

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



V

**MONADNOCK DEVELOPMENTAL SERVICES**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages

**Employer:** Monadnock Developmental Services, 121 Railroad St., Keene, NH  
03431

**Date of Hearing:** April 1, 2015

**Case No.** 49819

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on January 30, 2015. 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 March 10, 2015.

The claimant filed the Wage Claim seeking vacation time, mileage and a bonus payment. At the start of the hearing, the issue of mileage and vacation time was withdrawn because they had been paid. The only issue to be presented for the Wage Claim was the bonus issue.

The claimant testified that she worked for the employer for four and a half years as a salaried employee. One of the functions that she performed was the writing of work plans. These plans were submitted to the State of New Hampshire and if they were approved the claimant would receive a bonus payment. The payment of the bonus was because there was a verbal agreement with the employer to pay the bonus. The bonus had been paid for past work plans developed by the claimant.

The claimant further testified that there was a work plan in production when she was terminated from employment. She said that three quarters of the work on this plan she had developed. The claimant feels that she is due between \$200.00 and \$300.00 for this plan.

The employer did testify that the claimant wrote risk plans for the agency. The writing was a part of her duties. There was an agreement that if a plan was accepted there could be a

discretionary bonus if the financial situation of the agency allowed for the bonus. The employer testified that there had been past bonus' paid. There had been a payment of \$400.00 for one plan and a payment of \$100.00 for work on another plan.

The plan in question at this time is not complete and is in need of revisions. If the plan is adopted and approved in May of this year, there may be a payment to the claimant if the financial situation of the agency allows for a payment. The employer testified that the payout of a bonus is a management prerogative it is not part of a regular wage package.

### **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 of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The claimant testified that there had been a verbal agreement for the payout of a bonus. This payout had been processed in the past and the claimant received a bonus. In this case the risk plan is not accepted by the State and there is no product completed.

The employer testified credibly that the work plan was still being reviewed by the State and that the payout for an accepted plan was strictly a management prerogative and subject to the financial situation of the agency. They further testified that if the plan is adopted in May of 2015, the claimant could be in line for a bonus payment, if finances allowed one to be paid.

There is no completed product and there is no written agreement on how the bonus is to be paid. The employer prevails in this Wage Claim. 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 she 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: April 22, 2015

TFH/kdc