

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

IN THE MATTER OF THE WAGE CLAIM) Case No. 374-2022
OF INSLEY D. EVANS,)
)
) Claimant,)
)
) vs.)
)
) GREAT FALLS CLINIC,)
)
) Respondent.)

**FINAL AGENCY
DECISION**

* * * * *

I. INTRODUCTION

On May 28, 2021, Insley D. Evans (Evans) filed a wage claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (the Department) alleging Great Falls Clinic owed him \$10,038.45 in wages and \$7,000.00 in travel reimbursement. On August 5, 2021, the Wage and Hour Unit issued a Redetermination, concluding that the Clinic owed Evans \$2,091.50 in wages and \$313.73 in penalties. As a result, on or about August 12 or 13, 2021, Great Falls Clinic sent a cashier's check payable to Evans to the Department.

Evans filed an appeal on August 18, 2021. On September 16, 2021, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings for hearing.

At hearing, Great Falls Clinic moved for summary judgment on Evans' claim for reimbursement of moving expenses based on the Department's lack of jurisdiction. Evans did not respond to or oppose the motion. The Hearing Officer agreed the Office of Administrative Hearings lacked jurisdiction to decide the part of the claim involving moving expenses since it did not involve recovery of wages. The Hearing Officer therefore limited the hearing to the issue of wages only, with a written explanation on the summary judgment motion to be set forth in the present decision.

The hearing was held on February 3, 2022. Evans participated in the hearing with sworn testimony from himself. Great Falls Clinic participated in the hearing with sworn testimony from Human Resource Director Chris Calia. Administrative Documents 5, 9, 23, 25-27, 72, 77, 79, and 82 were admitted into evidence. Subsequent to the hearing, Evans submitted additional documentation which was not taken into evidence because it was both untimely and not substantive to the issues presently before this tribunal.

The parties were given the opportunity to submit post-hearing briefing, which both parties submitted. Upon expiration of that timeframe, the record was closed and the case was deemed submitted. Based upon the evidence and argument adduced at hearing and post-hearing briefing, the Hearing Officer addresses the motion for partial summary judgment and makes the following findings of fact, conclusions of law, and final agency decision.

II. ISSUE

Whether Great Falls Clinic owes wages for work performed, as alleged in the complaint filed by Evans, and owes penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. Great Falls Clinic is a hospital and/or business providing medical or nursing care for residents. Great Falls Clinic has an annual dollar volume of sales or business of at least \$500,000.00.

2. On April 27, 2020, Great Falls Clinic offered Evans the position of Laboratory Manager, which Evans accepted. (Admin Doc. 72.) Evans' start date was to be determined.

3. Evans' annual salary was to be \$87,000.00. *Ibid.* Although Great Falls Clinic considered Evans an exempt employee, for purposes of this decision and the calculations herein, his hourly rate of pay was approximately \$41.83 per hour ($\$87,000.00 \div 2080$ hours).

4. In addition to his salary, Evans was to receive a \$20,000.00 retention bonus, which was to be paid in the first payroll period. *Ibid.* The agreement regarding the retention bonus was set forth in Evans' April 27, 2021, offer letter and read as follows:

20K Retention Bonus: The retention bonus applicable to your position should you remain employed for the entire program interval of three (3) years is valued at the amount of \$20,000.

Payment is made as follows:

1 a. Upon agreeing to employment with the Clinic an initial payment of \$20,000 is included in the first payroll payment as a retention payment to continue with employment through the probationary period.

In the event that you elect to terminate your employment or if your employment is terminated for cause by the Clinic following receipt of a retention payment specified in paragraph 1a above, you agree that the Company shall have a right but not an obligation to seek reimbursement for the retention payment made.

(Admin. Doc. 72.)

5. The Great Falls Clinic’s workweek runs Sunday to Saturday.
6. During his tenure at Great Falls Clinic, Evans worked the following hours:

May 2021					Hours
5/3	5/4	5/5	5/6	5/7	
1			5	6.75	12.75
5/10	5/11	5/12	5/13	5/14	
				8	8
5/17	5/18	5/19	5/20	5/21	
8	8	8	8	8	40
5/24	5/25	5/26	5/27	5/28	
	1				1
					61.75

(Admin. Doc. 23.)

