

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

QUALITY INSULATION

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses

Employer: Quality Insulation, 1 Pease Road, Meredith, NH 03253

Date of Hearing: July 1, 2014

Case No. 47939

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 4, 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 June 5, 2014. The original Wage Claim was filed for \$512.00. The employer did pay \$200.00 towards the Wage Claim.

The claimant testified that he was an hourly employee and he worked for the employer for about two years. The employer issued checks drawn on TD Bank. In order to cash the check at TD Bank, the claimant had to have an account there. Without an account the claimant was charged a \$5.00 service fee. In order to save \$2.00 he took the checks to Wal-Mart where they cashed them for \$3.00.

The claimant complained to the employer about this and was told that he could have direct deposit but the claimant did not have any account to send the wages.

The employer testified that they paid the claimant with a check every pay day. The company does not pay check cashing fees for their issued pay checks. There is no charge for direct deposit and it is free to employees.

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 275:43 V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law takes an issue such as employee expenses and places them into the category of wages when the expenses 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 he met this burden.

The law requires that an employer must pay an employee all wages due and owing. RSA 275:43 I (e) places the burden on the employer to issue pay checks that can be cashed locally without cost to the employee. In this case the employer's bank was charging a service fee to an employee who did not have a personal account at the banking institution. This is an unreasonable burden to put on the employee and should be worked out by the employer.

The Wage Claim is valid in the amount of \$312.00.

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 Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$312.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$312.00 within 20 days of the date of this Order.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: July 18, 2014

Original: Claimant
cc: Employer

TFH/cag