

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v

CORNERSTONE VNA

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I/II illegal deductions from wages

Employer: Cornerstone VNA 178 Farmington Rd, Rochester NH 03867

Date of Hearing: December 16, 2015

Case No.: 51777

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 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 December 2, 2015.

The claimant testified that she worked for the employer for fifteen years. She was terminated on August 28, 2015. The claimant filed the Wage Claim for a total amount of \$90.00 in deductions that were made or not made from her wages. Prior to the scheduled hearing, the claimant received a check for \$16.27 from the employer. The receipt of this check reduced the Wage Claim to \$73.73.

At the hearing there was an issue of a Flexible Spending Account. The claimant maintained that there should be a deposit of \$50.00 that was not placed into the account. The employer asked for time to review this claim and if they could resolve it, the claimant was to notify the Department of Labor. The Wage Claim was held open until December 24, 2015.

On December 23, 2015 the claimant notified the Department of Labor that she was in receipt of the \$50.00 into her account. This now reduced the Wage Claim to \$23.73.

The claimant stated that she is looking to get back a payment of \$16.11 for her dental insurance and a payment of \$7.62 for a voluntary life insurance policy she elected to take. The claimant said that her coverage stopped upon her discharge and so the deductions were illegal.

The employer testified that the company policy was to pay in arrears and so the coverage for the two policies stopped at the end of the month of August. The claimant was

covered until the end of the month and that coverage was in place because of the last deductions from wages. The claimant also was advised of her Federal COBRA rights to continue any insurance.

FINDINGS OF FACT

RSA 275:43 I Weekly 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.

RSA 275:48 Withholding of Wages. –

- 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.

II. If an employer making a deduction of an employee's wages under paragraph I fails to make any payment relative to such deduction on the employee's behalf, and such employee loses any benefit or fails to meet an obligation caused by such failure, the employer shall be liable for such lost benefit or failed obligation. For any benefits provided to an employee paid for entirely by the employer without employee deductions, if the employer fails to make timely payments for such benefits and the employee loses any benefit or fails to meet any obligations caused by such failure, then the employer shall be liable for such lost benefits or failed obligations. The employer shall also be liable for any cost incurred by the employee caused by the employer's failure to make such payments.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the remaining issues, not paid, are invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The employer provided credible testimony that was not refuted by the claimant, that any insurance deductions were paid in arrears. This policy showed that all deductions covered the claimant until the end of the month. There was no evidence to show that the payments were made in advance and that coverage stopped while still having deductions made.

The remainder of the Wage Claim in the amount of \$23.73 is invalid. The payment made by the employer to the claimant satisfies the balance of the Wage 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 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.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 31, 2015

TFH/slh