

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

INCEPTION TECHNOLOGIES INC.

DECISION OF THE HEARING OFFICER

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

Employer: Inception Technologies Inc., 1 Sundial Ave., Ste. 201, Manchester, NH 03103

Date of Hearing: December 23, 2013

Case No. 46867

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 17, 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 November 15, 2013.

The claimant testified that she worked for the employer from May 13, 2013 until September 11, 2013. She held a salaried position with a monthly pay period. The pay period ran from the 23rd of a month until the 22nd of the next month. Her hiring package stated that she was to earn \$9,166.67 per month.

The claimant testified that she was not paid for one day after she started to work. She also feels that the employer did not pay her for the entire number of days in the last pay period. She feels that she was not fully paid for the time worked.

The employer testified that the claimant was under a hiring agreement and she was a salaried employee paid on a monthly basis. The employer did say that they stopped the salary on the day the claimant's resignation came into place. The employer also stated that the claimant took some vacation time during the last pay period and so she was changed into an hourly position.

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.

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This part of the law puts the salary wage under rules governing when and how the wages are to be paid.

It is the finding of the Hearing Officer, based on the written presentations 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 with her figures on how her salary was paid and where it did not comply with the law.

The employer did not claim that the figures presented by the claimant were invalid but did say that the last pay period caused the claimant's wage structure to be changed from salary to hourly. This is not allowed without a written notification. The claimant remained in a salaried position.

The employer also said that the claimant took some vacation time and she had not earned the amount of time she took. The hiring agreement said that the leave time was earned on an accrual basis, month by month. The employer allowed the claimant to take time off in a pay period and has a history of allowing this practice.

The law governing salaried employees is based on payment for the "many or the few" hours in the pay period. There is nothing to indicate that the employer notified the claimant that she would be docked pay for time away from work in the pay period. Because of this it is found that the Wage Claim is valid in the amount of \$4,447.80. The employer must be responsible for

the salary due for the pay period. The employer is allowed to stop payment on the day a resignation comes into place. This was done, however, the one day in the first pay period is due and owing and the days of employment during the last pay period are due and owing.

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 by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$4,447.80.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$4,447.80, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 14, 2014

Original: Claimant
cc: Employer

TFH/all