

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN RE: OFFICE OF ADMINISTRATIVE HEARINGS CASE NO. 2276-2015

DANIELLE JONES A/K/A)	
DANIELLE ANANEA,)	
)	
Charging Party,)	
)	HEARING OFFICER
vs.)	DECISION ON REMAND
)	
ALL STAR PAINTING, INC.)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On November 26, 2014, Charging Party Danielle Jones, a/k/a Danielle Ananea (Jones), filed a Charge of Discrimination with the Montana Human Rights Bureau alleging she was discriminated against in her employment with All Star Painting, Inc. (All Star), on the basis of gender due to her having been subjected to sexual harassment by All Star’s owner, Norman Hodges. On March 21, 2016, Hearing Officer Caroline A. Holien issued a Hearing Officer Decision entering judgment in favor of All Star Painting, Inc.

On April 3, 2018, the Montana Supreme Court remanded the matter to the Office of Administrative Hearings for the purpose of consideration of the testimony of the witnesses of Danielle Jones a/k/a Danielle Ananea, the entering of findings of fact explaining its review of the evidence and explanation as to the effect, if any, such a review has on the conclusions of law.

On July 9, 2018, the Hearing Officer took oral argument on the issues raised by the Supreme Court. Ryan Shaffer and James Murnion, attorneys at law, appeared on behalf of Jones. Thomas Singer, attorney at law, appeared on behalf of All Star Painting, Inc. In light of the directives contained in the Supreme Court’s remand, the following findings of fact, conclusions of law and order on damages are made.

II. FINDINGS OF FACT

1. All Star Painting, Inc. (All Star) employed Danielle Jones as a painter beginning on or about July 29, 2014. Jones' last day of work was approximately September 12, 2014.

2. At all times relevant to this matter, Jones has used the names Danielle Sands, Danielle Ananea, and Danielle Jones.

3. Jones worked approximately six weeks for All Star. All Star paid Jones a total of \$1,130.50 in wages. Jones' average weekly wage was \$173.00.

4. Norman Hodges is the sole owner of All Star. Hodges meets with clients, prepares estimates, completes payroll and generally directs the performance of the crew. Hodges typically meets the crew at the start and at the end of the work day. Hodges does not typically remain at the job site throughout the day.

5. Hodges hires crew members. Hodges typically directs new crew members to be safe on the job; to take a morning and afternoon break; to take a 30-minute lunch break if the crew member brings a lunch or a one hour break if the crew member leaves the job site; to watch his or her language on the job site because the homeowner is typically home; and to wear painter's whites.

6. All Star runs one three- or four-person crew. Marvin Thomas has been the crew supervisor for the past four years.

7. During the summer of 2014, the crew largely consisted of Jones, Thomas and Ellen Knier, who was Thomas' girlfriend at the time.

8. Thomas reports to Hodges the number of hours crew members work on a daily basis.

9. Jones' rate of pay was initially \$10.00 per hour. Hodges increased Jones' rate of pay to \$11.00 per hour during the third week of her employment due to his satisfaction with her work.

10. Jones worked on approximately nine projects during her six weeks of employment. Each job took approximately three to four days to complete.

11. Jones frequently arrived late or left work early. Jones rarely worked more than two to three days per week due to child care and car issues.

12. Hodges never disciplined or otherwise reprimanded Jones based upon her job performance or attendance.

13. Hodges never reprimanded Jones for not wearing painter's whites and allowed her to continue wearing shorts, t-shirts, and sports bras to the job site.

14. Beginning on the third or fourth day of work, Hodges began making these unwelcome sexually harassing comments as well as touching Jones without her permission or consent.

15. Hodges' comments included questioning Jones about her sex life and questioning her about her personal grooming habits. These comments were often made in front of Jones' co-workers, which caused her to feel upset and embarrassed.

16. Hodges stood beneath Jones while she was standing on a ladder while at a job site and looked up her shorts. Hodges put his hand on her upper thigh with his fingers going underneath the bottom of her shorts while she was on a ladder. Hodges touched Jones' underwear and hip area in an apparent attempt to snap her panties.

17. Hodges stuck Jones' paycheck down her pants and her underwear while she was bending over to fold up a tarp while at a job site.

