

Topics for STATE v. WEYER
Lewis and Clark County Cause No. CDC-2005-341

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 45-6-301. Section 45-6-301(5)(b), MCA, which makes it a crime to purposely or knowingly obtain unauthorized control over worker's compensation benefits by deception or other fraudulent action, is not violated when the owner and sole shareholder of an S corporation receives TTD benefits and also receives draws from the corporation for such things as rent payments, a hunting trip to Alaska, a land purchase, and credit payments, when the recipient did not perform any service for the corporation while he was receiving TTD benefits and the draws he received were not remuneration for any services he performed for the corporation.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-123. Section 39-71-123(1), MCA, defines "wages" in pertinent part as all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Subsection (1)(d) applies to a sole proprietor or partner. The owner and sole shareholder of an S corporation is not a sole proprietor and thus subsection (1)(d), which includes income in the form of a draw, does not apply to the defendant, who, as the owner and sole shareholder of an S corporation, received TTD benefits and also received draws from the corporation without performing any services for the corporation. Thus, these draws are not considered "wages."

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-123. The definition of "wages" found in § 39-71-123(1), MCA, is disjunctive.

Wages: Wages Defined. Section 39-71-123(1), MCA, defines "wages" in pertinent part as all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Subsection (1)(d) applies to a sole proprietor or partner. The owner and sole shareholder of an S corporation is not a sole proprietor and thus subsection (1)(d), which includes income in the form of a draw, does not apply to the defendant, who, as the owner and sole shareholder of an S corporation, received TTD benefits and also received draws from the corporation without performing any services for the corporation. Thus, these draws are not considered "wages."

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