

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

IBM Corp

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/commissions

Employer: IBM Corporation, 1133 Westchester Ave, White Plains, NY 10601

Date of Hearing: July 28, 2015

Case No.: 49972

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$106,504.65 in unpaid commission for sales in the third quarter of 2014.

At the hearing, he amended the claim to \$71,946.27 as he had received a payment of \$34,558.71 in May 2015.

The employer denies the claimant is due any further commissions/incentives. The Incentive Plan Letter (IPL) notified the claimant that the employer had the right to modify, change or cancel the program at any time. They changed the target dollar amount from \$571,000 to \$1,000,000, after the end of the fourth quarter 2014. They calculated the amount due on quarter three sales with the new target amount and paid the claimant accordingly in May 2015, less any advances and commissions/incentives already paid.

FINDINGS OF FACT

The claimant began working for the employer as a Sales Executive in January 2013 and is still a current employee.

The employer presented the claimant with an IPL for the period of July 1, 2014 through December 31, 2014, on July 14, 2014. The claimant acknowledged the terms of this policy and accepted the agreement on July 16, 2014.

This agreement notified the claimant he would earn commissions/incentives on a quota of \$571,000 for SEC signings.

The parties do not disagree that the claimant met the original commissions/incentives target of \$571,000.

The employer changed the target amount of sales from \$571,000 to \$1,000,000 after the close of the IPL period of December 31, 2014. The employer admitted they did

not notify the claimant of the change in the target amount, prior to the change becoming effective.

The employer's argument that Courts have consistently upheld the right to modify, change or cancel terms of a commission policy, providing there is notice in the policy itself, is not persuasive.

The issue is not whether the employer has the right to modify, change or cancel the terms of the program. The employer has the right to make changes to the policy, however, they are required by RSA 275:49 and Lab 803.03 (a) and (c) to notify employees of the changes, in writing, prior to the effective date of the changes, and maintain an employee signed copy of the notification, Lab 803.03 (f)(6).

RSA 275:49 Notification, Posting, and Records. – Every employer shall:

I. Notify the employees, at the time of hiring of the rate of pay, and of the day and place of payment;

II. Notify his or her employees of any changes in the arrangements specified above prior to the time of such changes.

and:

Lab 803.03 Notification and Records.

(a) Every employer shall at the time of hiring and prior to any changes notify his/her employees in writing as to the rate of pay or salary, whether by day, week, biweekly, semi-monthly, or year, or commissions, as well as the day and place of payment and the specific methods used to determine wages due pursuant to RSA 275: 49.

(b) Every employer shall provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49.

(c) Pursuant to RSA 275:49, every employer shall inform his/her employees in writing of any change to such employees rate of pay, salary or employment practices or policies as referred to in Lab 803.03 (a) and (b) prior to the effective date of such change.

The employer admitted they did not notify the claimant of the changes prior to the effective date of the changes. The employer made the changes internally and verbally notified the claimant in May 2015 of the change for the period of July 1, 2014 through December 31, 2014.

The Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed commissions/incentive as the employer illegally changed the commission/incentive policy. The claimant originally claimed \$106,504.65 and received a payment of \$34,558.71, leaving a balance of \$71,945.94 due.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant met his burden in this claim.

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 that the claimant proved by a preponderance of the evidence that he is owed the claimed wages/commissions, it is hereby ruled that the Wage Claim is valid in the amount of \$71,945.94.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$71,945.94, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 12, 2015

MJD/kdc