18. On one of Jones' final days of employment, Hodges stuck a chicken bone down the back of Jones' pants and underwear while she was eating lunch with her co-workers in the driveway of a customer's home. Hodges simulated sexual intercourse while engaging in this conduct. Jones left the job site almost immediately due to her being so upset at Hodges' conduct.

19. Jones frequently told Hodges that she did not want him to continue making comments to her about her sex life and personal grooming habits. Jones also told Hodges on several occasions that she did not want him touching her.

20. Jones frequently complained about Hodges' conduct to her husband and her former roommate, as well as to her father-in-law. Jones was visibly upset about Hodges' behavior.

21. On or about the second week of Jones' employment with All Star, Jones' husband observed she was returning home from work visibly upset. Jones' husband observed she was more irritable and more sensitive than usual throughout her employment with All Star. Jones' husband observed she was frequently distraught and more prone to crying during this period than usual. Jones' feeling of frustration and despair as a result of Hodges' sexually harassing conduct caused increasing tension and strain in her marriage, as well as her relationship with her minor daughter.

22. Dustin Ritts, who lived with Jones during her employment with All Star, observed Jones was frequently distraught, anxious and angry during this period. Jones frequently complained to Ritts that she was being sexually harassed by Hodges.

23. Jeff Jones, Jones' father-in-law, observed Jones was upset as a result of Hodges sticking her paycheck down the back of her pants. Jeff Jones also observed that Jones' relationship with his son was strained during her employment with All Star.

24. Jones dreaded going to work and felt anxious and afraid while at the job. Jones felt violated, humiliated and depressed as a result of Hodges' conduct.

25. Jones quit her employment with All Star in mid-September 2014. Jones quit due to the harassing conduct of Hodges.

26. Jones and Marvin Thomas, her co-worker at All Star, spoke with Stacey Hemming, an AFLAC insurance agent, about obtaining employee health insurance for a business venture they were contemplating, My Mother's Dream. Jones desired to continue painting houses and believed she and Thomas could establish a successful business doing such work. During this meeting, Thomas mentioned Hodges' harassing conduct to Hemming.

27. Jones understood Hodges intended to keep her on to perform interior painting through November 2014.

28. Jones was unemployed for two weeks following her separation from All Star. Jones then began work for Yellowstone River of Care, where she worked sporadic and unpredictable hours. As a result, she earned less in her subsequent employment than she would have if she had remained in her employment with All Star.

29. Jones suffered \$500.00 in economic losses as a result of her being forced to separate from her employment with All Star as a result of Hodges' sexually harassing behavior.

30. Jones suffered emotional distress as a result of Hodges' discriminatory behavior. Jones is fearful of male-dominated environments. Jones avoids visiting Billings, where her husband's family lives, out of concern of seeing Hodges again. Jones has trouble sleeping, suffers flashbacks and often cries.

31. Jones wanted to seek psychological counseling as a result of her experience at All Star but could not afford to do so. An award for emotional distress damages in the amount of \$25,000.00 represents a reasonable amount of compensation for the discrimination she suffered.

32. Imposition of affirmative relief, which requires All Star to implement policies and procedures to ensure its owner and its employees are fully educated regarding sexual harassment and how to prevent it in the workplace is appropriate in this case.

III. CREDIBILITY OF THE WITNESSES

The Hearing Officer noted in the original Hearing Officer Decision that she did not find any one witness particularly more credible than the other. Relying upon what she believed to be an assessment of the allegations based upon dates and locations offered by the parties during their testimony, the Hearing Officer failed to adequately consider the testimony of Jones' witnesses, who all confirmed that Jones regularly complained of Hodges' conduct toward her during her employment with All Star. Jones, Jones' husband, Jones' father-in-law, and Jones' former roommate all confirmed that she appeared angry, distraught, depressed, and generally upset during her employment. Each testified that Jones described in specific detail about offensive conduct she was subjected to during her employment. Jones' testimony was corroborated by each of these witnesses.