7. The table above illustrates the following:
 - a. Evans’ initial week of work was May 2 to May 8, 2021. *Ibid.* Evans completed new hire paperwork for one hour on Monday, May 3. *Ibid.*

- b. Evans subsequently worked 5 hours on Thursday, May 6, and 6.75 hours on Friday, May 7, 2021. *Ibid.* Evans asserted he would have worked more hours during this week, but no one was available at Great Falls Clinic to train him.
- c. Evans was traveling between Great Falls, Montana, and McPherson, Kansas, for personal reasons related to his daughter from May 9 through May 13, 2021. (Admin. Doc. 82.) As a result, Evans did not work on May 10, 11, 12, or 13, 2021. (Admin Doc. 23.) Evans worked 8 hours on Friday, May 14, 2021. *Ibid.*
- d. Evans' terminal week of employment was May 23 through May 29, 2021. Evans called in sick and did not work on Monday, May 24, 2021. Evans worked one hour on Tuesday, May 25, 2021.

8. Great Falls Clinic terminated Evans' employment on May 25, 2021. A termination letter dated that same date and entitled "Corrective Action Conference Form" stated in relevant part as follows:

The Great Falls Clinic is terminating your employment effective today, May 25, 2021.

As a probationary employee in the role of Laboratory Manager, hired* April 30, 2021, under the Clinic's Probationary Period Policy an employee may be terminated during or at the end of the probationary period. *Loaded into system for Bonus payments.

You are not to return to any Clinic Facilities, unless seeking patient care.

(Admin. Doc. 80 (asterisks in original); *see also* Admin. Doc. 81 regarding Great Falls Clinic probationary policy.) A handwritten note on the letter indicates Evans refused to sign. (Admin. Doc. 80.)

9. Because Evans was terminated during his probationary period, no cause was given for his termination.

10. Great Falls Clinic initially made the following deposits into Evans' US Bank account ending in 0036 (US Bank account):

- a. On April 30, 2021, Great Falls Clinic deposited \$10,000.00 into Evans US Bank account. (Admin. Docs. 27-30.) This deposit was for the first half of Evans' retention bonus.
- b. On May 5, 2021, Great Falls Clinic deposited an additional \$10,000.00 into Evans' US Bank Account. (Admin. Doc. 31.) This deposit was for the second half of Evans' retention bonus.
- c. On May 14, 2021, Great Falls Clinic deposited \$453.89 (gross pay of \$491.50, less taxes) into Evans' US Bank account. (Admin. Docs. 25, 34, 40, 75.) This deposit was for 11.75 hours worked the week of May 2 through May 8, 2021.

11. Great Falls Clinic did not immediately pay additional monies to Evans because it believed he had violated the terms under which he could retain the retention bonus, and so was withholding further payment in order to recoup those monies and for ostensible withholdings. (Admin. Docs. 32, 70.¹)

12. On or about August 12 or 13, 2021, Great Falls Clinic submitted a \$2,405.23 cashier's check² in Evans' name to the Montana Department of Labor. The check represented the following amounts:

- a. \$41.83 for the 1 hour worked on May 3, 2021;
- b. \$334.64 for the 8 hours worked on May 14, 2021;
- c. \$1,673.20 for the 40 hours worked from May 17 through 21, 2021;
- d. \$41.83 for the 1 hour worked on May 25, 2021; and
- e. \$313.73 in penalties, representing 15% of \$2,091.50, which is the total of the foregoing amounts paid.

¹ Evans alleges the calculations and ostensible withholding amounts set forth in these documents are part of a fraud perpetuated by Great Falls Clinic with the use of false numbers. The Hearing Officer has not relied on any of these figures in reaching his conclusion herein, and instead has relied solely on the wage rate agreed upon by the parties and the hours actually worked by Evans.

² Due to uncertainties raised at hearing about the status of these funds, the Hearing Officer subsequently confirmed that the Wage and Hour Unit had received and was still in possession of a cashier's check in Evans' name for \$2,405.23.

13. Prior to starting work, on April 29, 2021, Evans completed an Employee Direct Deposit Enrollment Form. (Admin. Doc. 26.) The Form authorized ADP, on behalf of Great Falls Clinic, to deposit amounts owed to Evans into his US Bank account ending in 0036. *Ibid.*

14. At some point, Evans may have begun experiencing problems with his US Bank account, which he attributed to fraudulent activity on the account. At hearing, Evans could not recall when he learned of the problems with the US Bank account.

15. Evans never attempted to amend or change his direct deposit enrollment, nor did he advise either Great Falls Clinic or the Wage and Hour Unit during its investigation that the US Bank account was closed or that he was having issues accessing the account. Evans asserts he did not contact Great Falls Clinic regarding this change because he was prohibited from doing so.

16. There was no evidence presented at hearing showing Evans did not receive the monies deposited by Great Falls Clinic in his US Bank Account through May 14, 2021.

