary's evidence that she performed work for which she was not compensated. *See Anderson*, 328 U.S. at 686-88.

7. Frank Robbins and Karen Robbins, individually and d/b/a Alpine Motel owes Leary \$1,912.64 in unpaid overtime wages for the period of her wage claim. *See* 29 U.S.C. §§ 216, 260.

8. Frank Robbins and Karen Robbins, individually and d/b/a Alpine Motel has failed to meet its burden of showing it acted in good faith and on reasonable belief that it was complying with the law when it failed to pay Leary properly for her overtime hours throughout the majority of her employment. 29 CFR § 785.19.

9. Liquidated damages on the amount of the overtime wages found to be owed, which amounts to \$1,912.64, are mandatory based upon the facts of this case. *See* 29 U.S.C. §§ 216, 260.

10. Leary is owed a penalty of 55% on the \$930.50 in regular wages earned during the pay period of May 16, 2018 through May 31, 2018 that Frank Robbins and Karen Robbins, individually and d/b/a Alpine Motel improperly withheld. The penalty amount is \$511.78 ($\$930.50 \times 55\%$). Admin R. 24.16.7566(1)(a).

11. Frank Robbins and Karen Robbins, individually and d/b/a Alpine Motel owe Leary a total of \$5,267.56, including unpaid wages and liquidated damages and penalty.

VI. ORDER

Frank Robbins and Karen Robbins, individually and d/b/a Alpine Motel are hereby ORDERED to tender a cashier's check or money order in the amount of \$5,267.56, representing \$1,912.64 in unpaid overtime wages and \$930.50 in unpaid regular wages, as well as \$1,912.64 in liquidated damages and \$511.78 in penalty on the unpaid regular wages, made payable to Sylvia Leary, 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 Respondents may deduct applicable withholding taxes from the portion representing wages, but not from the portion representing liquidated damages or penalties.

DATED this 1st day of November, 2021.

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 59620-1503

Workweek Ending	Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Total Hours	Regular Hours	Regular ¹ Wages	Overtime Hours	Overtime Wages	Wages Paid
07/16/2016							5.64	5.64	5.64	84.60	0	0	
07/23/2016	5.64	5.64	5.64	5.64	5.64	5.64	5.64	39.48	39.48	592.20	0	0	
07/30/2016	5.64	5	5	5	5	5	5	40.64	40	600	.64	14.40	
08/06/2016	5	5	5	5	5	5	5	35	35	525	0	0	1357.50
08/13/2016	5	5	7	7	7	7	7	45	40	600	5	112.50	
08/20/2016	7	7	7	7	7	7	7	49	40	600	9	202.50	1200.00
08/27/2016	7	7	7	7	6.63	6.63	6.63	47.89	40	600	7.89	177.53	
09/03/2016	6.63	6.63	6.63	6.63	6.63	6.63	6.63	46.41	40	600	6.41	144.23	
09/10/2016	6.63	6.63	6.63	6.63	6.63	7.82	7.82	48.79	40	600	8.79	197.78	1680.00
09/17/2016	7.82	7.82	7.82	7.82	7.82	7.82	7.82	54.74	40	600	14.74	331.65	
09/24/2016	7.82	7.82	7.82	7.82	7.82	7.82	7.49	54.41	40	600	14.41	324.23	1497.75
10/01/2016	7.49	7.49	7.49	7.49	7.49	7.49	7.49	52.43	40	600	12.43	279.68	
10/08/2016	7.49	7.49	7.49	7.49	7.49	7.49	7.49	52.43	40	600	12.43	279.68	1762.50
10/15/2016	5.93	5.93	5.93	5.93	5.93	5.93	5.93	41.51	40	600	1.51	33.98	
10/22/2016	5.93	5.93	5.93	5.93	5.93	5.93	5.93	41.51	40	600	1.51	33.98	1687.50
10/29/2016	5.93	5.93	7.27	7.27	7.27	7.27	7.27	48.21	40	600	8.21	184.73	
11/05/2016	7.27	7.27	7.27	7.27	7.27	7.27	7.27	50.89	40	600	10.89	0	1425.00

¹Leary's regular hourly rate was \$15.00. Leary's overtime hourly rate was \$22.50.

