

01/15/2021 2:21:37 PM

Linda Myhre Enlow
Thurston County Clerk

1 Hearing is Set:
2 Date: 1/19/2021
3 Time: 1:30 pm
4 Hon. Chris Lanese

5
6 **STATE OF WASHINGTON**
7 **THURSTON COUNTY SUPERIOR COURT**

8 DEPARTMENT OF LABOR AND
9 INDUSTRIES OF THE STATE OF
10 WASHINGTON,

11 Plaintiff,

12 v.

13 FOWLER NAT D. AND MARY M.
14 DBA FARM BOY DRIVE IN

15 Defendant.

NO. 20-2-02460-34

DECLARATION OF CRAIG
BLACKWOOD

16 I, Craig Blackwood, declare under the penalty of perjury under the laws of the State of
17 Washington that the following is true and correct:

- 18 1. I am over the age of eighteen and am otherwise competent to testify. I make these
19 statements on personal knowledge and belief.
- 20 2. I am the Acting Assistant Director for the Division of Occupational Safety and Health
21 (DOSH) of the Washington State Department of Labor and Industries (L&I). DOSH is
22 the division responsible for implementing the Washington Industrial Safety and Health
23 Act (WISHA), RCW ch. 49.17.
- 24 3. I have worked for DOSH for nearly 30 years, beginning in September of 1991. I was
25 appointed as Deputy Assistant Director for DOSH in December 2014 and was appointed
26 as Acting Assistant Director in January 2021. In this capacity, I am the State of

1 Washington Supervisor of Industrial Safety and Health as defined under RCW 43.22.040
2 and oversee the development, implementation, and enforcement of the occupational
3 safety and health laws and rules applicable to approximately 300,000 public and private
4 sector workplaces in Washington State. I also oversee L&I's consultation, risk
5 management, and outreach programs. I am responsible for all L&I operations relating to
6 the prevention of work-related fatalities, injuries, and illnesses for non-federal
7 Washington workplaces. As Deputy Assistant Director, my responsibilities were nearly
8 identical as I was delegated joint decision-making authority on virtually all DOSH-
9 related matters.

10 4. I supervise approximately 400 technical professionals and support staff who perform
11 workplace safety and health investigations in alignment with the federal and state
12 occupational safety and health statutes. I am familiar with jobsites across the State of
13 Washington and the types of hazards workers face.

14 5. I am an occupational health professional (industrial hygienist) and a public safety and
15 health officer with over 34 years of experience visiting workplaces, evaluating job-
16 related hazards, conducting inspections, and developing occupational health training for
17 employers and workers. As Acting Assistant Director I am responsible for all decisions
18 concerning the policies and resource deployment necessary to fulfill DOSH's mission of
19 preventing workplace related fatalities, injuries, and illnesses.

20 6. I graduated from California State University at Northridge in 1986 with a Bachelor of
21 Science Degree in Occupational & Environmental Safety and Health.

22 7. On March 13, 2020, the Division of Occupational Safety and Health within Labor and
23 Industries publicly declared in a widely distributed workplace Hazard Alert that the
24 SARS-CoV2 virus constituted a very serious workplace hazard for State of Washington
25 workplaces.

1 8. On May 26, 2020, L&I adopted WAC 296-800-14035 as an emergency rule. WAC 296-
2 800-14035 has been periodically amended during the course of the COVID-19 pandemic.

3 The last amendment was on January 12, 2021. In its present form the rule provides that:

4 (1) Where a business activity is prohibited by an emergency proclamation an employer
5 shall not allow employees to perform work.

6 (2) Employers must comply with all conditions for operation required by emergency
7 proclamation issued under RCW 43.06.220, including "Healthy Washington - Roadmap
8 to Recovery" reopening requirements for all business and any industry specific
9 requirements.

10 (3) An "emergency proclamation" means a proclamation that is in effect, including
11 proclamation amendments and conditions, and issued under RCW 43.06.220 and is in
12 effect at the time the emergency rule was adopted.

13 9. Under the Governor's Proclamation 20-25.8, restaurants and bars are closed for indoor
14 dine-in services. These restrictions were periodically extended through subsequent
15 proclamations and ultimately expired on January 11. On January 11. The Governor
16 issued Proclamation 20-25.12, Healthy Washington: Roadmap to Recovery." Under this
17 plan each region begins in Phase 1. Phase 1 continued the restriction that restaurants and
18 bars from offering indoor dining services. I understand this restriction to apply all
19 restaurants and food courts. This includes food courts within locations such as Costco,
20 Target, or Walmart. Additionally, airports are prohibited from allowing dining within
21 VIP lounges or restaurants and hospital cafeterias are prohibited from offering indoor
22 dining to guests.

23 10. DOSH's enforcement of its emergency rule relies primarily on complaints received
24 either by DOSH or the Emergency Response Center. When a complaint is received,
25 DOSH will investigate and determine whether a violation of any safety and health
26 regulation exists. DOSH's enforcement applies equally, whether inspecting a small
business, or large multi-national corporation. I understand that Farm Boy argues that

1 “there is indoor dining and consumption of food at local hospitals cafeterias, local
2 airport, bus and train depot cafeterias and food vending, and indoor consumption of
3 food at deli counters of local large supermarkets and retailers such as Walmart and
4 Target.” Resp. 6. And it asserts that “In Farmboy’s case, national-chain food retailers
5 such as Walmart's indoor deli, Target’s indoor deli, Costco, airport cafeterias and others
6 operate profitably with the approval of Labor and Industries while Farmboy is fined for
7 providing very similar (if not the same) prepared food products.” Resp. 9. These
8 statements are not accurate. If DOSH received a complaint that a food court at a
9 business such as Walmart, Costco, or other businesses were allowing for indoor dining,
10 DOSH would enforce WAC 296-800-14035 as business are all restricted from indoor
11 dining services.

12
13 DATED this 14th day of January 2021 in Tumwater, Washington by:

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16 Craig Blackwood, Acting Assistant Director
17 Division of Occupational Safety & Health