

NOTICE OF PETITION FOR DECLARATORY ORDER

On August 25, 2009, the Department of Labor & Industries (Department) received a Petition for a Declaratory Order under RCW 34.05.240 from the Washington Unit of the Wally Byam Caravan Club International (Washington Unit) and the Washington Land Yacht Harbor, Inc. The petition requests a ruling from the Department that individuals who provide volunteer labor that directly benefits the Washington Land Yacht Harbor, Inc., the wholly-owned, for-profit subsidiary of the Washington Unit, are not employees subject to the requirements of the Washington Minimum Wage Act, RCW 49.46.

Attached is the original Petition for Declaratory Order and attached declarations.

Pursuant to RCW 34.05.240(3), this Notice of Petition for Declaratory Order is provided to all persons to whom notice is required by law, and to any other interested person.

ENTERED at Tumwater, Washington this 9th day of September, 2009.

CULLEN PALMER LAW OFFICE LLP

WILLIAM E. CULLEN
DAVID K. PALMER
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August 18, 2009

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AUG 19 2009

Employment Standards

Department of Labor and Industries
Employment Standards
Attn: Mr. Richard Ervin, Program Manager
P.O. Box 44510
Olympia, WA 98504-4510

Re: Washington Unit of the Wally Byam Caravan Club International
Washington Land Yacht Harbor, Inc.
Petition for Declaratory Order concerning the Washington Minimum Wage Act or **MWA**

Dear Mr. Ervin:

This letter is a petition for a declaratory order under RCW 34.05.240. Specifically, the Washington Land Yacht Harbor, Inc. requests a ruling that members of the Washington Unit of the Wally Byam Caravan Club International providing volunteer labor are not employees under the Washington Minimum Wage Act, RCW Chapter 49.46. This letter refers to the Washington Unit of the Wally Byam Caravan Club International as the '**Washington Unit.**'

Background

The Washington Unit is a local unit of the Wally Byam Caravan Club International (the "**WBCCI**"). The WBCCI is a non-profit corporation for Airstream owners, dedicated to the spirit of friendship and common interest in RV traveling.¹ It was originally organized in the 1950s. Today, the WBCCI is active in the United States, Canada, and other foreign countries.²

Two traditional activities of the WBCCI are **caravans** and **rallies**.

Caravans are group trips in Airstream RVs. These trips are less expensive than commercial tours. Caravans go into the backcountry and small towns as well as the large cities.³

The WBCCI supports many rallies each year. Different rallies have different activities . . . fashion, pet and hobby shows . . . games and contests of every sort . . . square, round and ballroom dancing . . . informational classes on RV safety and maintenance . . . and instruction sessions embracing most hobbies. Dinners, potlucks and eating out are part of these weekend agendas. Foods are sometimes prepared in unusual and different ways, as customs vary from one

¹ http://www.wbcci.org/index.cfm?pageSRC=FAQs&Q_ID=3&step=2 (searched July 29, 2009).

² http://www.wbcci.org/index.cfm?pageSRC=FAQs&Q_ID=5&step=2 (searched July 29, 2009).

³ <http://www.wbcci.org/index.cfm?pageSRC=Caravans> (searched July 29, 2009).

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locale to another. Primarily, rallies are social, a chance to meet new people and to renew old friendships.⁴

In the United States, Canada and Mexico, the WBCCI is organized into 12 regions. Each region is further subdivided into units. The Washington Unit is one of eight units in Region 10. The Washington Unit is the largest unit in the WBCCI, with approximately 401 members.⁵

An individual must meet two requirements to join the WBCCI. First, the individual must own an Airstream RV. Second, an individual must pay membership dues to the WBCCI, either as a member at large or as a unit member.⁶ Hence, members of the Washington Unit also become members of the WBCCI.

