

PINELLAS COUNTY OFFICE OF HUMAN RIGHTS

LESA COLVIN,

Complainant,

v.

CASE NUMBER: PCOHR-WT-22-00028

NEW DIRECTION CAREER SERVICES, INC.,

Respondent.

FINDINGS AND ORDER

The above referenced complaint of wage theft was heard before the undersigned Special Magistrate on October 24, 2022.

The Complainant, and/or their representative:

was/were present to prosecute the matter; or.

was not/were not present to prosecute the matter, and therefore this Complaint is dismissed.

The Respondent, and/or their representative:

was/were present to be heard on this matter; or.

was not/were not present to be heard on this matter.

The parties, and/or their representative(s), if present, were afforded the opportunity to present witnesses and evidence, and to conduct cross-examination.

Based on that testimony and evidence presented by the parties, if any, I enter the following findings and order:

FINDINGS

1. The Complaint of wage theft:

is timely; or

is not timely.

2. The Complaint of wage theft:

does allege a claim for at least the "threshold amount" of sixty dollars (\$60.00) and no more than fifteen thousand dollars (\$15,000.00); or

does not allege a claim for at least the "threshold amount" of sixty dollars (\$60.00) or alleges an amount more than fifteen thousand dollars (\$15,000.00), and this Complaint is, therefore, dismissed.

3. The Respondent(s):

was/were provided notice of the complaint pursuant to §§70-307(b)(2) and 70-307(g)(2) of the Code of Ordinances of Pinellas County, Florida; or

was not/were not provided notice of the complaint pursuant to §§70-307(b)(2) and 70-307(g)(2) of the Code of Ordinances of Pinellas County, Florida

4. Conciliation of this dispute:

was attempted pursuant to §70-307(g) of the Code of Ordinances of Pinellas County, Florida; and was not successful

was not attempted pursuant to §70-307(g) of the Code of Ordinances of Pinellas County, Florida, as it was rejected by one or both parties

5. Notice of failed conciliation:

was provided to the parties in accordance with §70-307(c)(5) of the Code of Ordinances of Pinellas County, Florida; or

was not provided to the parties in accordance with §70-307(c)(5) of the Code of Ordinances of Pinellas County, Florida; or

not applicable.

6. A Notice of Hearing for this date, time and location, before the undersigned Special Magistrate:

was provided to the parties of record, or their representative(s); or

was not provided to the parties of record, or their representative(s).

7. The Complainant:

was an employee of the Respondent(s); or

was not an employee of the Respondent(s) (because of independent contractor status or otherwise) and this Complaint is, therefore, dismissed.

8. The evidence:

establishes the Complainant and Respondent(s) agreed upon a wage rate of \$40K base salary, plus sick leave and vacation pay accrues at 2 hours/pay period.

does not establish the Complainant and Respondent(s) agreed upon a wage rate.

9. The evidence:

- a. supports a finding that Complainant earned unpaid wages in the amount of **\$2,461.44**, which is due and owing from Respondent(s). This amount is calculated as follows:

I deny Complainant's claim for benchmark incentive pay. Complainant did not prove that Respondent promised to pay her the benchmark incentive. On the record before me, I am not persuaded Complainant ever returned a signed copy of the Performance Standards document, accepting the conditions therein, while she was employed. Moreover, according to the unrebutted testimony, the four benchmarks were in the conjunctive, meaning ALL had to be met – Complainant would have had to meet the monthly placement goal in order to receive the corresponding benchmark incentives, but she only met the placement goal one month.

I approve Complainant's claim for Paid Sick Leave and for Paid Vacation Leave. The offer letter states that these amounts "[a]ccrue... at 2 hours per pay period." The Respondent agrees Complainant never requested usage of these benefits while employed. The Respondent argues that the company intended these benefits to be "use it or lose it," but acknowledges the Employee Handbook does not state that; it does not state either way. Typically, under Florida law, vacation pay is an item of wages and sick leave is a benefit. Consequently, absent evidence proving the contrary was agreed upon, accrued but unused vacation pay is an item of wage that must be paid out upon termination of employment, absent an explicit reservation by the employer to the contrary; Respondent acknowledged its Handbook made no such explicit reservation. Moreover, the Handbook references payout of "vested benefits" upon termination. While the Respondent testified that this related solely to 401k, life insurance or those kinds

of benefits, they did not state as much in the Handbook and I am left to conclude the term also includes within its ambit Paid Sick Leave, which was, in Complainant's offer letter, specifically stated as a benefit.

