

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

L-TOWN GARAGE

DECISION OF THE HEARING OFFICER

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

Employer: L-Town Garage LLC 347 Rockingham Rd Londonderry NH 03053

Date of Hearing: October 27, 2014

Case No. 48847

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 9, 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 October 7, 2014.

The claimant stated that she is seeking one week of salary and two weeks of vacation time. She said that she was terminated on September 7, 2014 and had worked for the employer for about three months. There were no written documents at the time of hire that would describe the wage and benefit package.

The claimant said that when she was hired she was told that she was to get two weeks of vacation time and one week of sick leave. She was working as a salaried employee after first starting as an hourly employee. The claimant said that on Tuesday, September 2, she had a disagreement with the owner's father. She was told by the owner to go home. On September 3, 2014 the claimant came into work and opened up the business and was logged into her computer when the owner and her father arrived for a meeting. At the meeting the claimant was told that they were eliminating her position and creating two part-time positions. The claimant was offered one of these positions. She was told to think about it and they would call her back. The claimant said that a meeting was set for Monday, September 8, 2014 and she asked about coming in on Friday to pick up her check. The claimant was informed that there would be no pay for the week of September 1 through September 5.

The employer later withdrew the offer of a part-time position.

The employer testified that the claimant walked off the job on September 2, 2014 and therefore quit her job. The claimant did start out as an hourly employee but asked to be switched to salary. It was the intent of the employer that all leave was to be prorated and not available in a lump sum at the beginning of employment.

The employer stated that during the three months the claimant worked she was out of work for seven full days and was paid for these days. The employer said that the time was not due but it was paid as "good will" because the claimant was going through some difficult times.

The employer, once the claimant quit, wanted to create two part-time jobs. The claimant was offered one of them but when she failed to agree to a set meeting, the offer was withdrawn.

The employer felt that any problems between the claimant and another employee could have been worked out and was no way the reason for the claimant to leave her job.

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.

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-b Payment of Salaried Employees. –I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

- (a) Any pay period in which such employee performs no work.
- (b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.
- (c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.
- (d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.
- (e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

This part of the law governs the salaried employee and points out when and how wages must be paid.

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.

In this section of the law an issue such as vacation time is put into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties presented for the hearing, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and she did meet part of this burden.

The employer was credible in their testimony that the claimant quit. On the day she walked out she terminated her employment. Under the salary provisions of the law, a voluntary quit stops the salary payment.

The claimant was on the payroll for the Labor Day holiday and she did work for a short time on September 2, 2014. For these two days she has to be paid. This part of the Wage Claim is valid in the amount of \$210.12.

The employer testified that there was no written employee handbook in place. There was also no written hiring agreement. At the time of separation the claimant was a salaried employee and she was under the understanding that all leave was earned in a lump sum and can be used as needed. The fact that the claimant took seven sick days in the first three months and was paid for these days seems to show that there was a lump sum accrual.

The claimant said that she was entitled to five sick days in a year and she was paid for seven. Because there is not a written handbook or policy in place it is reasonable to assume that there is a lump sum accrual. Because the claimant felt that she had ten days of vacation time and five days of sick time and the fact that she used seven of these days, leads this decision to be valid in the amount of \$840.54 for the requested leave payment.

The employer did not place their policies and procedures in writing and so the Wage Claim is valid in the amount of \$1,050.66.

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 \$1,050.66.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,050.66, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

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Date of Decision: November 24, 2014

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