The Washington Unit is headquartered on 61 acres at 9101 Steilacoom Road S.E., Olympia, WA 98513. These headquarters include the Terraport – an RV park facility for visiting Airstreamers, Harmony Hall – a 13,000 square foot meeting facility where many of the Washington Unit's activities are held, and the Land Yacht Harbor - a large residential mobile home park.⁷ Since its incorporation, the Washington Unit has leased these mobile home lots to its members with 99-year leases.

These headquarters have provided a focal point for club activities. Caravans can start or meet here. The Washington Unit uses these facilities to host rallies. Harmony Hall is the center of the Washington Unit's club and social activities.

The Washington Unit is a Washington nonprofit corporation, first incorporated under RCW Chapter 24.04 in 1963. It is exempt from federal income tax under IRS Code §501(c)(7) as a social club. The Washington Unit is a membership nonprofit corporation. Its board of directors is called the "**Board of Trustees.**" Although the Washington Unit is a "unit" of the WBCCI, it is not a subsidiary of the WBCCI; the Washington Unit is a nonprofit corporation in its own right. Its members elect the trustees to the Board of Trustees. The Washington Unit has its own officers and it files its own tax returns.

Until recently, the Washington Unit held title to the real and personal property used for its club functions, including the Terraport, Harmony Hall and the Land Yacht Harbor. Over the years, many members of the Washington Unit have volunteered to help maintain this property. These volunteer tasks have included:

Roof cleaning and repair

⁴ http://www.wbccci.org/index.cfm?pageSRC=FAQs&Q_ID=6&step=2 (searched July 29, 2009).

⁵ <http://www.washingtonunitwbcci.org/index.html> (searched July 29, 2009).

⁶ <http://www.wbccci.org/index.cfm?pageSRC=Membership> (searched July 29, 2009).

⁷ <http://www.washingtonunitwbcci.org/index.html> (searched July 29, 2009).

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Lawn mowing
Tree planting and pruning
Collecting of pruning debris and storm blow-down debris
Hauling of pruning debris and storm blow-down debris to County dump
Shrubbery planting and pruning
Flower garden development and maintenance
Irrigation system installation and maintenance
Road edging
Road sweeping
Road surface repair
Snow removal from roadways
Clean storm water sediment boxes
Trimming of weeds and shrubs from perimeter fences
Brush removal
Water system development, upgrades and management
Read and record deep-well water pump meters
Repair electrical, sewer and water damage to Terraport by visitors
Testing and reporting of water quality to Health Dept.
Plumbing repair
Facilities and grounds winterizing and de-winterizing
Irrigation and firefighting equipment
Janitorial services for Harmony Hall
Kitchen cleanup after social events
Collect and deliver recycle materials
Maintain and repair tractors, mowers and other machinery
Administration
Financial management
Provide on-call day or night emergency assistance for heat, water and electricity

The members of the Washington Unit perform these chores for a variety of reasons. Many members are retired, but want to continue an active lifestyle. Some enjoy the tasks, such as driving the rider mowers. Also, almost 200 members live at the Land Yacht Harbor and those members want to maintain their neighborhood. These dedicated workers contribute to the lower cost of living for all residents, many living on fixed incomes. They perform many routine neighborhood tasks that the Washington Land Yacht Harbor, Inc. would otherwise contract to outside providers.

Historically, most of the chores are performed by a small group of people. Generally, out of these 400+ members, between 20 and 30 perform most tasks.

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This year, the Washington Unit completed a major corporate reorganization. For income tax purposes, the Washington Unit formed a wholly-owned, for-profit subsidiary, the Washington Land Yacht Harbor, Inc. (This new corporation should not be confused with the nonprofit corporation that went by the same name. The nonprofit Washington Land Yacht Harbor, Inc. merged into the Washington Unit in 1970 and no longer exists.)

As part of this reorganization, the Washington Unit conveyed all real estate that it owned to the Washington Land Yacht Harbor, Inc. The Washington Unit assigned its interest in all of the 99-year leases. It transferred most of its personal property to Washington Land Yacht Harbor, Inc. For this property, the Washington Land Yacht Harbor, Inc. issued all its stock to the Washington Unit; the Washington Unit is sole shareholder of the Washington Land Yacht Harbor, Inc.

