

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

X-RAY PROFESSIONALS

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: X-Ray Professionals, 2 ½ Beacon St., Concord, NH, 03301

Date of Hearing: November 17, 2014

Case No. 48932

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 22, 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 22, 2014.

The claimant testified that he worked for the employer from October 7, 2012 until March 22, 2013. He stated that he was required to take courses, on his own time, these courses were necessary for certification and for advancement in the field. The claimant was earning \$12.50 per hour and was not exempt from overtime pay.

The claimant stated that he worked a forty hour schedule and he estimates that he put in another twenty hours a week studying for the exams. He is seeking thirteen weeks at twenty hours per week at the overtime rate of \$18.75 per hour.

The claimant testified that the course was called Coding Strategies Inc. (CSI) and the employer paid for the courses. The claimant said that he was given six months to pass the tests and that the employer set the passing grade and the timelines for all of the tests. The claimant said that there is no written policy on the time spent for studying and there was no policy on any continuing education plan.

The claimant said that he was hired into a position as a Coder. However, because he was not certified he had to work under another employee's license. He also said that he never

complained about the program or the time involved while he was working. He does however feel that training time must be counted as time worked.

The employer testified that there is a continuing education program in place. It is designed to get the employee well versed in the work and make the employee capable of advancement in the field. The courses are done on the employee's own time and management does set the passing grade to be attained.

The claimant was in the standard continuing education program and the completion of the program would become a resume builder for the future. The claimant's employment was terminated because of a productivity issue and had nothing to do with the courses the claimant was taking.

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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

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.

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 there are wages due and owing and he did not meet this burden.

The claimant was enrolled in a continuing education program that made it very clear that the studying was to be done on the employee's own time. The result of passing the certification would be the ability to advance in the company or to use the certification to seek other jobs. The claimant enrolled in the program knowing the policy and the control of various aspects exercised by the employer. The field deals with sensitive medical issues and there has to be a minimum of mistakes because of the nature of the work.

The claimant never tried to collect any overtime while he was working at the Coder position with the employer. He participated in the continuing education program and was moving along through the program. The incident that led to the termination of employment had nothing to do with the continuing education program.

The Wage Claim is invalid.

DECISION

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.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 8, 2014

TFH/slh