In contrast, the witnesses called by Hodges, including those who were called as character witnesses, neither had the personal knowledge or the apparent opportunity to fully observe Hodges' behavior at the job site or his interactions with Jones. Marvin Thomas, who was the one witness who worked with both Jones and Hodges, was not credible at all. Thomas actively avoided speaking with the Human Rights Investigator and made several inconsistent statements to the Investigator, as well as during his deposition and at hearing. For example, Thomas had reported to the

Investigator that he had observed Hodges leering at and grabbing at Jones on the ladder and hearing Jones' complaints about Hodges' behavior. At hearing, Thomas accused the Investigator of misrepresenting his statements in his Final Investigative Report. Thomas also denied discussing Hodges' harassing treatment of Jones when they met with Hemming in September 2014. Particularly damaging to Thomas' credibility is Hodges' own testimony regarding Thomas' effort to obtain unemployment insurance benefits by misrepresenting the nature of his separation from All Star in September 2014.

Based upon a review of the evidence, including the sworn testimony of each of the witnesses who testified, it is determined that Jones' testimony that she was sexually harassed by Hodges during her employment with All Star is more credible than Hodges' denials.

IV. DISCUSSION¹

A. *Jones has Established a Claim of a Hostile Work Environment*

The Montana Human Rights Act prohibits discrimination in the terms and conditions of employment on the basis of sex. Mont. Code Ann. §§ 49-2-303(1)(a) and 49-3-201. Sexual harassment is considered a form of sex discrimination, and a hostile work environment is one form of illegal sexual harassment. *Beaver v. D.N.R.C.*, ¶29, 2003 MT 287, 318 Mont. 35, 78 P. 3d 857; *Stringer-Altmaier v. Haffner*, ¶20, 2006 MT 129, 138 P.3d 419.

The anti-discrimination provisions of the Montana Human Rights Act closely follow a number of federal anti-discrimination laws, including Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* Montana courts have examined and followed federal case law that appropriately illuminates application of the Montana Act. *Crockett v. City of Billings*, 234 Mont. 87, 761 P.2d 813, 816 (1988).

To establish a claim of a hostile work environment, Jones must prove (1) she was subjected to verbal or physical conduct of a harassing nature; (2) that it was unwelcome; and (3) that the harassment permeated the work environment to the point that it was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. *Stringer-Altmaier* at ¶22; *Nichols v. Azteca Restaurant Ent., Inc.*, 256 F.3d 864, 873 (9th Cir. 2001). To satisfy

¹ Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

this requirement, Jones needed to prove that her workplace was "both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so." *Faragher v. City of Boca Raton*, 524 U.S. 775, 787, 141 L. Ed. 2d 662, 118 S. Ct. 2275 (1998). In addition, Jones was required to prove that any harassment took place "because of sex." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79, 140 L. Ed. 2d 201, 118 S. Ct. 998 (1998).

A charging party establishes a *prima facie* case of sexual harassment with proof that she was subject to "conduct which a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment." *Ellison v. Brady*, 924 F.2d 872, 879 (9th Cir. 1991). A totality of the circumstances test is used to determine whether a claim for a hostile work environment has been established. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, (1993). The relevant factors include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris*, 510 U.S. at 23; *see also Faragher*, 524 U.S. at 787-88. To be sufficiently severe or pervasive, the conduct must create a working environment that is objectively and subjectively offensive. *Beaver v. Mont. DNRC*, ¶31, 2003 MT 287, 318 Mont. 35, 78 P.3d 857. As such, the environment must be one that a reasonable person would find hostile or abusive, and one that the victim in fact perceived as hostile and abusive.

The objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering all the circumstances. *Oncale, supra*, quoting *Harris*, 510 U.S. at 23. It is appropriate, when assessing the objective portion of a charging party's claim, to assume the perspective of the reasonable victim. It is not necessary that a plaintiff enumerate with precision the exact number of times that she was subjected to offensive conduct in order to demonstrate the pervasiveness required to prove a hostile working environment. Testimony that the plaintiff was subjected to numerous instances of offensive conduct can be sufficient to show that the conduct was pervasive. *Torres v. Pisano*, 116 F.3d 625, 634-635 (2nd Cir.,1997).