This reorganization has been a profound change for the Washington Unit's corporate operation. The Washington Land Yacht Harbor, Inc. has its own board of directors. As the sole shareholder, the Washington Unit elects these directors. Although all board members of the Washington Land Yacht Harbor, Inc. are members of the Washington Unit, none are on the Washington Unit's Board of Trustees. The Washington Land Yacht Harbor, Inc. and the Washington Unit have separate officers. It is expected that the Washington Unit will lease space from the Washington Land Yacht Harbor, Inc. The Washington Land Yacht Harbor, Inc. will maintain its own financial records and file a tax return as a for-profit corporation. Under federal income tax law, the Washington Land Yacht Harbor, Inc. is limited in the amount of dividends that it can distribute to the Washington Unit. The Washington Land Yacht Harbor, Inc. will distribute no dividends to members of the Washington Unit, or to any other individuals for that matter.

The Washington Land Yacht Harbor, Inc. will not require any member of the Washington Unit to provide services.

Even with these changes, the reasons why members volunteer to work around the facility remain unchanged. The facility remains the center of the club's activities and the members who lease lots will continue to live in mobile homes on those lots. People will volunteer for the same reasons -- to maintain an attractive location for club activities and a pleasant neighborhood.

Question

Can members of the Washington Unit volunteer to work at Washington Land Yacht Harbor, Inc.'s facilities, providing services that members have provided directly to the Washington Unit for decades?

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Proposed Conclusion

Members of the Washington Unit may voluntarily perform services for the Washington Unit, even when those services directly benefit the wholly-owned subsidiary, the Washington Land Yacht Harbor, Inc. The Washington Unit must comply with RCW 49.46.010(5)(d).

Analysis

The Department of Labor and Industries specifically addresses volunteer labor used by a for-profit corporation in Administrative Policy No. ES.A.1. In that policy, the Department states:

“Volunteers are not allowed in a ‘for-profit’ business. Any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer, who permits any individual to work, is subject to the provisions of the MWA.”

Department of Labor and Industries Administrative Policy No. ES.A.1, page 4.

In the very first paragraph of this Administrative Policy, the Department of Labor and Industries states:

“This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.”

The RCW standards are found in RCW Chapter 49.46. Chapter 49.46 is the Minimum Wage Act (the ‘MWA’). RCW 49.46.020(4)(a) states:

*“Beginning on January 1, 2001, and each following January 1st as set forth under (b) of this subsection, every **employer** shall pay to each of his or her **employees** who has reached the age of eighteen years wages at a rate of not less than the amount established under (b) of this subsection.”*

(Emphasis added.) (RCW 49.46.020(4)(b), the “(b)” referred to in the previous paragraph, describes the manner in which the minimum wage is calculated annually.)

RCW 49.46.010 defines “employer” and “employee.” RCW 49.46.010(4) says, “Employer” includes any individual, partnership, association, corporation, business trust, or any person or

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group of persons acting directly or indirectly in the interest of an employer in relation to an employee.”

The definition of “employee” is more interesting here. Under RCW 49.46.010(5), an “Employee’ includes any individual **employed** by an employer....” (Emphasis added.) RCW 49.46.010(3) says:

“‘Employ’ includes to permit to work....”

Here, the issue is whether Washington Unit members volunteering to perform jobs or chores that benefit the Washington Land Yacht Harbor, Inc. are employed as employees under the Washington Minimum Wage Act.

The Washington Unit was specifically exempt. RCW 49.46.010(5)(d) excludes from the definition of “employee:”

“Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously.”

I was unable to find any regulations in the WAC or Washington Administrative Code or any court cases that provide further guidance.

