STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

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Trinet HR V Inc and/or Watchful Software Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Trinet HR V Inc, 9000 Towncenter Pkwy, Bradenton FL 34202
Watchful Software Inc, 10000 Lincoln Dr E Ste 201, Marlton NJ 08053

Date of Hearing: March 29, 2017

Case No.: 54662

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed $8,049.25, which is the balance of his monthly salary for December 2016. He argues he was laid off by the employer and they prorated his salary for the number of days he worked in December, rather than his full salary.

Trinet HR V Inc argues they were not the employer of the claimant.

Watchful Software Inc argues they relied on Trinet HR V Inc to follow New Hampshire statutes as they did not have that capability. Trinet HR V Inc prepared the separation agreement which outlined the monies the claimant was to receive and he did indeed receive those amounts.

FINDINGS OF FACT

The claimant was at all times a salaried employee receiving a monthly salary of 10,416.67. Upon his separation, which all parties agree was not for cause, he received only $2,367.42.

Trinet HR V Inc is an employee leasing company with a client relationship with Watchful Software Inc. The claimant worked at this client location.

The claimant alleges he was not paid all salary due and seeks the balance of $8,049.25.

Trinet HR V Inc argues they are not the employer, as Watchful Software Inc is the employer of record.

Watchful Software Inc argues that they relied on Trinet HR V Inc as the leasing company, for compliance with the New Hampshire statutes. Trinet HR V Inc prepared the separation agreement for the claimant, including the proration of his monthly salary. She agreed the claimant was laid off due to his position being eliminated, not a termination for cause.

RSA 275:43-b requires that an employer pay a salaried employee their full salary for any pay period in which the employee performs any work. It also allows employers to make deductions to a salaried employee's wages under certain circumstances, but none of those exceptions apply to the facts of this case.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed salary of $8,049.25.

Now the Department must determine which entity is the employer of the claimant for the purposes of paying wages to employees.

RSA 277-B:9 deems employee leasing to be co-employment between the employee leasing company and the client company.

RSA 277-B:9 Employee Leasing Deemed Co-Employment. – An employee leasing company and a client company shall be deemed co-employers and shall divide employment responsibilities as follows:
  I. An employee leasing company shall be solely responsible for:
    (a) Paying wages to leased employees. The employee leasing company may rely on initial hiring documentation of wages, ongoing pay change documentation, and reported payroll documentation regarding hours worked or other measured unit of employee compensation received from the client company. An employee leasing company shall not knowingly rely on materially inaccurate information provided under this paragraph.

        And:

        II. A client company shall be solely responsible for:
    (d) Providing accurate personnel and payroll information, and a record of hours and wages to the employee leasing company and department of labor when requested, as a co-employer on all leased employees as required of employers under RSA 279:27. Notification shall be made in compliance with the signed notice as required by rules adopted by the department.
    (e) Complying with all wage and hour laws, including recordkeeping requirements and determinations of exempt and non-exempt status.

Pursuant to RSA 277-B:9 II (e) requires the client company to comply with all wage and hour laws. Section (d) requires the client company to provide accurate payroll information.

Watchful Software Inc's argument that they relied on Trinet HR V Inc to provide the correct information regarding payments to the claimant for the separation payments due is noted, however, ultimately, the responsibility lies with Watchful Software Inc to provide the accurate payroll information and comply with all wage and hour laws.

Therefore, Watchful Software Inc is found to liable for the payment of wages in this case.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant proved by a preponderance of the evidence that he was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of $8,049.25.

Watchful Software Inc is hereby ordered to send a check to this Department, payable to ▮▮▮▮▮▮▮, in the total of $8,049.25, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey
Hearing Officer

Date of Decision: April 13, 2017

Original: Claimant
cc: Employer

MJD/das