



For Immediate Release

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Pamplin Broadcasting must pay Unpaid Wages and \$41,024 in Civil Penalties
Media personalities Margie Boulé and Carl Wolfson entitled to unpaid wages as misclassified employees

PORTLAND, OR—Pamplin Broadcasting-Oregon, a local media group, must pay more than \$55,000 for violations of overtime pay and recordkeeping requirements, the Bureau of Labor and Industries (BOLI) announced today.

The agency's Final Order, issued after a contested case hearing, stems from complaints filed with BOLI by Margie Boulé and Carl Wolfsohn (Wolfson) for unpaid overtime wages earned in 2016 and 2017, as former hosts of KPAM Radio's "Margie and Carl" show operated by Pamplin.

BOLI determined in the order that Pamplin Broadcasting had improperly classified Boulé and Wolfsohn (Claimants) as independent contractors because their independent contractor agreements did not reflect their actual working relationships with Pamplin.

BOLI applied the "economic realities" test applied by courts and in previous agency orders to distinguish an employee from an independent contractor under Oregon's minimum wage laws, and found the majority of the factors weighed heavily in favor of an employer/employee relationship. This "economic realities" test consists of the following six factors, with no one factor being dispositive: (1) The degree of control exercised by the alleged employer; (2) The extent of the relative investments of the worker and alleged employer; (3) The degree to which the worker's opportunity for profit and loss is determined by the alleged employer; (4) The skill and initiative required in performing the job; (5) The permanency of the relationship; and (6) whether the service performed was an integral part of Respondent's business. For more information regarding how these factors were applied in this case, see pages 31 to 34 of the order, or the summary of the facts considered at the bottom of this release.

BOLI's determined in the Final Order that the majority of the above factors weigh in favor of an employer/employee relationship. Accordingly, Pamplin did not sustain its burden of proving that Claimants were independent contractors.

Pamplin advanced an alternative argument, contending that that if the wage claimants were employees, they were exempt from overtime as "creative professional" employees. However, Boulé and Wolfsohn were determined in the order to be employed on a piece rate (per show) basis, and the law requires employees to be paid on a salary basis (not piece rate) in order to be considered for exempt status.

The BOLI Final Order assesses back wages owed for overtime, civil penalties, and interest on both the wages and penalties.

Under Oregon law, employers have the obligation to maintain workers' time and payroll records and provide them to BOLI upon request. Records were neither kept nor provided to BOLI investigators. Civil penalties are being assessed in the order for Pamplin's willful failure to keep these employee records.

Previous BOLI wage and hour investigations have helped misclassified employees in many sectors and industries secure unpaid wages and access overtime and sick leave protections.

Employees with wage and hour claims or complaints may contact the Wage and Hour Division at (971) 673-0844 or via email at whdemail@boli.state.or.us. Under Oregon civil rights law, employers may not retaliate against employees for reporting wage violations.

Employers seeking compliance guidance may contact the agency's Technical Assistance for Employers hotline at (971) 673-0824. For more information about BOLI's effort to support employers and protect workers, please visit the agency's website at oregon.gov/BOLI/Pages.

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The following is a summary of facts considered in the economic realities test and the considerations of the factors in the BOLI Final Order. For the complete analysis, see pages 30 to 34 of BOLI Case No. 09-18 & 10-18.

1. Degree of Control Exercised by Pamplin

While there was extensive collaboration on the content of the show, the facts lean in favor of an employment relationship due to the structure, framework and guidance provided by Pamplin management. Some of the facts considered:

- Pamplin requested, but did not require, Boulé and Wolfsohn to work with Westwood One network reporters when conducting interviews about breaking news stories. For local news, Pamplin encouraged them to use Pamplin print news reporters in order to cross market the publications.
- The segments in the three-hour radio show were proscribed by the "show clock" that dictated what type of content filled in each minute of the show. For example, there was a sports segment with Portland Winterhawks announcer Ron Callan, and a technology segment once a week featuring another KPAM radio host. There was also a news quiz. All of the content that went on the air was discussed and agreed upon by the show's producer, Wolfsohn and Boulé.
- Claimants were required to attend staff meetings. In staff meetings, program directors provided input as to the tone, tenor and content of the show. The show's producer worked collaboratively with Claimants in suggesting show content and guests. A program director told Claimants that the content on the show must be "interesting, entertaining and relevant." KPAM informed Boulé and Wolfsohn to be evenhanded when discussing political issues because the listeners included both liberal and conservative voters.