IV. DISCUSSION

A. Evans is Due the Wages Submitted by Great Falls Clinic

Evans asserts he is due his full salary for the weeks he was employed by Great Falls Clinic. Great Falls Clinic asserts Evans is only entitled to hourly pay for the actual time he worked and is not entitled to his full salary for those weeks.

In this particular case, there are two potentially-applicable bodies of law with regard to what constitutes wages—the Montana Wage Protection Act (MWPA), Mont. Code Ann. §§ 39-3-101 *et seq.*, and the federal Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 *et seq.* As discussed in more detail below, this decision applies the FLSA because there is no issue to be addressed under the MWPA that could potentially provide greater benefits to Evans. Rather, the FLSA provides greater potential benefits in this matter. *See* 29 U.S.C. § 218(a).

The FLSA provides coverage to employees on two different bases—enterprise coverage and individual coverage. With regard to enterprise

coverage, an “[e]nterprise engaged in commerce or in the production of goods for commerce” means, in relevant part:

[An enterprise with two or more employees that performs activities] in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit). . . .

29 U.S.C. § 203(r)(2)A). Here, the facts clearly show that Great Falls Clinic falls under the foregoing definition of an enterprise and is subject to jurisdiction under the FLSA.

Once coverage under the FLSA is established, a claimant has the burden of proving two remaining elements in an FLSA claim: (1) the existence of an employer-employee relationship; and (2) a violation of one or more of the statutory standards. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 686–87 (1946). There is no dispute that Evans was an employee of Great Falls Clinic. With both coverage and employment established, the remaining question becomes the amount of work, if any, which Evans performed without proper compensation. An employee seeking unpaid wages under the FLSA has the initial burden of proving work performed without proper compensation. *Id.*, 328 U.S. at 686-87. 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.*, 328 U.S. at 687.

Because the FLSA applies in this case, the Code of Federal Regulations (C.F.R.) also applies. Even if only the MWPA applied, however, Admin. R. Mont. 24.16.211(2)(f) expressly adopts 29 C.F.R. 541, subpart G. Contained in that subpart is 29 C.F.R. § 541.602, which concerns employees paid on a salary basis. Thus, the following analysis is identical under both the FLSA and MWPA.

Pursuant to 29 C.F.R. § 541.602, the prohibition against deductions from pay for salary basis employees is subject to the following, relevant exceptions:

(1) Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons,

other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

(2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.

* * *

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

29 C.F.R. § 541.602(b)(1), (2), and (6). When calculating the amount of a deduction from pay, “the employer may use the hourly or daily equivalent of the employee’s full weekly salary or any other amount proportional to the time actually missed by the employee.” 29 C.F.R. § 541.602(c).

With regard to week of May 10 through 14, 2021, Evans admitted at hearing he was traveling for personal reasons related to transportation of his daughter. This reason falls under the exception set forth in 29 C.F.R. § 541.602(b)(1) (“Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons. . . .”). The evidence also shows May 3 through 7 and 24 through 28, 2021, were Evans’ first and final weeks. These weeks fall under the exception of 29 C.F.R. § 541.602(b)(6) (“An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee’s full salary for the time actually worked. . . .”). Although Evans did call out sick on May 24, 2021, he did not have sick time to take, and so this also may be deducted pursuant to 29 C.F.R. § 541.602(b)(2) (“Deductions for such full-day absences also may be made before the employee has qualified under the plan. . . .”).

Based on the foregoing, Great Falls Clinic was not required to pay Evans his full, weekly salary during his second week of employment when he missed work for personal reasons, nor was it required to pay his full salary during either his first or last weeks of employment. 29 C.F.R. § 541.602(b)(1)-(2), (6). It was only required to pay him at his hourly rate of \$41.83 per hour during those three weeks. 29 C.F.R. § 541.602(c).

Similarly, with specific respect to Evans’ last week of employment, although there is no requirement that he be paid for more than the hours he worked during his terminal week, it is noted that Evans would have worked on Monday, May 24, 2021, but for calling out sick. Because Evans was probationary, it does not appear he had yet earned any sick leave. Under 29 C.F.R. § 541.602(b)(2), if a salaried employee has yet to earn sick leave, pay may be deducted in full day increments. As such, even though Evans did not work on May 24 due to sickness, because he missed a full day, it is not compensable. See 29 C.F.R. § 541.602(b)(2), (6).

On the basis of the foregoing, Evans was due the following wages:

- \$ 533.33 for 12.75 hours worked the week of May 3 – 7, 2021.

