

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

BERRY DELICIOUS BAKERY

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Berry Delicious Bakery, 12 Yeaton Road, Plymouth, NH 03264

Date of Hearing: January 21, 2014

Case No. 46845

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 11, 2013. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on December 4, 2013.

The claimant testified that she worked for the employer from January of 2011 until November of 2013. She was hired into a part-time position at a rate of \$10.00 per hour. The claimant stated that there was nothing reduced to writing when she was hired.

The claimant said that she kept weekly time sheets and submitted them to the employer. In April of 2011 the claimant was still not on the payroll. Once she started on a forty hour scheduled she was never paid for overtime hours.

The claimant was asked to fill out a Federal 1099 tax form. When the claimant found out that she had no taxes deducted, the employer paid her \$1,000.00 to help with the tax payment.

The employer testified that the claimant was hired in February of 2011 as an Independent Contractor. The employer stated that the claimant was willing to pay her own taxes. As of April, the claimant was still not on the company payroll. Once the pay started the claimant would be paid \$400.00 for all hours. There was no agreement to paying any overtime wages.

In January of 2012 the employer gave the claimant a Federal 1099 Form. It was at that point that the claimant asked for help in paying taxes. The employer did provide some relief for the taxes owed. The employer also testified that the claimant knew that there was no overtime pay because of the financial situation of the employer. The claimant did have set hours and

there is nothing in writing except for the pay checks. There was no hiring contract or written agreement.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and she met this burden. The claimant was credible in her testimony that she was an hourly employee and that she kept track of her own hours.

The claimant said that she applied for the position without any restrictions or period of training. She went to work and there were no written policies in place. At no time did the claimant hold herself out to be an Independent Contractor.

The employer testified that there were problems with the work product and there was training to take place. The claimant was an Independent Contractor and set her own hours. It is required under the law that an employer has written policies for an employee and that the wages and benefits should be in writing. The employer did not follow the law in this practice and the law also requires the an hourly employee be compensated with premium pay when working beyond forty hours in a pay week.

The Hearing Officer accepts the claimant's written documents because the employer only submitted pay checks that show some overtime paid and some paid at straight time. The employer has the responsibility or record keeping and this was not doe.

The Wage Claim is valid in the amount of \$4,247.90.

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 this Hearing Officer finds that the claimant

proved that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$4,247.90.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$4,247.90, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: February 6, 2014

Original: Claimant
cc: Employer

TFH/all