This case is a direct evidence case. Direct evidence "speaks directly to the issue, requiring no support by other evidence," proving the fact in question without either inference or presumption. E.g., Black's Law Dictionary, p. 413 (5th Ed. 1979); *see also, Laudert v. Richland County Sheriff's Department*, 2000 MT 218, 301 Mont. 114, 7 P.3d 386. Direct evidence of discrimination establishes a violation unless the

respondent proffers substantial and credible evidence either rebutting the proof of discrimination or proving a legal justification. *Laudert, supra*.

When a charging party establishes a prima facie case of sexual harassment with direct evidence, the burden is then on the employer to prove, by a preponderance of evidence, “that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination is not credible and unworthy of belief.” Admin. R. Mont. 24.9.610(5).

Not only did Jones’ credible testimony establish a prima facie case, but her testimony was corroborated by the testimony of her husband, father-in-law, and former roommate, establishes she was subjected to unwelcome verbal and physical conduct due to her gender. The unwelcome verbal conduct included Hodges questioning Jones about her sex life and her personal grooming habits. The unwelcome physical conduct included Hodges positioning himself to look up Jones’ shorts while she was on a ladder; sticking her paycheck down her pants; touching her upper thigh without her permission; acting as though he was going to snap her panties; and putting a chicken bone down the back of her pants while simulating sexual intercourse.

A reasonable woman in Jones’ position would have found Hodges’ conduct sufficiently severe and pervasive as to alter the terms and conditions of her employment. *See Nichols*, 256 F.3d at 872. Further, Jones’ credible and detailed testimony establishes that she subjectively found the environment abusive and terms and conditions of her employment altered as a result of Hodges’ conduct. *See Harris*, 510 U.S. at 21-22. Jones reached out to those closest to her and complained about Hodges’ conduct, which had an immediate and severe impact upon her personally, as well as her relationships with her husband and young daughter. While Jones may have had personal issues that were exacerbated by Hodges’ objectively offensive conduct, the evidence shows that Hodges’ conduct caused Jones to have increased feelings of frustration, despair and insecurity. Further, as the Montana Supreme Court has explicitly recognized, “[w]ithout question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex" and violates the Montana Human Rights Act. *Harrison v. Chance* (1990), 244 Mont. 215, 221, 797 P.2d 200, 204, citing *Meritor Savings Bank FSB v. Vinson*, (1986) 477 U.S. 57,64.

Hodges flatly denied that any of the events described by Jones in her testimony took place. However, as noted above, Jones’ testimony was deemed more credible than Hodges’ denials. The overwhelming credible evidence proved that

Hodges, as the owner of All Star, subjected Jones to harassment on the basis of her sex, and that this harassment was so severe and pervasive as to alter the conditions of employment and create an abusive working environment. All Star has failed to produce sufficient credible evidence to show that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination is not credible and unworthy of belief.” Jones, therefore, has proven that she was subjected to a sexually hostile working environment.

B. *Jones has Established she is Entitled to Damages*

Upon a finding of discrimination, the department may order any reasonable measure to rectify the harm suffered as a result of the discrimination. Mont. Code Ann. § 49-2-506(1)(b). Damages are awarded to make the victim whole. E.g., *P. W. Beny v. Freese* (1989), 239 Mont. 183, 779 P.2d 521, 523. *See also, Dolan v. School District No. 10* (1981), 195 Mont. 340, 636 P.2d 825, 830. To be compensable, the damages must be causally related to making the victim whole, i.e., must come out of the discriminatory acts. Mont. Code Ann. §§ 49-2-506(1)(b); *Beny, supra; see also, Village of Freeport Park Commission v. New York Division of Human Rights*, 41 A.D. 2d 740, 341 N.Y.S. 2d 218 (App. 1973)(loss of earnings which did not flow from the discriminatory act is not compensable as it does not flow from the discrimination). Damages include emotional distress endured as a result of unlawful discrimination. *Vortex Fishing Syst.* at 33.

1. Jones is entitled to economic loss damages.

In this case, Jones seeks an award of between \$350.00 and \$1,000.00 for economic losses she suffered after her separation from All Star in mid-September 2014. *See* Mont. Code Ann. § 27-1-202 (“Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called damages.”). Jones does not seek front pay. Jones was able to obtain suitable employment two weeks following her separation from All Star, albeit employment that was sporadic and offered fewer hours per week than her employment at All Star. Jones earned an average of \$173.00 per week during her employment with All Star. An award of \$500.00 in economic loss damages is a reasonable amount to compensate Jones for the loss in wages she suffered as a result of Hodges’ conduct.