Workweek Ending	Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Total Hours	Regular Hours	Regular Wages	Overtime Hours	Overtime Wages	Wages Paid
11/12/2016	7.27	7.27	7.27	7.27	7.27	7.27	7.27	50.89	40	600	10.89	245.03	
11/19/2016	7.27	7.27	7.27	7.27	7.27	7.27	7.27	50.89	40	600	10.89	245.03	1635.00
11/26/2016	7.27	7.27	7.27	7.27	7.27	7.27	7.27	50.89	40	600	10.89	245.03	
12/03/2016	7.27	7.27	7.27	7.27	5.93	5.93	5.93	46.87	40	600	6.87	154.57	1425.00
12/10/2016	5.93	5.93	5.93	5.93	5.93	5.93	5.93	41.51	40	600	1.51	33.98	
12/17/2016	5.93	5.93	5.93	5.93	5.93	8.56	8.56	46.77	40	600	6.77	152.33	2055.00
12/24/2016	8.56	8.56	8.56	8.56	8.56	8.56	8.56	59.92	40	600	19.92	448.20	
12/31/2016	8.56	8.56	8.56	8.56	8.56	8.56	8.56	59.92	40	600	19.92	448.20	1545.00
01/07/2017	6.86	6.86	6.86	6.86	6.86	6.86	6.86	48.02	40	600	8.02	180.45	
01/14/2017	6.86	6.86	6.86	6.86	6.86	6.86	6.86	48.02	40	600	8.02	180.45	2055.00
01/21/2017	6.86	6.81	6.81	6.81	6.81	6.81	6.81	47.67	40	600	7.67	172.58	
01/28/2017	6.81	6.81	6.81	6.81	6.81	6.81	6.81	47.67	40	600	7.67	172.58	1635.00
02/04/2017	6.81	6.81	6.81	7.6	7.6	7.6	7.6	50.83	40	600	10.83	243.68	
02/11/2017	7.6	7.6	7.6	7.6	7.6	7.6	7.6	53.2	40	600	13.2	297.00	1710.00
02/18/2017	7.6	7.6	7.6	7.6	7	7	7	51.4	40	600	11.4	256.50	
02/25/2017	7	7	7	7	7	7	7	49	40	600	9	202.50	1260.00
03/04/2017	7	7	7	6.6	6.6	6.6	6.6	47.4	40	600	7.4	166.50	
03/11/2017	6.6	6.6	6.6	6.6	6.6	6.6	6.6	46.2	40	600	6.2	139.50	1485.00
03/18/2017	6.6	6.6	6.6	6.6	6.81	6.81	6.81	46.83	40	600	6.83	153.68	

Workweek Ending	Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Total Hours	Regular Hours	Regular Wages	Overtime Hours	Overtime Wages	Wages Paid
03/25/2017	6.81	6.81	6.81	6.81	6.81	6.81	6.81	47.67	40	600	7.67	172.58	1635.00
04/01/2017	6.81	6.81	6.81	6.81	6.81	6.81	5.81	46.67	40	600	6.67	150.08	
04/08/2017	5.81	5.81	5.81	5.81	5.81	5.81	5.81	40.67	40	600	.6	13.50	1309.50
04/15/2017	5.81	5.81	5.81	5.81	5.81	5.81	5.81	40.67	40	600	.67	15.08	
04/22/2017	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	559.65	0	0	1200.00
04/29/2017	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	559.65	0	0	
05/06/2017	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	559.65	0	0	1200.00
05/13/2017	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	559.65	0	0	
05/20/2017	5.33	5.33	7.41 ²	7.41	7.41	7.41	7.41	47.71	40	800	7.71	231.30	
05/27/2017	7.41	7.41	7.41	7.41	7.41	7.41	7.41	51.87	40	800	11.87	356.10	
06/03/2017	7.41	7.41	7.41	7.41	7.07	7.07	7.07	50.85	40	800	10.85	325.50	
06/10/2017	7.07	7.07	7.07	7.07	7.07	7.07	7.07	49.49	40	800	9.49	284.70	2371.00
06/17/2017	7.07	7.07	7.07	7.07	7.07	7.69	7.69	50.73	40	800	10.73	321.90	
6/24/2017	7.69	7.69	7.69	7.69	7.69	7.69	7.69	53.83	40	800	13.83	414.90	2126.00
07/01/2017	7.69	7.69	7.69	7.69	7.69	7.69	4.87	51.01	40	800	11.0	330	
07/08/2017	4.87	4.87	4.87	4.87	4.87	4.87	4.87	34.09	34.09	681.80	0	0	2310
07/15/2017	4.87	4.87	4.87	4.87	4.87	4.87	4.87	34.09	34.09	681.08	0	0	

²Leary's hourly wage increased from \$15.00 to \$20.00. Leary's overtime rate was \$30.00.

