

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



V

**Prime Automile Holdings LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43-b unpaid salary  
RSA 275:42 VII draw

**Employer:** Prime Automile Holdings LLC, Attn: Marla, 425 Providence Hwy, Westwood  
MA 02090

**Date of Hearing:** December 21, 2017

**Case No.:** 56344

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$2,500 in unpaid biweekly draw for his final pay period of work.

The employer denies the claimant was not paid for all time worked. They assert the claimant received minimum wage for all hours worked during his final pay period, rather than the full draw which they would not be able to recover.

**FINDINGS OF FACT**

The claimants employment ended on October 23, 2017, when he was terminated by the employer. He was at all relevant times for the purposes of this hearing paid a \$2,500 biweekly draw which settled with commissions at the end of each month.

The employer did not pay the claimant's draw for the final pay period, October 15 through 28, 2017, as they claim they had no way to recoup the draw from commissions. Instead, they claim to have produced a check for \$348 which represents minimum wage for all hours worked. The claimant asserts he did not receive this check and is due the full \$2,500 for the final pay period ending October 28, 2017.

RSA 275:49 I requires that an employer inform employees of the rate of pay at the time of hire. Lab 803.03 (a) and (c) require that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer is prohibited from changing an employee's pay without noticing the employee, in writing, and prior to the effective date of the change. The employer

changed the claimant's pay to an hourly rate of \$7.25 when they terminated the claimant. The claimant did not receive any notice of the change from the draw against commission compensation of \$2,500 every two weeks, prior to the effective date of the change.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages in the amount of \$2,500.

### **DISCUSSION**

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant met his burden in this claim.

### **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 that the claimant proved by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$2,500.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$2,500, 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: January 5, 2018

Original: Claimant  
cc: Employer

MJD/nm