

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Holiday Retirement dba Maple Suites

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: Holiday Retirement dba Maple Suites, 5885 Meadows Rd Ste 500, Lake
Oswego, OR 97035

Date of Hearing: March 30, 2017

Case No.: 54576

BACKGROUND AND STATEMENT OF THE ISSUES

This hearing was consolidated with another wage claim hearing against the employer. Separate decisions have been issued for these hearings.

The claimant asserts she is owed \$138,000 in unpaid wages, salary, overtime pay, and vacation pay. She argues the employer misclassified her and her husband as salary exempt employees when they should have been salary non-exempt, and entitled to overtime pay, because they did not have management responsibilities.

She removed the claim for vacation pay at the hearing and clarified she is seeking overtime wages only.

The employer denies the claimant is due any overtime wages. She was appropriately classified as a salary exempt employee and therefore not entitled to any overtime pay. Further, they argue this is not the proper jurisdiction as the employer is subject to the US Department of Labor.

FINDINGS OF FACT

The claimant argues she is due overtime wages under the Fair Labor Standards Act (FLSA) because the employer misclassified she and her husband as salary exempt employees when they should have been classified as salary non-exempt because they did not have management duties.

RSA 279:21 VIII exempts employees from the requirements of overtime pay if they are subject to the FLSA.

The employer is subject to the FLSA because they meet the criteria as described below:

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and —

1. whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated); or
2. is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or
3. is an activity of a public agency.

The employer's annual gross volume of sales or business done is not less than \$500,000.

Therefore, the New Hampshire Department of Labor does not have jurisdiction on this issue. The claimant may have a cause of action in another venue.

DECISION

Based on the testimony and evidence presented, as RSA 279:21 VIII exempts employees covered under the Fair Labor Standards Act, it is hereby ruled that the Wage Claim is invalid due to a lack of jurisdiction by this Department.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 7, 2017

Original: Claimant
cc: Employer

MJD/das