

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

WATERVILLE VALLEY SKI RESORT

DECISION OF THE HEARING OFFICER

Appearances: Elizabeth A. Bailey Esq., Attorney for the Employer

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal deductions from wages

Employer: Waterville Valley Ski Resort, 1 Ski Area Road, Waterville Valley, NH
03215

Date of Hearing: June 3, 2014

Case No. 47557

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on February 12, 2014. 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 April 25, 2014. The Wage Claim is for \$992.44 in illegal deductions from wages.

The claimant testified that he voluntarily entered into a Flexible Spending Account. This is allowed under Federal regulations. The claimant testified that when he left his position with the employer he should have been paid the remaining funds in his account or allowed to use them. The account history shows that the claimant did use the account at times for allowable medical expenses.

The employer testified that the claimant entered into the Plan and used it. When he left the employer, to take another job, the claimant could have applied for COBRA coverage but did not do so. The claimant did leave money in the Plan but there is a use it or lose it provision in the regulations.

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.

RSA 275:48 I Withholding of Wages. – I.

No employer may withhold or divert any portion of an employee's wages unless:

- (a) The employer is required or empowered to do so by state or federal law, including payroll taxes.
- (b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) or for any of the following:
 - (1) Union dues;
 - (2) Health, welfare pension, and apprenticeship fund contributions;
 - (3) Voluntary contributions to charities;
 - (4) Housing and utilities;
 - (5) Payments into savings funds held by someone other than the employer;
 - (6) Voluntary rental fees for non-required clothing;
 - (7) Voluntary cleaning of uniforms and non-required clothing;
 - (8) The employee's use of a vehicle under RSA 261:111, III;
 - (9) Medical, surgical, hospital and other group insurance benefits without financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded; and
 - (10) Required clothing not covered by the definition of uniform.
- (c) The deductions are pursuant to any rules or regulations for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books.
- (d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:
 - (1) Voluntary contributions into cafeteria plans or flexible benefit plans, or both, as authorized by section 125 or section 132 of the Internal Revenue Code.
 - (2) Voluntary payments by the employee for the following:
 - (A) Child care fees by a licensed child care provider.
 - (B) Parking fees.

- (C) Pharmaceutical items, gift shop, and cafeteria items purchase on site of a hospital by hospital employees.
- (3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:
 - (A) The time the payments will begin and end.
 - (B) The amounts to be deducted.
 - (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
- (4) Voluntary payments for the recovery of accidental overpayment of wages when the following conditions are met:
 - (A) The recovery is agreed to in writing.
 - (B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.
 - (C) The written agreement specifies:
 - (i) The date the recovery of the overpayment will begin and end.
 - (ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in any pay period.
 - (iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
- (5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:
 - (A) The time the payments will begin and end.
 - (B) The amounts to be deducted.
 - (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
- (6) Voluntary payments for the employee's use of a health or fitness facility that is sponsored by the employer for the benefit of its employees and that is located within the employer's facility or workplace, or operated by a private health and fitness facility that offers discounted memberships of 50 percent or more to all employees of the employer, as evidenced by a document that includes the following:
 - (A) The time the payments will begin and end.
 - (B) The amounts to be deducted.
 - (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
- (e) The employee requests in writing that deductions may be made for contributions to a political action committee from the employee's wages.
- (f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay

made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

This part of the law spells out when and how deductions can be made from wages.

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 invalid. The claimant has the burden to show that wages have illegally been withheld from his earnings; he did not carry this burden.

The claimant entered into a Federal program that allows for a tax reduction when the wage earner is paying medical expenses. The rules governing this Plan are generated and published by the Federal Government.

The employer stated that this is not a decision that can be made by the New Hampshire Department of Labor. It is a decision left to the Federal Government and is not under the New Hampshire laws. This is an accurate statement as the Plan deals with tax liability on the Federal level. The Wage Claim is invalid in this forum.

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 Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 19, 2014

Original: Claimant
cc: Employer

TFH/clc