

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

O'LEARY'S MUSIC CENTER

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation time
RSA 275:43 V unpaid sick leave
RSA 275:48 I/II illegal deductions

Employer: O'Leary's Music Center, 16 Manning Street, Derry, NH 03038

Date of Hearing: May 18, 2016

Case No.: 52440

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on March 9, 2016. 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 April 20, 2016.

The claimant testified that she started to work for the employer in January of 2015. At that time she was told that she had one week of vacation time and one week of sick time available. During the year the claimant took her vacation and because she did not use her sick time, she was paid out for the balance at the end of the year. The claimant testified that she was an hourly employee at the rate of \$20.00 per hour.

The claimant testified that at the start of 2016, she was told that she would have two weeks of vacation time and one week of sick time. In February of 2016 the claimant gave her notice and asked for the payout of the promised leave.

The claimant stated that her last day of employment was February 6, 2016. On February 12 she was paid for her last week of work and on February 19 she was paid for her dental coverage, 4 hours of sick time and 9 hours of vacation time. The employer stated to the claimant that all leaves were prorated and accrued. This was the first time the claimant had heard of this policy.

The claimant also testified that her health insurance was terminated on February 1, 2016. She had already made a payment of \$46.84 for the February coverage. There were no claims against the insurance during the non-coverage period.

The employer testified that when he first talked to the claimant in December of 2014 he explained that it was a small company and they were just hiring help to assist in growing the business.

The employer testified that he did owe the deduction for the health insurance coverage but all other employee wages were paid in full. The company did not have written policies but everything was explained prior to the hiring.

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.

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 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This section of the law places issues such as vacation time and sick time into the category of wages when the time 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.

RSA 275:48 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.

These sections of the law explain 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 of the parties, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and she met this burden.

The claimant was credible in her testimony that she was never presented with any written policies in regards to the employee benefits. The only thing that she was told was the she would have a certain amount of sick leave and annual leave per year. In the first year that she worked for the employer she took her one week of vacation time and at the end of the year

she was paid for her unused sick time. The claimant was also credible in her testimony that she paid \$46.84 for insurance after the coverage had been cancelled.

The employer was credible in his testimony that the dental insurance had been paid and that he did owe the \$46.84 in deductions made after the insurance was cancelled.

The employer relied on the fact that it was a "start-up" business and they were starting small so not everything was recorded in a written policy. The fact remains that any employer is required to have policies in writing and known to any employees. This was not done.

It is found that the claimant had a reason to believe that she had a certain amount of sick leave and annual leave at the start of the year. In her first year she was allowed to use the vacation time absent any accrual policy. The claimant was also under the impression that any unused sick time was paid at the close of the employment year, but it was available at any time during the year.

The claimant was paid a proration of her leave and it appears that when paid it was the first time she heard of the proration policy. It is the finding of the Hearing Officer that the claimant is due, \$1,420.00 for 71 hours of vacation time at \$20.00 per hour; \$720.00 for 36 hours of sick time at \$20.00 per hour; and \$46.84 as a result of the improper deduction after the insurance had been cancelled. All other wages and expenses have been paid.

The Wage Claim is valid in the amount of \$2,186.84.

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 she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$2,186.84.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$2,186.84, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 7, 2016
Original: Claimant
cc: Employer
TFH/aph