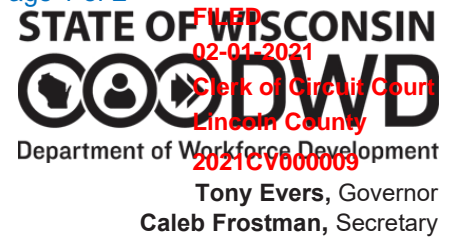


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July 29, 2020

Patrick Woller
N2739 Alexander Lake Rd
Merrill, WI 54452Semling Menke Company Inc d/b/a SEMCO
605 N Ohio St
Merrill, WI 54452RE: Patrick Woller v. SEMCO
ERD Case No. LS202000205**FINAL DETERMINATION**

This administrative proceeding arose as the result of a written appeal submitted to the Equal Rights Division ("the Division"). The Division routinely grants parties involved in unpaid wage complaints with one administrative review of the complaint record. The review helps ensure that the Division's initial determination is supported by facts and is a reasonable interpretation of Wisconsin's labor standards laws. Due to a mailing error, the Respondent did not receive the initial determination until weeks after the Division forwarded the case to the Department of Justice for litigation. However, this error did not affect the judicial process and only affected the timeliness of the Respondent's administrative review request.

The Division received the Complainant's complaint alleging a business closing law violation on February 5, 2020. The Division also received a complaint from Laurie Lee. The Division determined that the Respondent violated Wis. Stat. § 109.07 and therefore owed all affected employees for wages and benefits. After reviewing the file and additional information, I am affirming the initial determination.

The Respondent argues in its administrative review request letter that the initial determination miscalculated the recovery period per Wis. Stats. § 109.07(3)(c). The Respondent asserts that it informed employees of the closing on December 28, 2019, but this is not supported by evidence. Based on the dates listed on the business closing notices provided, the Respondent informed employees of the closing on December 30, 2019. Therefore, the recovery period identified in the initial determination is correct.

Furthermore, the initial determination properly determined that the Respondent did not meet exceptions provided in Wis. Stat. § 109.07(6)(a) and (d). The Respondent's lender limited its financial support months prior to the Respondent's closing and the Respondent began seeking buyers shortly thereafter. These changes were not sudden, as the Respondent experienced financial struggles for years prior. It does not appear that the business closing was unforeseeable, and the Respondent could have notified employees prior to November 1, 2019. The Respondent also states that it meets the exception identified in Wis. Stat. § 109.07(6)(a), but this argument is unpersuasive as well. The sale of the business occurred after the business closing and the buyer did not agree to hire substantially all affected employees with not more than a 6-month break in employment. Instead, the buyer agreed to hire former employees "to the extent positions are available".

Based on the foregoing, it appears that the Respondent violated § Wis. Stat. 109.07. An employer who violates the business closing notice requirement is liable to each affected employee for an amount equal to back pay and benefits for the period of violation up to 60 days. The purpose of the statute is to provide affected employees with compensation for the amount of time they should have known a business closing was imminent. Deducting wages earned during the recovery period as the Respondent suggests in its administrative review would defeat the purpose of the business closing statutes.

Therefore, the Division will refer the claims, case record, and this Determination to the Department of Justice.

Plaintiff's Exhibit B

Sincerely,

Jeff Rayford
Investigations Section Chief

Cc: Complainants
Respondent
Yingtao Ho, Attorney for Complainant
Heath Mynsberge, Attorney for Respondent