

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

EXETER SUBARU

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Exeter Subaru

Date of Hearing: December 1, 2015

Case No. 51664

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 7, 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 November 5, 2015.

The claimant testified that he worked for the employer for almost three years and held the position of Service Manager. He testified that he was a salaried employee with a daily rate of \$400.00. The Wage Claim is for his last pay period in which he worked on Monday, Tuesday and Wednesday. He testified that he did not work a full day on the last Wednesday. The Wage Claim is for \$1,000.00 for two full days and one half day.

The employer testified that the claimant worked less and less in his position. The employer did not feel that the claimant was doing his job for a period of time. The claimant left on a two week approved vacation but took three weeks. The employer met with the claimant upon his return to work and the claimant felt that the vacation would help him continue with the job. This did not happen and the claimant gave his notice and left the employment of the company.

The employer testified that the claimant did not do any work in his last few days and was gone from the dealership for extended periods of time. The claimant testified that he felt he was there to help the dealership and did spend a lot more time there, during the last few days, then reported by the employer.

FINDINGS OF FACT

RSA 275:43 Weekly

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.

RSA 275:43-b Payment of Salaried Employees.

I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

- (a) Any pay period in which such employee performs no work.
- (b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written

progressive disciplinary policy, plan or practice and the suspension is in full day increments.

(c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.

(d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.

(e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This part of the law governs the payment of a salaried employee. It spells out how a salaried employee is to be paid and when payment of wages can stop to a salaried employee.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The employer and the employee agreed that the employee would be a salaried employee. With this method of wages being paid, there are rules and regulations that must be followed. Once an employee is working in a salary structure the employee is not bound by time. The rule is basically, "the many or the few" as far as a work day. The parties have agreed to this and the testimony at the hearing showed that there was no recording of time worked.

The law also dictates when and how a salary can be stopped. In this case the claimant gave a notice and voluntarily left on the noticed day. It is a finding that the claimant did work on Monday, Tuesday and Wednesday of his last week of work. The employer's testimony that the claimant was not doing any work on these days, does not change the fact that the claimant reported to work.

The claimant testified that he was paid a salary of \$400.00 per day. This was not challenged by the employer. The claimant did file his Wage Claim for \$1,000.00 based on the fact that he only worked a half day on the last day. This is a mistake in the reading of the law by the claimant. It does not take into consideration the principal of the "many or the few." The fact that the claimant reported to work on the three days in the last week of work, entitles the claimant to three days of wages.

The Wage Claim is valid in the amount of \$1,200.00.

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 by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,200.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,200.00, less any applicable taxes, within 20 days of the date of this Order

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 10, 2015

Original: Claimant
cc: Employer

TFH/slh