RCW 49.46.010(5)(d) should apply here. The services are volunteered by some but not all members of the Washington Unit. No person is required to provide services as a condition of membership. Members of the Washington Unit have provided these services historically for decades. These services will continue to directly benefit the Washington Unit. The Washington Unit will continue to use these facilities for caravans and rallies. Washington Unit expects to continue using Harmony Hall for the same types of activities that this building has been used for historically. In short, members want to volunteer for the same reasons that they have historically volunteered: to promote the lifestyle of membership in the Washington Unit and the WBCCI.

In conclusion, Washington Unit members who volunteer their services at property owned by the Washington Land Yacht Harbor, Inc. are not its employees and are exempt from the MWA under RCW 49.46.010(5)(d).

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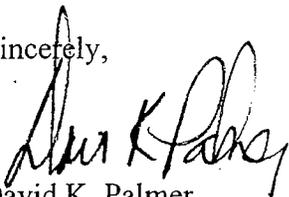
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Please let me know if you need additional information. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Palmer". The signature is written in a cursive style with a large initial "D".

David K. Palmer

Enclosures
Cc: clients

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Employment Standards

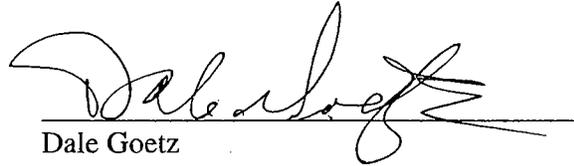
Statement Concerning My Volunteer Work

I, Dale Goetz, declare and state:

I am a member of the Washington Unit of the Wally Byam Caravan Club International (the "Washington Unit"). I live at 9101 Steilacoom Road S.E. #188, Olympia, Washington 98513.

I am willing and able to do most volunteer work for the operation of the Washington Land Yacht Harbor, Inc. at 9101 Steilacoom Road S.E., Olympia, Washington 98513.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Dated this 15 day of AUGUST, 2009 in Olympia, Washington.


Dale Goetz

Statement Concerning My Volunteer Work

I, Dr. Robert L. Metcalf, declare and state:

I am a member of the Washington Unit of the Wally Byam Caravan Club International (the "Washington Unit"). I live at 9101 Steilacoom Road S.E. #109, Olympia, Washington 98513.

After retiring from teaching, I spent ten years traveling with an Airstream trailer in the US, Canada, and Mexico. Then, with my wife of fifty-eight years, I purchased a home in Land Yacht Harbor. By purchased, I mean that we agreed to a 99-year lease with the Washington Unit. Recently, my lease was transferred to Washington Land Yacht Harbor, Inc.

I have performed a variety of tasks at the Washington Unit for thirteen years. I have never regretted my decision to provide service to the Washington Unit because of the personal enjoyment I receive from being allowed to do so. I enjoy being able to live among so many friends and to actively participate in and help manage Washington Unit activities. I do not expect to be paid for what I do for the Washington Unit or the Washington Land Yacht Harbor, Inc. I consider my service as a donation to an organization that has given me such great satisfaction, and I would very much like to continue my service for as long as I am able; my wife, who is now corresponding secretary for the Washington Unit, feels the same way about her volunteer work.

I served as an officer of the Washington Unit for four years. I acted as committee chairman for numerous activities that included waste and recycle management, repair and maintenance tasks, rally registrar, financial reports, schematic preparation and printing, meeting hall and building maintenance, and assisting in the running of numerous rallies both at the Washington Unit and at other out of park locations.

I am currently the registrar and waste manager for the Washington Unit and one of the directors of the Washington Land Yacht Harbor, Inc.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Dated this 14 day of August, 2009 in Olympia, Washington.



Dr. Robert L. Metcalf

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Statement Concerning My Volunteer Work

I, Paul Perryman, declare and state:

I am a member of the Washington Unit of the Wally Byam Caravan Club International (the "Washington Unit"). I live at 9101 Steilacoom Road S.E. #57, Olympia, Washington 98513.