As to sick and vacation leave, Complainant proved she accrued 64 hours of Paid Vacation Leave and 64 hours of Paid Sick Leave. Therefore, she had an accrued but unused leave bank of 128 hours. At her hourly rate of pay (\$19.23), the total amount of accrued but unused Paid Vacation and Paid Sick Leave is **\$2,461.44.**

- b. supports a finding that, outside the confines of any effort to mediate this Complaint of Wage Theft (whether or not such mediation effort was pursuant to §70-307(g) of the Code of Ordinances of Pinellas County, Florida, as such mediation communications are privileged and confidential except where disclosure is permitted or required by law, per Fla. Stat. § 44.405), the Respondent offered to pay the Complainant the amount of \$_____, in writing prior to this hearing. Pursuant to §70-308(a)(1)(A) of the Code of Ordinances of Pinellas County, Florida, therefore, this amount is **not** subject to automatic multiplication for calculating an award.
- c. supports a finding that the amount of wages earned by the Complainant and unpaid by the Respondent in 9.a., which was not offered in payment to the Complainant by the Respondent in 9.b. to be **\$2,461.44.**
- d. Pursuant to §70-308(a)(1) of the Code of Ordinances of Pinellas County, Florida, the amount recited in 9.c. is to be doubled for payment by the Respondent to the Complainant and amounts to **\$4,922.88.**
- e. does not support a finding that Complainant earned unpaid wages, and this Complaint is, therefore, dismissed.
10. Respondent engaged in prohibited retaliation, for which §70-308(a)(2) of the Code of Ordinances of Pinellas County, Florida allows an award of quantifiable damages established at hearing for lost wages, expenses incurred in gaining alternative employment, or other, which I find to be in the amount of \$_____, calculated as follows:
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11. Pinellas County, through its Office of Human Rights, has expended resources administering this complaint by way of postage costs, the fair and reasonable value of which has been provided by an affidavit from a staff member of the Office of Human Rights. I have reviewed this affidavit and find these postage costs in the amount of **\$46.60**, to be fair and reasonable and payable to the Pinellas County Board of County Commissioners pursuant to §70-308(a)(3).

12. The evidence:

supports

does not support

a finding the Employee brought this complaint without any basis in law or fact pursuant to §70-308(a)(4).

Order

Based on the foregoing findings, I order:

Respondent shall pay Complainant wages as determined in finding 9.b., above, in the amount of [n/a], plus double the amount of wages earned by Complainant but not offered for payment by the Respondent as determined in finding 9.d., above, in the amount of **\$4,922.88**, plus damages for retaliation as determined in finding 10, above, in the amount of [n/a] for a total order of payment from Respondent to Complainant of **\$4,922.88**

Respondent must pay this ordered amount within thirty (30) days pursuant to §70-308(b) of the Code of Ordinances of Pinellas County, Florida. Respondent may, however, elect to request one (1) extension of an additional fourteen (14) days to pay this ordered amount pursuant to §70-308(b)(1) of the Code of Ordinances of Pinellas County, Florida. Respondent's request for an additional fourteen (14) days to pay this ordered amount must be in writing and must be received by the Pinellas County Office of Human Rights within thirty (30) days of this order.

Should Respondent either fail to pay this ordered amount within thirty (30) days or, having successfully obtained a one-time extension of fourteen (14) days, fail to pay this ordered amount within that additional fourteen (14) days, pursuant to §70-308(b)(2) of the Code of Ordinances of Pinellas County, Florida, the amount indicated in finding 9.c., above, shall be trebled, to **\$7,384.32**, and Respondent is then ordered to pay Complainant the amount in 9.b. of my findings of [n/a], plus treble the amount of 9.c. of my findings of **\$7,384.32**, plus damages for retaliation in the amount of [n/a] for a total award of **\$7,384.32**.


Respondent or Complainant shall pay to the Pinellas County Board of County Commissioners the amount of **\$46.60** for postage costs in administering this complaint.

The Complaint be dismissed, with no award to Complainant or Pinellas County.

I reserve as to an award and order of reasonable attorney's fees pursuant to §70-308(a)(2) and/or §70-308(a)(5) of the Code of Ordinances of Pinellas County, Florida, pending consideration of documentation and information in support thereof. Any award of reasonable attorney's fees will be included in a Final Order.

DONE AND ORDERED today, October 24, 2022,

PINELLAS COUNTY OFFICE OF HUMAN RIGHTS,
WAGE THEFT PROGRAM

By: 
Christopher M. Shulman
Special Magistrate

CERTIFICATE OF SERVICE

I certify that a copy of these Findings and Order have been furnished to the parties of record to this complaint, or their legal representative(s) by ___ U.S. mail, ___ fax, or X e-mail on this 24 day of October, 2022.

PINELLAS COUNTY OFFICE OF HUMAN RIGHTS

By: *Ronisha Jackson*
Ronisha Jackson
Equal Opportunity Specialist /
Wage Theft Coordinator