- \$ 334.64 for 8.00 hours worked the week of May 10 – 14, 2021.
- \$ 1,673.20 for 40 hours worked the week of May 17 – 21, 2021 (*i.e.*, his full weekly salary).
- \$ 41.83 for 1.00 hour worked the week of May 24 – 28, 2021.

Great Falls Clinic paid Evans a gross amount of \$491.50 (less taxes³) for 11.75 hours on May 14, 2021, leaving 50 hours, or \$2,091.50, unpaid at that time. Subsequently, on or about August 12 or 13, 2021, Great Falls Clinic submitted a cashier's check to the Department in Evans' name which included not only the \$2,091.50 in unpaid wages, but also a 15% penalty on those monies of \$313.73. After taking into account the funds remitted to the Department, Great Falls Clinic has, in fact, submitted payment due Evans for all the hourly wages he was due during his tenure with the Clinic.⁴

With regard to the retention bonus amount, the full \$20,000.00 was paid in full and there is no dispute concerning any amounts still due or owing. If there are any wage-related payments which Evans believes were deposited but not properly made available to him by US Bank, that is an issue which cannot be addressed by this tribunal, and which Evans must address directly with his bank.

B. This Tribunal Does Not Have Jurisdiction Over Evans' Travel Reimbursement Claim

Evans requested reimbursement for \$7,000.00 in moving expenses. In support of his claim, Evans submitted an April 27, 2021, offer letter which stated Great Falls Clinic would provide up to \$7,000.00 for moving expenses with sufficient documentation. (Admin. Doc. 72.) Administrative proceedings are limited in jurisdiction by both statute and rule, however, and only "wages" are recoverable in a wage and hour action. *See* Mont. Code Ann. § 39-3-201(6).

³ Evans asserts no taxes should have been taken from any wages owed him. Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency do not affect a determination of whether someone has been paid appropriate wages. *See* 29 C.F.R. § 531.38. Furthermore, this tribunal does not have jurisdiction for recovery of taxes or other withholdings. *See* Mont. Code Ann. §§ 39-3-201 *et seq.*

⁴ Evans has not yet received these monies because they have been held by the Department pending the outcome of his appeal on this litigation, as is required under the law. *See* Admin. R. Mont. 24.16.7551(3) ("Money paid pursuant to a determination or redetermination will not be disbursed prior to the running of appeal periods unless the department is notified in writing that payment resolves the claim").

Evans' claim therefore raises the question of whether moving expenses are considered wages.

Under the FLSA, the term "wages" is not statutorily defined, but it is clear there is no allowance or requirement under the FLSA for recovery of expense reimbursement. Indeed, unreimbursed employee expenses are only contemplated in the context of whether reimbursement may be included when calculating wages paid for purposes of minimum wage and overtime. See 29 U.S.C. § 203(m). Under the MWPA, however, "wages" are defined:

"Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and gratuities that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

Mont. Code Ann. § 39-3-201(6)(a). On its face, expenses are not included in the MWPA's definition of wages, and are therefore not recoverable in a wage and hour action.

The Montana Supreme Court's caselaw supports the conclusion that expenses are not recoverable as wages. In *Johnston v. K & T Mfg.*, an executive pilot, Johnston, was normally paid by his employer for incidental expenses after submitting receipts. *Johnston v. K & T Mfg.*, 191 Mont. 458, 459, 625 P.2d 66, 66 (1981). After being terminated, Johnston filed suit for recovery of both wages and expenses. *Id.*, 191 Mont. at 459, 625 P.2d. at 66-67. The trial court found against Johnston on all of his claims except that he had been owed \$171.46 in unreimbursed expenses at the time he filed suit (the amount was eventually reimbursed). *Ibid.* On appeal, Johnston argued additional penalties were due on amounts not timely paid him. *Id.*, 191 Mont. at 460, 625 P.2d. at 67. The Supreme Court expressly found that expenses were not "wages" under Mont. Code Ann. § 39-3-201. *Ibid.* Rather, the expense payments were for employee indemnification pursuant to Mont. Code Ann. § 39-2-701, and therefore did not arise under the wage and hour statutes.

Here, as in *Johnston*, Evans' claim for moving expenses is not a claim for wages. And unlike *Johnston*, it cannot even be said that the moving expenses

relate to indemnification because they were not expended as a direct consequence of the discharge of his duties or at the employer's directions—in other words, Evans was not engaged in work when he incurred the expenses. Evans' right to reimbursement is purely contractual.