I have mowed and performed other light work duties for the Washington Unit for over 8 yrs that I have lived here. I love it and look forward to doing it. I love to ride the mower and it gives me something to do now that I'm retired. I have never been paid and hope that I can continue to volunteer for these jobs for the Washington Unit at the Washington Land Yacht Harbor, Inc. as long as health will let me.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Dated this 14th day of August, 2009 in Olympia, Washington.


Paul Perryman

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Statement Concerning Our Volunteer Work

We, Paul & Charli Westerfield, declare and state:

We are members of the Washington Unit of the Wally Byam Caravan Club International, (the "Washington Unit"). We live at 9101 Steilacoom Road S.E. #141, Olympia, Washington 98513.

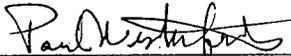
The residents of the Land Yacht Harbor and members of Washington Unit, of WBCCI have done most of the maintenance labor in the Harbor since the 1960's. We take pride in our park, and enjoy working together to achieve and keep our pleasant surroundings. We enjoy keeping up the planting beds around the Hall, in the median, and at the entrance to our park. The camaraderie and banter we exchange while doing these jobs form lifelong friendships. Another reason that we like to do our own work is to manage our cost of living, as many of us are retirees living on fixed incomes

Although we are aging the outdoor activities help keep us active and enjoying a healthier lifestyle than if we just sat around watching hirelings do the jobs. There are some projects that we undertook 20 or 30 years ago that we no longer consider doing. We now employ professionals for strenuous or dangerous jobs and those requiring licensed craftsmen. We wish to continue to do those tasks that we can safely and legitimately do ourselves. Over our many years of volunteerism we have exercised good judgment and safe practices. Safety first is always emphasized.

None of us are employees of WLYH. Why then would those who enforce the Minimum Wage Act feel the need to prevent our residents from performing maintenance of our common areas, as volunteers? We would appreciate being allowed to continue to help with the upkeep of our park as we always have.

Thank you for your consideration.

We certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Dated this 15th day of August, 20 09 in Olympia, Washington.



Paul Westerfield



Charli Westerfield

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JEN PALMER LAW OFFICE LLP

1000 LUMBIA ST. NW SUITE 104
WASHINGTON 98501



Department of Labor and Industries
Employment Standards
Attn: Mr. Richard Ervin, Program Manager
P.O. Box 44510
Olympia, WA 98504-4510

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FROM
CULLEN PALMER LAW OFFICE LLP

606 COLUMBIA ST NW SUITE 104
OLYMPIA WASHINGTON 98501

TO

Department of Labor and Industries
Employment Standards
Attn: Mr. Richard Ervin, Program
Manager
P.O. Box 44510
Olympia, WA 98504-4510

CULLEN PALMER LAW OFFICE LLP

WILLIAM E. CULLEN
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AGO L&I DIVISION
SEATTLE

August 21, 2009

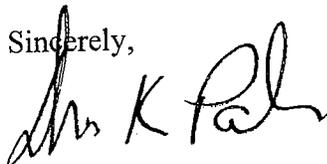
Department of Labor and Industries
Employment Standards
Attn: Mr. Richard Ervin, Program Manager
P.O. Box 44510
Olympia, WA 98504-4510

Re: Washington Unit of the Wally Byam Caravan Club International
Washington Land Yacht Harbor, Inc.
Petition for Declaratory Order concerning the Washington Minimum Wage Act or MWA

Dear Mr. Ervin:

I have enclosed a declaration entitled "Statement Concerning My Volunteer Work" by Roy B. Bernd, Colonel, U.S. Army (Ret.). This declaration supports the petition for declaratory order made in my letter dated August 18, 2009. Thank you.

Sincerely,



David K. Palmer

Enclosure
Cc: client



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AUG 24 2009

Employment Standards

Statement Concerning My Volunteer Work

I, COL (R) Roy B. Bernd, declare and state:

I am a member of the Washington Unit of the Wally Byam Caravan Club, International (WBCCI). I live at 9101-39 Steilacoom Road SE, Olympia, Washington 98513-6118.