Workweek Ending	Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Total Hours	Regular Hours	Regular Wages	Overtime Hours	Overtime Wages	Wages Paid
07/22/2017	5	5	5	5	5	5	5	35	35	700	0	0	1460
07/29/2017	5	5	5	5	5	5	5	35	35	700	0	0	
08/05/2017	5	5	5.33	5.33	5.33	5.33	5.33	36.65	36.65	733	0	0	1600
08/12/2017	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	746.20	0	0	
08/19/2017	5.33	5.33	5.33	6.91	6.91	6.91	6.91	43.87	40	800	3.87	116.10	1600
08/26/2017	6.91	6.91	6.91	6.91	6.91	6.91	6.91	48.37	40	800	8.37	251.10	
09/02/2017	6.91	6.91	6.91	6.91	6.91	6.95	6.95	48.37	40	800	8.37	251.10	2219
09/09/2017	6.95	6.95	6.95	6.95	6.95	6.95	6.95	48.65	40	800	8.65	259.50	
09/16/2017	6.95	6.95	6.95	6.95	6.95	6.95	7.01	48.71	40	800	8.71	261.30	2087
09/23/2017	7.01	7.01	7.01	7.01	7.01	7.01	7.01	49.07	40	800	9.07	272.10	
09/30/2017	7.01	7.01	7.01	7.01	7.01	7.01	7.01	49.07	40	800	9.07	272.10	2104
10/07/2017	6.33	6.33	6.33	6.33	6.33	6.33	6.33	44.31	40	800	4.31	129.30	
10/14/2017	6.33	6.33	6.33	6.33	6.33	6.33	6.33	44.31	40	800	4.31	129.30	1900
10/21/2017	6.33	5.31	5.31	5.31	5.31	5.31	5.31	38.19	38.19	763.80	0	0	
10/28/2017	5.31	5.31	5.31	5.31	5.31	5.31	5.31	37.17	37.17	743.40	0	0	1700
11/04/2017	5.31	5.31	5.31	5.33	5.33	5.33	5.33	37.31	37.31	746.20	0	0	
11/11/2017	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	746.20	0	0	
11/25/2017	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	559.65	0	0	1600
12/02/2017	5.33	5.33	5.33	5.33	5.33	6.8	6.8	40.25	40	600	0	0	

Workweek Ending	Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Total Hours	Regular Hours	Regular Wages	Overtime Hours	Overtime Wages	Wages Paid
12/09/2017	6.8	6.8	6.8	6.8	6.8	6.8	6.8	47.60	40	600	7.6	57	1200
12/16/2017	6.8	6.8	6.8	6.8	6.8	6.8	5.20	46	40	600	0	0	
12/23/2017	5.20	5.20	5.20	5.20	5.20	5.20	5.20	36.40	36.40	546	0	0	1695
12/30/2017	5.20	5.20	5.20	5.20	5.20	5.20	5.20	36.40	36.40	546	0	0	
01/06/2018	5.20	5.73	5.73	5.73	5.73	5.73	5.73	39.58	39.58	593.70	0	0	1274.25
01/13/2018	5.73	5.73	5.73	5.73	5.73	5.73	5.73	40.11	40	600	.11	.83	
01/20/2018	5.73	5.73	5.96	5.96	5.96	5.96	5.96	41.26	40	600	1.26	9.45	1335
01/27/2018	5.96	5.96	5.96	5.96	5.96	5.96	5.96	41.72	40	600	1.72	12.9	
02/03/2018	5.96	5.96	5.96	5.96	7.15	7.15	7.15	45.29	40	600	5.29	39.68	1548.75
02/10/2018	7.15	7.15	7.15	7.15	7.15	7.15	7.15	50.05	40	600	10.05	75.38	
02/17/2018	7.15	7.15	7.15	7.15	7.15	6.67	6.67	49.09	40	600	9.09	68.18	1814.25
02/24/2018	6.67	6.67	6.67	6.67	6.67	6.67	6.67	46.69	40	600	6.69	50.18	
03/03/2018	6.67	6.67	6.67	6.67	6.93	6.93	6.93	47.47	40	600	7.47	56.03	1200
03/10/2018	6.93	6.93	6.93	6.93	6.93	6.93	6.93	48.51	40	600	8.51	63.83	
03/17/2018	6.93	6.93	6.93	6.93	6.93	5.75	5.75	36.15	36.15	542.25	0	0	1740
03/24/2018	5.75	5.75	5.75	5.75	5.75	5.75	5.75	40.25	40	600	.25	1.88	
03/31/2018	5.75	5.75	5.75	5.75	5.75	5.75	5.75	40.25	40	600	.25	1.88	1470
04/07/2018	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	559.65	0	0	
04/14/2018	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	559.65	0	0	1200

Workweek Ending	Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Total Hours	Regular Hours	Regular Wages	Overtime Hours	Overtime Wages	Wages Paid
04/21/2018	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	559.65	0	0	
04/28/2018	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	746.20	0	0	1200
05/05/2018	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	746.20	0	0	
05/12/2018	5.33	5.33	5.33	5.33	5.33	5.33	5.33	37.31	37.31	746.20	0	0	
05/19/2018 ³	5.33	5.33	5.33					15.99		239.85			
									TOTALS	\$61,029.20		\$11,177.44	\$70,294.00

Regular Wages Earned	\$61,029.20
Overtime Wages Earned	\$11,177.44
TOTAL WAGES EARNED:	\$72,206.64
Wages Paid	(\$70,294.00)
TOTAL OVERTIME WAGES OWED:	\$1,912.64

³Leary is owed \$930.50 for her final wages due for the pay period of May 16, 2018, through May 31, 2018. As such, those hours were not used in the calculations above.