

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Advantage Media Group LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Advantage Media Group, LLC, 5690 Rush Meadow Rd West
Windsor VT 05089-4415

Date of Hearing: June 4, 2014

Case No.: 47776

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$596.66 in unpaid wages for hours worked between January 6, 2014 and February 14, 2014. She also alleges she is due \$188.00 in unpaid bank fees incurred for returned checks.

The employer paid the claimant six payroll checks, all of which were returned for insufficient funds by her financial institution. The employer gave the claimant a check for \$564.00, of which \$493.00 was for past wages and \$71.00 for fees. She alleges the entire \$564.00 was a commission check and she is still due the full amount of the claim and expenses.

She testified that she understood she would receive minimum wage for all hours worked and if she did make more in commission for any given week, she would receive commission instead of minimum wage for that week.

The employer agrees the claimant is due \$103.66 in unpaid wages and \$35.00 for an outstanding bank fee, totaling \$138.66. Though he does not believe he is responsible for paying bounced check fees, he has already paid the claimant \$71.00 and will pay the balance of \$35.00.

The claimant was paid on a draw against commission arrangement, which she signed. He testified he had a copy, but did not bring it to the hearing. She did not make enough commissions to make more than her minimum wage payment for all hours worked.

The hearing was left open until 4:30pm on June 4, 2014, for the employer to submit a copy of the payment arrangement given to the claimant. He submitted the required documentation within the prescribed timeframe.

FINDINGS OF FACT

The claimant worked for the employer from January 9, 2014 through February 14, 2014. The pay arrangement was a draw against commission, with a weekly minimum wage draw for all hours worked. The claimant did not correctly understand how a draw against commission program is paid. The employer did provide a notice of rate of pay in writing to the claimant, which she signed acknowledging the notice.

RSA 275:42 VII The term "draw against commission" means a compensation method under which an employee receives, at least once each month, a draw payment of not less than the minimum wage, representing an advance against anticipated commission earnings. Draws shall be reconciled against commissions monthly unless otherwise agreed, in writing, by employer and employee. If the reconciliation results in an amount payable to the employee, payment shall be made in accordance with this chapter. If the reconciliation results in a negative balance, the balance may, by written agreement between employer and employee, be carried over into ensuing time periods; however, if a final reconciliation results in a negative balance, it shall not be recoverable from the employee.

The claimant did not receive a single pay check during her employment that was cashable. The employer paid the claimant \$564.00 after her employment ended that she was able to cash.

On two occasions, the employer accidentally overpaid the claimant due to an issue with the office manager/bookkeeper. These checks were not cashable.

The employer provided credible testimony that the claimant did not earn enough in commission to override the minimum wage payment. The parties disagree as to whether she earned any commission at all.

The parties agree the claimant worked the following hours:

- Week ending January 10, 2014 14 hours
- Week ending January 17, 2014 34 hours
- Week ending January 24, 2014 3 hours
- Week ending January 31, 2014 28 hours
- Week ending February 7, 2014 10 hours
- Week ending February 14, 2014 6 hours

The claimant should have been paid \$688.75, gross, for ninety-five hours at a rate of \$7.25 per hour.

The claimant previously provided documentation showing she incurred bank fees due to the returned checks, totaling \$141.00, as follows:

- January 22, 2014 \$12.00
- February 4, 2014 \$35.00
- February 4, 2014 \$24.00

- February 19, 2014 \$35.00
- February 20, 2014 \$35.00

RSA 275:43 I requires an employer to pay all wages due to an employee at no cost to the employee. Therefore, any bank fees incurred by an employee as a result of the employer's checks insufficiency are the responsibility of the employer.

The employer paid the claimant \$564.00 on or about February 18, 2014. This payment included \$71.00 in returned check fees and \$493.00 for wages.

The Hearing Officer finds the claimant proved by a preponderance of the evidence she is due \$195.75 (\$688.75-\$493.00) in unpaid wages. She further proved she is due \$70.00 in unpaid employee expenses (\$141.00-\$71.00).

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 that the claimant proved by a preponderance of the evidence that she is owed a portion of the claimed wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$195.75.

As RSA 275:43 V considers the payment of employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all employee expenses due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$70.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$265.75 (\$195.75 + 70.00), less any applicable taxes, within 20 days of the date of this Order.

/s/

Melissa J. Delorey
Hearing Officer

Date of Decision: June 16, 2014

Original: Claimant
cc: Employer

MJD/all