2. Extent of Relative Investments of Boulé/Wolfsohn and Pamplin

- Pamplin made the vast majority of the investments needed for Boulé and Wolfsohn to do their work as radio show hosts. Pamplin provided Boulé and Wolfsohn with cubicles, desks, business cards, computers and printers to use while at the studio, email addresses, telephones, office supplies and the use of

studio equipment. Pamplin created a logo for “The Margie and Carl Show,” arranged for professional pictures to be taken of Boulé and Wolfsohn, and created the “open” for “The Margie and Carl Show” that was played at the beginning of each show. KPAM created the Facebook page for “The Margie and Carl Show.” Boulé and Wolfsohn used their own personal headphones and could work from home using their personal computers.

- Pamplin offered to pay for hotel rooms for both Claimants to stay in during snow storms so they could get to the studio to host the show, and paid for a hotel for Boulé after she accepted the offer.

3. *Degree to Which Pamplin Determined Profit and Loss*

When Pamplin approached Boulé and Wolfsohn to host a radio show, they were each informed that they would be paid \$200 per show and that the amount was not negotiable. Claimants and other radio hosts at KPAM were permitted to take on other paying work, but Boulé and Wolfsohn did not do so. Claimants received separate talent fees for endorsements and sponsorships. Those fees were paid to the radio station by sponsors and, in turn, Pamplin issued checks to Claimants for those fees. While Claimants had some opportunity to earn extra money with outside work and endorsements, the record shows that the bulk of their pay came in the form of the payments they received for hosting the show.

4. *Skill and Initiative Required to Perform the Job*

Boulé and Wolfsohn understood that they needed to provide funny, interesting and original content. Each show required a significant amount of off-air preparation prior to the show. They emailed each other and the show’s producers to discuss the topics that they might cover each day. They needed to research topics sufficiently so that they sounded spontaneous in their discussions. Wolfsohn recorded a segment titled “Day in History” that he had performed on another radio show in the past. Wolfsohn had 10 years of radio experience, which included previously hosting his own show. Boulé had many years of experience appearing on television and writing a newspaper column. All of these facts demonstrate their extensive experience in their field. However, when analyzing the “skill and initiative” component of the independent contractor analysis, BOLI has focused on whether a worker’s income stream was dependent upon that person’s initiative. In this case, although Claimants’ previous media experience was useful to them in knowing how to prepare for each day’s show, they always made \$200 per show. They could not use their “initiative” to generate more wage income for themselves. Accordingly, this factor was determined to lean in favor of an employer/employee relationship.

5. *Permanency of the Relationship*

Claimants were initially hired to fill in for other hosts who were away due to illness or on vacation. However, they transitioned into hosting their own radio show. Additionally, Claimants had several discussions with Pamplin management about entering into a permanent contract with a salary and benefits. Based on these discussions, up until the time of their termination, Claimants understood and believed Pamplin would be permanently replacing the previous radio show with “The Margie and Carl Show.”

6. *Whether the Work Performed Was an Integral Part of Pamplin’s Business*

Pamplin operated a radio station pursuant to a license from the FCC and, thus, was obligated to broadcast radio content throughout the day. As radio show hosts, Claimants provided the content that was integral to Pamplin's business. Pamplin argued that Claimants' radio show hosting was not essential to its business because Pamplin could have arranged for a syndicated program to fill the time slot. BOLI's Final Order ruled that regardless of whether that was an option, Claimants' radio show was an integral part of KPAM's radio news business.

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