

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

CLEAR CHOICE HOME IMPROVEMENTS LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid commissions
RSA 275:43 I unpaid wages
RSA 275:43 I unpaid bonus
RSA 275:43 V unpaid car allowance
RSA 275:43 V unpaid bereavement pay
RSA 275:48 I illegal deductions from wages

Employer: Clear Choice Home Improvements LLC, PO Box 1998 New London, NH
03257

Date of Hearing: October 30, 2014

Case No. 48856

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 8, 2014. The notice was sent to the employer and there was no written objection to the Wage Claim. A Notice of Hearing was sent to both parties on October 7, 2014. The employer did show up for the hearing. The Wage Claim was filed for \$3,000.00.

The claimant testified that he worked for the employer from April 28, 2014 until August 18, 2014. He did work under a written hiring agreement. The claimant said that his pay plan called for two weeks at a rate of \$350.00 per week. Then he was increased to \$400.00 per week. After his training was complete, the claimant was paid on a commission only basis.

The claimant said that he was trained to sell gutters for roofs. He did not feel comfortable with the training and asked for help on proposals and the various products sold by the employer.

He used his own equipment in the sales process and he covered New Hampshire, Vermont and Massachusetts. The commission plan was for a set goal and that he would be paid one half of the commission at the sale and the other half at the completion of the installation. The claimant stated that he did make sales and believes that there is still about \$1,900.00 in commissions owed.

The employer was not happy with his sales work and he was terminated from his position. The claimant said that he never received any car allowances for travel and that he was not allowed to take three bereavement days for the death of his grandfather. He was allowed to take one day and was paid for that day.

The employer testified that the claimant was trained in the products they sold and he was trained in writing contracts. All issues were reviewed in the training and contracts were reviewed. There is a set week of training but there is an option for an extra week and the claimant took the extra week.

The employer said that the claimant worked in the field after his training and he was paid the \$400.00 per week if it was more than his commissions. If the commissions were higher, the claimant received the commissions.

The employee rules state that an employee can take up to three days off for the death of a grandfather. The claimant only asked for one day and was given that day and paid for that day.

The company did not pay expenses but there was a bonus plan in place that if the employee reached a certain threshold he received a bonus and a car allowance. The claimant did not reach these thresholds.

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, all bonuses due and all commissions due when 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 places issues such as employee expenses and bereavement leave into the category of wages when the expenses and the leave 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 section of the law points out when and how deductions can be made from wages.

It is the finding of the Hearing Officer, based on the written submission and the testimony of the parties 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 he met part of this burden.

The claimant prevails in the part of the Wage Claim in which he is looking for commissions. The testimony was not clear as to what the goal was for the earning of various incentives but there was no doubt that there were commissions paid for all sales even if the sales were short of an established goal. The claimant felt that he was owed around \$1,900.00 and the employer testified that there were commissions due in the amount of \$1,900.00. This part of the Wage Claim is valid.

There is no finding for employee expenses or the issue of bereavement leave. It is found that the claimant did not reach the established goals and so there is no bonus system that

will “kick in”. The employer was also credible in their testimony that the claimant only asked for one day of bereavement leave and it was granted and paid for by the employer.

There is also no finding for illegal deductions from wages the claimant was not clear on this issue.

The Wage Claim is valid in the amount of \$1,900.00.

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 that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,900.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,900.00, less any applicable taxes, within 20 days of the date of this Order.

All other requests in the Wage Claim are invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: November 21, 2014