Prejudgment interest on lost income is a proper part of the department’s award of damages. *P.W. Berry v. Freese*, *supra*. Calculation of prejudgment interest is proper based on the elapsed time without the lost income for each pay period times an

appropriate rate of interest. *See* Mont. Code Ann. 27-1-211. The appropriate rate is 10% annual simple interest, as is applicable to tort losses capable of being made certain by calculation, only without the requirement of a written demand to trigger commencement of the interest accrual, which has not been required in Human Rights Act cases. Mont. Code Ann. § 27-1-210. Jones is entitled to prejudgment interest in the amount of \$394.76.²

2. Jones is entitled to emotional distress damages.

Upon a finding of discrimination, the department may “require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against.” Mont. Code Ann. § 49-2-506(1)(b). The freedom from unlawful discrimination is a fundamental human right. Mont. Code Ann. § 49-1-102. Violation of that right is a *per se* invasion of a legally protected interest. The Human Rights Act demonstrates that Montana does not expect a reasonable person to endure any harm, including emotional distress, which results from the violation of a fundamental human right. *Johnson v. Hale*, 940 F.2d 1192 (9th Cir.1991); cited in *Vainio v. Brookshire*, 258 Mont. 273, 852 P.2d 596 (1993); see also *Campbell v. Choteau Bar & Steak Hse.* (1993), HR No.8901003828. The severity of the harm governs the amount of recovery. *Vortex Fishing Systems v. Foss*, 2001 MT 312, ¶ 33, 308 Mont. 8, 38 P.2d 836.

From a factual standpoint, the instant case is very similar to *Vainio*. In that case the Montana Supreme Court found that an emotional distress award of \$20,000.00 was appropriate in a case where the plaintiff was subjected to conduct that “included, among other things, brushing his body against her buttocks, putting his hand up her skirt, grabbing her breasts, and requesting [the plaintiff] to have sex with him.” *Vainio*, 258 Mont. at 280-281.

The Montana Supreme Court affirmed a district court’s award of \$5,000.00 in emotional distress damages in *Beaver v. Mont. Dep’t of Natural Res. & Conservation*,

² The hearing officer calculated interest on the amount of lost wages by determining the daily value of interest on the monthly income lost by the unlawful discharge and then calculating the number of days that have elapsed between the month of lost income and the original date of judgment in this matter, March 21, 2016. This process was applied to each of the months of lost income, and then the interest value for each of these separate months was added together to arrive at the total amount of interest due on the lost income. The daily interest value for the period of lost income following her discharge is \$.71 per day (10% per annum divided by 365 days = .00027% x \$2,600.00 (the net monthly lost income) = \$.71 per day). The interest due on this lost income through March 25, 2010 is \$394.76.

2003 MT 287, ¶86, 318 Mont. 35, 78 P.3d 857. In *Beaver*, the plaintiff was subjected to a single incident of sexual assault by her supervisor outside of work prior to receiving a less desirable position. The court noted that Beaver did not have any further contact with the supervisor after the incident; the employer did not take inappropriate action against her; and her therapist reported she was unlikely to need further therapy related to the sexual assault and required no medication and was able to return to work. *Id.* at ¶88. The court found “the award of compensatory damages . . . [was] not so grossly out of proportion to Beaver’s injury as to shock the conscience.” *Id.* at ¶94.

An award of \$10,000.00 in emotional distress damages was affirmed by the district court in *Anderson v. Martin*, 1997 Mont. Dist. LEXIS 567, ** 9-11 (Second Judicial District Court of Montana, Silver Bow County). In *Anderson*, the plaintiff showed she was subjected to unwanted kissing and other unwanted physical touching despite her protests. *Id.*

The Montana Supreme affirmed an award of \$75,000.00 for emotional distress damages in a case where the plaintiff proved that her manager subjected her to unwanted sexual advances in the workplace and attempted to assault her when giving her a ride home from a Christmas party. *Benjamin v. Anderson*, 2005 MT 123, ¶¶ 68-70, 327 Mont. 173, 112 P.3d 1039.

