

May 12, 2020

To: Salted Chef, LLC  
4327 Hannover Court  
St. Louis, MO 63123-6809

Labor and Industry Review Commission  
3319 West Beltline Highway  
Madison, WI 53713

Legislative Reference Bureau  
One East Main Street, Suite 200  
Madison, WI 53703

RE: In the matter of Salted Chef, LLC  
UI Hearing Nos. S1800203AP, S1800204AP

PLEASE TAKE NOTICE that the Wisconsin Department of Workforce Development, under Wis. Stat § 108.10(7)(b), does not acquiesce in the decision of the Labor and Industry Review Commission dated April 16, 2020, identified above, in UI Hearing Nos. S1800203AP, S1800204AP, a copy of which is attached to this notice, and requests that the Legislative Reference Bureau obtains publication of this Notice in the Wisconsin Administrative Register under Wis. Stat. § 108.10(7)(b). Although the decision is binding on the parties to the case, the Commission's conclusions of law, the rationale, and construction of the statutes in the case are not binding on the Department in other cases.

Electronically signed by:

*Brett A. Balinsky*

Brett A. Balinsky  
State Bar No. 1025215  
Attorney for Wisconsin Department of Workforce  
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BUREAU OF  
LEGAL AFFAIRS

**Salted Chef, LLC**  
Employer

Hearing Nos. S1800203AP  
S1800204AP

**Unemployment Insurance  
Contribution Liability  
Decision<sup>1</sup>**

**Dated and Mailed:**

**APR 16 2020**

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This case is before the commission to consider Salted Chef, LLC's, status as an employing unit subject to the Wisconsin unemployment insurance law and its liability for unpaid contributions. An administrative law judge (ALJ) of the Unemployment Insurance Division of the Department of Workforce Development (DWD) held a hearing and issued two decisions in this matter dated May 20, 2019, finding beginning on January 1, 2018, Salted Chef, LLC (Salted Chef), is an employer subject to the Wisconsin unemployment insurance law (Hearing No. S1800203AP) and that Louis R. Henschel performed services for Salted Chef as a statutory employee and not as an independent contractor, requiring Salted Chef to submit quarterly wage reports, along with any contributions due (Hearing No. S1800204AP).

On November 26, 2019, the commission issued a decision affirming the ALJ's decision in Hearing No. S1800203AP, finding that Salted Chef is an employer subject to the Wisconsin unemployment insurance law and must comply with quarterly reporting requirements. In a separate decision, issued the same day, involving Hearing No. S1800204AP, the commission reversed the ALJ's decision and found that Salted Chef was not liable for unemployment insurance contributions based on services performed by Louis R. Henschel for the periods set forth in the determination because six of the nine conditions in Wis. Stat. § 108.02(12)(bm)2. (specifically, b., d., e., f., g. and i.) had been met.

<sup>1</sup> **Appeal Rights:** See the blue enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, all other parties in the caption of this decision or order (the boxed section above), and the Department of Workforce Development. Appeal rights and answers to frequently asked questions about appealing an unemployment insurance decision to circuit court are also available on the commission's website <http://lirc.wisconsin.gov>.

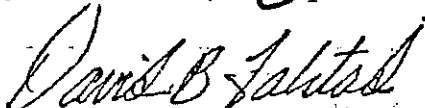
On December 13, 2019, the department filed a motion for reconsideration of the commission's decision. On December 18, 2019, the commission set aside its November 26, 2019 decision to consider the department's request.

After carefully considering the positions of the parties, in light of the department's motion for reconsideration, the commission now concludes that only five of the nine conditions have been met under Wis. Stat. § 108.02(12)(bm)2. Specifically, the commission now concludes that condition d. has not been met because the record does not support a conclusion that Louis R. Henschel incurred the main expenses in the performance of his services under the contract. Because only five of the nine conditions in Wis. Stat. § 102.02(12)(bm)2. (specifically, b., e., f., g., and i.) are present in this case, the commission concludes that the appeal tribunal decision in Hearing No. S1800204AP must be affirmed.

Based on the foregoing, the commission **modifies** the appeal tribunal decision in Hearing No. S1800204AP to conform to the foregoing, and **as so modified, affirms** both appeal tribunal decisions. Accordingly, the appellant is an employer subject to the Wisconsin unemployment insurance law and shall comply with quarterly reporting requirements and is required to submit quarterly wage reports for the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2018, along with payment of any contributions due as set forth in the appeal tribunal decisions.

By the Commission:

  
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Michael H. Gillick, Chairperson

  
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David B. Falstad, Commissioner

  
\_\_\_\_\_  
Georgia E. Maxwell, Commissioner