

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Trinet HR Corp.

DECISION OF THE HEARING OFFICER

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

Employer: Trinet Corp., 1100 San Leandro Blvd., San Leandro, CA 94577

Date of Hearing: February 26, 2014

Case No.: 46998

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant worked at Avitide Inc., which is a client company of Trinet HR Corp., an employee leasing company. Avitide Inc. hired employees through an employee leasing arrangement with Trinet HR Corp. The claimant has filed a simultaneous claim against Avitide Inc., case number 47309. Both of the claims were heard in a consolidated hearing.

The claimant asserts he is owed \$2,100.00 in unpaid salary as he was terminated three days into a biweekly pay period and was only paid three days of salary, or \$900. He argues he is the balance of his biweekly salary of \$3,000, or \$2,100.

Trinet HR Corp. denies they are the employer. They argue that Avitide Inc. is responsible as the employer for the payment of wages to employees.

However, they further argue that the claimant is not due any further wages or salary because the claimant was paid severance in the form of wage continuation for the remainder of his temporary assignment. He was paid in full for the temporary contract term, though he was terminated prior to the end of the term.

FINDINGS OF FACT

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

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.

(b) Preparing and issuing of W-2 forms for leased employees.

(c) Calculating, collecting, and remitting all payroll taxes, including income tax and social security tax, as required by law with respect to leased employees.

(d) Complying with state and federal unemployment compensation requirements, including the reporting of wages paid, making required contributions, and processing claims for benefits on a timely basis as required by New Hampshire law.

(e) Paying for workers' compensation insurance for the leased employees.

(f) Making payments for health or other benefits for leased employees, to the extent the contract calls for the employee leasing company to provide such benefits.

(g) Complying with all laws, rules, and regulations for employee leasing companies under their contract or as required by this state or the federal government.

(h) Paying the tax imposed by RSA 77-E and inclusion in its compensation portion of the base tax those wages paid to its leased employees.

(i) Providing to each employee an employee manual outlining the terms and conditions of employment with the leasing company.

(j) Providing an employee grievance system for employees employed by the leasing company.

II. A client company shall be solely responsible for:

(a) Directing and controlling the leased employees as necessary to conduct the client company's business, discharge any applicable fiduciary duty, or comply with any licensure or regulatory or statutory requirement.

(b) The goods and services produced by the client company and its direct and leased employees.

(c) The acts, errors, and omissions of the leased employees committed within the scope of the client company's business or under the direction and control of the client company.

(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.

(f) Providing a safe workplace to the employees free of all hazards in compliance with the Occupational Safety and Health Act of 1970 and regulations or any similar law. This shall include sole responsibility for compliance with the requirements of RSA 281-A:64 and similar requirements or regulations.

(g) Complying with all laws prohibiting employment discrimination, harassment, and retaliation on the basis of any protected class or characteristic.

(h) Paying all expenses arising from unionization, negotiating collective bargaining agreements, and processing grievances and unfair labor practice charges related to the client company or the leased employees.

(i) Complying with all applicable professional license or bonding requirements pertaining to the client company's business and maintaining professional liability coverage.

(j) Assuming and accepting responsibility for all compensation paid to any employee that is not paid through the employee leasing relationship or reported to the employee leasing company. Responsibility shall include but shall not be limited to all payroll taxes, federal and state taxes, additional premium for insurances including but not limited to workers' compensation insurance, and additional matching contributions if any.

(k) Assuming and accepting all responsibilities, as defined under New Hampshire law, of an employer when hiring or employing individuals separately and not included in the contract with the employee leasing company.

III. The employee leasing company shall notify the commissioner of employment security and the commissioner of the department of labor in writing of all new and terminated client companies within 20 business days of engagement or termination.

Pursuant to RSA 277-B I the employee leasing company shall be solely responsible for paying wages to leased employees. Therefore, Trinet HR Corp is found to be the employer for the purposes of paying wages to employees and this hearing.

The claimant signed a temporary contract with client company Avitide Inc. to work from July 8, 2013 for three calendar months (through September 6, 2013). He was paid at a rate of \$1,500 per week, on a biweekly basis. On August 14, 2013, the claimant was terminated.

The claimant signed a separation agreement which stated, in relevant part, "Severance Payments. In exchange for your entering in to this Agreement, including the general release and waiver of claims set forth in paragraph 5 below, the Company will pay you severance in the form of continuing payment of your current base salary until September 6th, 2013, which may be paid as a single lump sum or in weekly installments.... Severance payments will be subject to all applicable federal and state withholdings."

The claimant now argues that the severance pay he received is not wages and he should be paid the remainder of the salary for the pay period in which he was terminated, or \$2,100.

The Hearing Officer finds the severance agreement clearly indicates the severance pay given to the claimant, in exchange for his signature and waiver of future claims, is in the form of wage continuation. The claimant paid for the remainder of the pay period in which he was terminated, and additionally he was paid for the remainder of the contract period for which he was originally hired. The claimant was compensated in full for the final pay period in which he performed work.

The Hearing Officer finds that though the employer may have used the word severance to refer to the monies paid to the claimant, by the plain reading of the agreement, the employer's intention was to fully compensate the claimant for all wages he would have earned during the employment period specified in the original contract.

The Hearing Officer finds that the claimant was paid all wages due and the claimant failed to prove by a preponderance of the evidence he is due the claimed wages.

DECISION

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 Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages/salary, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: March 11, 2014

Original: Claimant
cc: employer

MJD/all