

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



**V**

**Armand E Lemire Co**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay  
RSA 275:43-b unpaid salary  
RSA 279:21 VIII unpaid overtime pay

**Employer:** Armand E Lemire Co, 7 Dartmouth St, Hooksett, NH 03106

**Date of Hearing:** November 14, 2016

**Case No.:** 53790

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$1,480.76 for one week of unpaid vacation pay; \$1,480.76 in unpaid salary for the week of August 15, 2016 through August 19, 2016 due upon his separation on August 22, 2016; and \$2,775.75 in unpaid overtime pay for 50 hours at a rate of \$55.51 per hour.

The employer denies the claimant is due any wages. They assert that the claimant was terminated on August 15, 2016, not August 22, 2016, upon return from his vacation. They argue they have a written policy and past practice which does not pay out accrued but unused vacation pay. Further, the claimant was a salaried employee and is not entitled to overtime pay.

**FINDINGS OF FACT**

The claimant worked for the employer from June 15, 2015 through August 15, 2016, when the employer terminated his employment. He was a salaried employee at all relevant times for this wage claim.

The claimant argues the employer terminated his employment upon his return from vacation on August 22, 2016, and did not pay his vacation wages for the week prior, August 15, 2016 through August 19, 2016. He also argued he is due salary for the same time frame.

The employer argues they terminated the claimant on August 15, 2016, and had a check prepared for him for the week of vacation August 8 through August 14, 2016. They had notified the claimant the check was available for pickup. The claimant and his wife both contacted the employer to state they would pick up the check, but they did not.

There were further disputes between the parties, and the employer still retains this check.

The Hearing Officer finds the claimant proved by a preponderance of the evidence he is due vacation pay for the pay period ending August 14, 2016, in the amount of \$1,480.76. He is not due any additional salary for the same time period.

The claimant argues he is due \$2,775.75 in unpaid overtime pay. He alleges the employer held a meeting in which they mandated employees keep a time record of all time worked, and that any hours worked over forty would be able to be used for time off later.

The employer agrees they began requiring employees to keep records of all time worked, however, as salaried employees they do not receive any pay or additional benefit for hours worked over forty, nor did they notify the claimant as such.

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.

RSA 279:21 VIII. Those employees covered by the introductory paragraph of this section, with the following exceptions, shall, in addition to their regular compensation, be paid at the rate of time and one-half for all time worked in excess of 40 hours in any one week:

(b) Any employee of employers covered under the provisions of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. section 201, et seq.); provided however, employers that pay any delivery drivers or sales merchandisers an overtime rate of compensation for hours worked in excess of 40 hours in any one week shall not calculate such overtime rate of compensation by the fluctuating workweek method of overtime payment under 29 C.F.R. section 778.114.

The Hearing Officer finds the claimant did not prove by a preponderance of the evidence he is due any overtime pay under the statutes.

### **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 RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that he is due the claimed vacation pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,480.76.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,480.76, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: November 23, 2016

Original: Claimant  
cc: Employer

MJD/das