

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**BALAGUR ASSOCIATES**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 I unpaid bonus  
RSA 275:48 I illegal deductions

**Date of Hearing:** January 15, 2015

**Case No.** 49180

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on October 29, 2014. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on December 17, 2014. The employer was represented at the hearing.

The claimant testified that he worked for the employer from July 1, 2012 until April 20, 2013, approximately nine months. He was an hourly employee and there was a written hiring agreement in place. The claimant stated that he was hired at a rate of \$17.00 per hour and in October of 2012 he was changed to \$20.00 per hour. Once he reached the \$20.00 per hour he was also eligible for benefits. The wage of \$20.00 per hour was the amount the claimant was taxed on.

The claimant said that the employer put away \$2.50 per hour for a benefit package. The claimant believes that this Benefits Account was to be used for multiple expenditures and if not used, it could be part of a yearend bonus. If not used, another possibility was that the account could be rolled over into the next year. The claimant never used any of the benefits in this account and so he believes that he is due the total in the account, \$2,321.25, at separation. The claimant was terminated for cause in April of 2013.

The claimant said that he was paid for all of his accrued vacation time and that he did receive unemployment compensation. The claimant also stated that he never requested any benefit payment from the Benefit Account and did not submit any medical bills after his termination.

The employer testified that there is no benefit payout for unused money in the Benefit Account. The amount placed in the account is not a deduction from wages and so there is no tax burden to the employee on this account. The employer stated that it was a management option to pay part of the account in a yearend bonus. The bonus was given for outstanding work performance.

The employer said that there was no bonus anticipated in this case and the claimant never asked for any benefit out of the account. The claimant was paid all of his vacation time upon separation. The employer also feels that it is strange that after a year from separation, the claimant asked to be paid for the balance in this account.

### **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. A bonus payment is considered wages when the payment is due and owing.

RSA 275:48 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;
- (10) Required clothing not covered by the definition of uniform;
- (11) Legal plans and identity theft plans without financial advantage to the employer when the employee has given his or her written authorization and deductions are duly recorded; and
- (12) For any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded. The withholding shall not be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business. Nothing in this subparagraph shall prohibit a charitable organization from withholding from an employee's wages a voluntary contribution to such charitable organization.

(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 purchased 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 part of the law spells out when and how deductions can be made from wages.

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 finding is that there were no illegal deductions from wages for the benefit program. The employer had a formula where he placed \$2.50 per hour into the account that could be used for a multitude of issues. The hourly amount was not deducted from the claimant's set hourly wage. There were no tax ramifications to the employee with this practice.

The employer was credible in their presentation that a bonus plan was for outstanding performance and it was a management prerogative. In this case there was no bonus given.

The claimant did not receive a deduction to wages because of the benefit plan. The amount put into the account was based on a set amount, (\$2.50 per hour) that was above the agreed upon wage for work performed. The claimant did not access the benefit account.

The Wage Claim is invalid.

**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 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.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: February 23, 2015

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