As a small boy growing up in Grand Coulee, WA, my parents set an example for me that demonstrated the need to contribute to the betterment of the community in which we live by volunteering in numerous activities to support and improve our community. "R.B., get up! We are going to the City Park and pull weeds"; my Dad was an unpaid city councilman for years; "I have a City Council meeting tonight so I'm afraid I'll miss your ball game." Volunteering was a fact of life. I have carried with me and practiced that lesson all these years and have tried to instill it (quite successfully) in our four children.

After retiring from 33-years of service in the Armed Forces, my wife of 54 years and I bought an Airstream travel trailer and retired to the Washington Land Yacht Harbor. Within a very short time I was asked to serve as the Assistant Treasurer of the Unit, I did. I have subsequently served as a member of the Harbor Management Committee, a Unit Director, and through the chairs to Unit President. I am now the Immediate Past President of Region 10, WBCCI (that's the whole Pacific Northwest from Montana to the Russian border, including 3 provinces and 2 territories in Canada). Additionally, we are active leaders of WBCCI Caravan throughout the U.S. and Canada. ALL of these were acts of volunteerism!

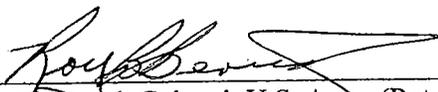
We have been residents of the "Harbor" for nineteen years. Never regretted a minute of it! But again, volunteering to assist in the Operation and Maintenance of our facility has been a vital part of that enjoyment. Mowing common grass areas, painting, washing windows, mopping a floor, cleaning a stove, repairing a street, removing windfall from community areas - - all minor tasks that need to be performed - - just like pulling those weeds in the City Park in Grand Coulee.

Certainly there are tasks in the Harbor that cannot be done by volunteers. Occasionally it is necessary to contract out jobs, such as replacing roofs, paving roads, replacing water pumps - - heavy physical activities or those requiring skills of a craftsman or special equipment.

However, to forbid volunteers from performing those day-to-day minor O & M activities needed to maintain our properties/community seems absurd.

Thank you for your consideration.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Dated this 18th day of August, 2009, in Thurston County, Washington.


Roy B. Bernd, Colonel, U.S. Army (Ret.)

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Employment Standards

Employment Standards Program
P.O. Box 44510 Olympia WA 98504-4510

September 23, 2009

David Palmer, Esq.
Cullen Palmer Law Office LLP
606 Columbia Street Northwest, Suite 104
Olympia, WA 98501

Re: Washington Unit of the Wally Byam Caravan Club International
Washington Land Yacht Harbor, Inc.
Petition for a Declaratory Order regarding the Minimum Wage Act

Dear Mr. Palmer:

This letter is in response to your August 25, 2009 letter requesting a declaratory order under the Administrative Procedures Act (APA), RCW 34.05.240. Your letter requests that the Department of Labor & Industries determine whether individual members of the Washington Unit of the Wally Byam Caravan Club International who provide volunteer labor that directly benefits their for-profit subsidiary, the Washington Land Yacht Harbor, Inc., are employees subject to the requirements of the Washington Minimum Wage Act, RCW 49.46.

The Department has reviewed your petition for a declaratory order and finds that the petition has failed to show under RCW 34.05.240(1) that: (a) uncertainty necessitating resolution exists; and (b) that there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion. Consequently, the Department is declining to enter a declaratory order RCW 34.05.240(5)(d).

Nevertheless, the Employment Standards Program at the Department would be happy to provide an advisory opinion based on the specific facts that you have provided. Please let me know if you would like an advisory opinion.

David Palmer, Esq.
September 23, 2009
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If you have any questions, please contact me at (360) 902-5310.

Sincerely,

Richard Ervin
Program Manager, Employment Standards Program