

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



**V**

**NAMCO**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/commissions

**Employer:** NAMCO, 30 Waterchase Drive, Ste 3, Rocky Hill, CT 06067

**Date of Hearing:** February 28, 2017

**Case No.:** 54242

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on October 25, 2016. The notice was sent to the employer and there was no written objection. The final Notice of Hearing was sent to both parties on February 13, 2017.

The claimant testified that she worked for the employer for six seasons. Her wage plan was based on salary plus commissions. She testified that she held a position called “key holder” which meant she had the capability of opening and closing the store.

The claimant testified that her commission for August was not paid and that is the basis of the Wage Claim.

The employer testified that the change in the wage plan, which eliminated the payment of commissions, was not reduced to writing for the employees. The employer testified that the change was made in a conference call that the claimant was not a part of those on the call. The employer admitted that there should have been something in writing for those who had a commission wage plan.

**FINDINGS OF FACT**

**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.

It is the finding of the Hearing Officer, based on the written Wage Claim 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 working under a written wage plan. That plan was changed without any written or verbal notice to the claimant. She believed that she was working for commissions until she learned that they were not to be paid.

The law requires that an employee should be aware of the established wage plan and given notice of any changes to that plan. This did not happen in this case and so the Wage Claim is valid in the claimed amount of \$550.00.

### **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 she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$550.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$550.00, less any applicable taxes, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: March 16, 2017  
Original: Claimant  
cc: Employer  
TFH/das