Because claims for reimbursement of moving expenses associated with employment are not cognizable in administrative cases brought under the wage and hour laws, they are not within the jurisdiction of this tribunal to render judgment. See Mont. Code Ann. §§ 39-3-201 *et seq.*; *State v. Holman Aviation*, 176 Mont. 31, 575 P.2d 925 (1978) (regarding limited jurisdiction of administrative wage and hour proceedings); see also Admin. R. Mont. 24.16.2519(2)(a) (regarding calculation of regular rate; payment for expenses are not compensation for services rendered). Travel expenses do not qualify as wages, therefore, the Hearing Officer has no authority to award payment of such expenses to Evans.

Given that this tribunal lacks jurisdiction to even address non-wage claims, the Hearing Officer concludes dismissal of the claim related to moving expenses is warranted pursuant to M. R. Civ. Proc. 56. This decision does not make any finding as to whether moving expenses could be recovered in another forum, only that this tribunal has no jurisdiction to hear the claim.

C. Great Falls Clinic is Not Subject to Penalties Beyond 15%

Under the FLSA, if unpaid wages are awarded, liquidated damages are equal to the amount of unpaid wages recovered. 29 U.S.C. § 216(b). 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). In the absence of a finding that the employer acted in good faith and on reasonable belief that it was complying with the law, liquidated damages are mandatory. 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.

The Montana Code also provides in relevant part that, a penalty must be “assessed against and paid by the employer to the employee in an amount not to exceed 110% of the wages due and unpaid.” Mont. Code Ann. § 39-3-206(1). However, the Administrative Rules also provide that, “[i]n cases where the wages claimed are paid by the employer either before or after receipt of the initial letter commencing the claim . . . and prior to the issuance of a determination, no penalty will be imposed” absent special circumstances set forth in Admin R. Mont. 24.16.7556. See Admin. R. Mont. 24.16.7551(1). Furthermore, “the department will reduce the penalty to 15% of the wages determined to be due if the employer pays the wages found due in the time period specified in the determination as well as a penalty equal to 15% of that amount.” Admin. R. Mont. 24.16.7566(1)(b).

Here, liquidated damages are not appropriate since there has been no award of unpaid wages beyond what Great Falls Clinic already deposited with the Department. Furthermore, given the short-term duration of Evans’ employment, his probationary status, and the size of the bonus he received, there is no evidence Great Falls Clinic was acting in bad faith when it initially counted those substantial monies as an offset of wages due upon termination. Because Great Falls Clinic already deposited those funds and was assessed a 15% penalty of \$313.73 at the time, that penalty is deemed appropriate under the circumstances. See Admin. R. Mont. 24.16.7566(1)(b). No additional penalty is warranted. *Ibid.* Furthermore, Evans did not introduce evidence of any special circumstances such as prior violations that resulted in adverse determinations of record which would warrant an additional penalty. See Admin R. Mont. 24.16.7556.

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*, 176 Mont. 31, 575 P.2d 925 (1978).

2. The jurisdiction of the Department of Labor and Industry is limited to determinations of compensation for wages under the wage and hour laws. *Ibid.* Evans’ claim for moving expenses is not a wage claim, and is dismissed.

3. The burden of proof is on the employee in an action to recover compensation to establish, by a preponderance of the evidence, the elements of a case entitling him to recovery, including that the employee has performed

work for which he has received inadequate compensation. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

4. Great Falls Clinic was not required to pay Evans his full, weekly salary during his second week of employment when he missed work for personal reasons, nor was it required to pay his full salary during either his first or last weeks of employment pursuant to rules which do not require full pay during either week. 29 C.F.R. § 541.602(b)(1)-(2), (6). It was only required to pay him at his hourly rate. 29 C.F.R. § 541.602(c).

5. Evans has shown by a preponderance of the evidence that he was not properly paid for 50 hours of work performed between May 3 through May 25, 2021. At an hourly rate of \$41.83, Great Falls Clinic owes Evans \$2,091.50. 29 C.F.R. § 541.602(b)(1)-(2), (6); 29 C.F.R. § 541.602(c).

6. A 15% penalty on unpaid wages of \$313.73 is warranted. Admin. R. Mont. 24.16.7566(1)(b).

VI. ORDER

IT IS THEREFORE ORDERED THAT:

1. Insley D. Evans' claim with regard to moving expenses is DISMISSED with prejudice for lack of jurisdiction.

2. Great Falls Clinic, having already tendered a cashier's check to the Employment Relations Division, made payable to Insley D. Evans in the amount of \$2,405.23, representing wages and penalty, has satisfied its obligation for the amount awarded herein and need not pay additional funds.

DATED this 20th day of May, 2022.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CHAD R. VANISKO
CHAD R. VANISKO
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