

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



**V**

**ON DEMAND STAFFING SOLUTIONS INC.**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid employee expenses  
RSA 275:42 V personal liability of corporate officer/manager

**Employer:** On Demand Staffing Solutions, 20 Coteville Rd., Londonderry, NH 03053

**Date of Hearing:** October 18, 2016

**Case No.:** 53575

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on August 3, 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 September 21, 2016. The claimant did not show up for the hearing.

In the written Wage Claim the claimant said that he was due two days of wages and that he had submitted the "ticket" to be paid for work performed.

The employer testified that they were never set up as an employer and never had any employees. The employer believes that they are victims of a "scam" in which an individual is setting up companies and using different ID numbers and is often in violation of state laws and regulations. The situation is now in the hands of the local police authorities and is an ongoing investigation.

The employer believes that the claimant has filed against the wrong company. The claimant did not show up for the hearing.

**FINDINGS OF FACT**

RSA 275:43 I

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 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 part of the law places an issue such as expenses suffered on behalf of the employer by the employee to become wages when the expenses are due and owing.

#### RSA 275:42 V

For the purposes of this subdivision the officers of a corporation and any agents having the management of such corporation who knowingly permit the corporation to violate the provisions of RSA 275:43, 44 shall be deemed to be the employers of the employees of the corporation.

This part of the law can allow the transfer of the burden to pay from the company to the official of the company.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the cited employer, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden. The claimant did not attend the hearing to provide testimony and as such there was no rebuttal and/or counterpoint to the information and testimony provided by the parties that appeared.

An individual had created "for profit" business using the same name as the "non-profit or have a name very similar to the nonprofits name. The nonprofit has never been in business and never solicited business.

The claimant was not known to the entity he filed the Wage Claim against. 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 he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

There is no liability for the officer cited in the Wage Claim.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: October 31, 2016  
Original: Claimant  
cc: Employer  
TFH/das