The credible evidence at hearing demonstrated that Jones suffered substantial emotional distress. Hodges subjected her to repeated inappropriate touching and comments about her sex life and personal grooming habits while she attempted to earn a living for her and her family. This has had a profound effect on her mental well-being, her relationship with her husband and her daughter, and her relationship with her friends. Jones was forced to leave a job that she loved and was apparently good at. Jones has requested \$50,000.00 in emotional distress damages, which seems excessive based upon the severity of the conduct and when compared to similar cases. An award of \$25,000.00 in emotional distress damages seems reasonable based upon the severity of the complained of conduct and Jones’ apparent ability to return to work after only two weeks following her separation from All Star.

3. Affirmative relief is necessary in this case.

Upon a finding of illegal discrimination, the law requires affirmative relief that enjoins any further discriminatory acts and may further prescribe any appropriate conditions on the Respondent’s future conduct relevant to the type of discrimination found. Mont. Code Ann. § 49-2-506(1)(a). The circumstances of the discrimination

in this case mandate imposition of particularized affirmative relief to eliminate the risk of any further violations of the Human Rights Act. Mont. Code Ann. § 49-2-506(1). This relief should include injunctive relief against Respondent and appropriate training to ensure that no further acts of sexual harassment occur.

V. CONCLUSIONS OF LAW

1. The Department of Labor and Industry has jurisdiction over this case. Mont. Code Ann. § 49-2-512(1).

2. All Star Painting, Inc., illegally discriminated against Danielle Jones, a/k/a Danielle Ananea by subjecting her to a hostile work environment because of her sex.

3. Jones is entitled to recover \$500.00 in economic losses she suffered as a result of her being forced to leave her employment with All Star as a result of Hodges' discriminatory conduct, along with \$394.76 in prejudgment interest.

4. Jones is also entitled to recover \$25,000.00 for the emotional distress she suffered as a result of the illegal discrimination. Jones is entitled to post judgment interest on all of these amounts.

5. The circumstances of the discrimination in this case mandate the imposition of affirmative relief in order to eliminate the risk of future violations of the Montana Human Rights Act. Mont. Code Ann. § 49-2-506(1).

6. For purposes of Mont. Code Ann. § 49-2-505(8), Jones is the prevailing party.

VI. ORDER

1. Judgment is granted in favor of Jones and against All Star, as All Star discriminated against Jones in violation of the Montana Human Rights Act.

2. Within 45 days of the date of this decision, All Star shall pay to Jones the sum of \$25,894.76, representing \$500.00 in economic losses sustained; \$394.76 in prejudgment interest, and \$25,000.00 in emotional distress damages.

3. The department permanently enjoins All Star from discriminating against any person on the basis of sex.

4. All Star must consult with an attorney with expertise in human rights law to develop and implement policies for the identification, investigation and resolution of complaints of discrimination that includes training for its employees to prevent and timely remedy disability discrimination. Under the policies, the employees of All Star will receive information on how to report complaints of discrimination. The plan and policies must be approved by the Montana Human Rights Bureau. In addition, All Star shall comply with all conditions of affirmative relief mandated by the Human Rights Bureau.

DATED this 27th day of November, 2018.

/s/ CAROLINE A. HOLIEN
Caroline A. Holien
Office of Administrative Hearings
Department of Labor and Industry

* * * * *

NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Ryan R. Shaffer and James C. Murnion, attorneys for Danielle Jones, and T. Thomas Singer, attorney for All Star Painting, Inc.

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(C).

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, Mont. Code Ann. § 49-2-505 (4), WITH 6 COPIES, with:

Human Rights Commission
c/o Annah Howard
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505(4), precludes extending the appeal time for post decision motions seeking relief from the Office of Administrative Hearings, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

THIS IS A DECISION ON REMAND WITH NO NEW HEARING TRANSCRIPT. If your appeal requires review of the original hearing transcript, please include a request for that review in your notice of appeal. The appealing party or parties must then assure that the original transcript is moved to the current appellate file for Commission review. Contact Annah Howard, (406) 444-4356 immediately to arrange for availability of that original transcript.

ANANEA.HOD.RMD.chp