

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Primary Financial Care Providers, LLC.

DECISION OF THE HEARING OFFICER

**Appearances:** [REDACTED], Claimant  
[REDACTED], Owner

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid severance  
RSA 275:44 IV liquidated damages  
RSA 275:48 illegal withholding from wages

**Claimant:** [REDACTED]

**Employer:** Primary Financial Care Providers, LLC  
6 Loudon Road, Suite 505, Concord, NH 03301

**Date of Hearing:** May 22, 2018

**Case No.:** 56961

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant explained she was the Head of Operations performing accounting tasks, maintaining company files, conducting sales and investor relations for the employer.

The employer is a provider of financial services.

The current issues concerns disagreements about deductions for a loan repayment and allegedly incorrect employee contributions deducted from the claimant's pay check for employer sponsored health insurance. The claimant argues she is due two weeks of severance pay. In addition the claimant seeks liquidated damages.

The employer holds she made legitimate deductions from the claimants pay.

The employer paid the claimant the severance pay she claimed prior to the Hearing.

On the basis of the claimant's assertions she is owed for improper deductions she filed a Wage Claim with the Department on March 28, 2018; a Notice of Wage Claim was forwarded to the employer on March 29, 2018. The claimant amended her claim on

April 2, 2018 to include an alleged improper deduction for health insurance. The employer's objection and a payment to the claimant were received on April 9, 2018. The claimant requested a Hearing on April 16, 2018 to pursue alleged illegal deductions and liquidated damages. Accordingly, Notices of Hearing were forwarded to the parties on May 2, 2018.

### **FINDINGS OF FACT**

The claimant explained she was the Head of Operations performing accounting tasks, maintaining company files, conducting sales and investor relations for the employer. The claimant began working for the employer on October 1, 2016; her employment was terminated on March 23, 2018.

The claimant earned \$22 per hour, plus bonuses; she was paid biweekly.

With the employer's filing of her objection she forwarded a check endorsed to the claimant in the amount of \$1,207.72, \$1,760.00 gross. The check's memo section reads: "Severance (2 – wks) Mar 26 – Apr 6 (Fri)," the sum is equal to the claimant's initial claim of March 28, 2018. Thus the severance portion of the claim was settled prior to the Hearing.

The claimant amended her claim on April 2, 2018 alleging the employer owes her \$50.00 for an incorrect deduction for health insurance.

On April 16, 2018 the claimant again amended her claim to include \$250.00 for an unauthorized deduction from her pay.

The parties agree the employer loaned the claimant a sum of money with a verbal agreement that the repayment of the loan would be made via deductions from the claimant's pay. The agreement was not written nor had the parties made any agreement as to what would happen to the balance owed if the parties were to part ways.

The parties agreed to hold the deduction for the loan payments for a period of time. Deductions subsequently continued.

The employer testified she felt the claimant owed her payments towards the loan while the claimant was employed, thus she withheld \$250.00 for the period she last worked.

The employer testified she's forgiven the balance of the loan valued at \$4,538.85.

### **DISCUSSION AND CONCLUSIONS**

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she is owed additional wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant acknowledged she consented to a \$50.00 payroll deduction per pay period for health insurance, not the instance where \$100.00 was deducted for the coverage.

The employer testified that the health coverage contract could only be terminated at the end of calendar months, thus the deduction made to the claimant's pay paid for the remainder of the claimant's coverage for the month of March, 2018.

This Hearing Officer finds the claimant did not pay for health coverage she did not receive and it was coverage she requested, thus she did not meet her burden to prove by a preponderance of evidence she is owed \$50.00 in improper payroll deduction for health insurance.

The parties agree the employer made a loan to the claimant with a verbal agreement that the loan would be paid back with deductions from the employee's pay. Both parties agree loan repayments were to be suspended for a period of time. The claimant concedes she owes the employer the balance of the loan.

RSA 275:48 allows an employer to make deductions from wages due an employee with his or her written authorization as long as it does not grant financial advantage to the employer, the deductions are duly recorded, and the employee requested them in writing. RSA 275:48 also requires that voluntary installment payments of legitimate loans made by the employer to the employee be evidenced with a document that includes the time the payments will begin and end, the amounts to be deducted and a specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

The loan agreement was verbal and not written as required by statute. Despite the acknowledgement by the claimant that she owes the employer the balance of the loan, this does not free the employer of her obligations under RSA 275:48.

The Hearing Officer finds the deductions made from the claimant's paycheck were not authorized in writing by the claimant as required by statute, thus the deductions were illegal. The Hearing Officer finds the claimant proved she is owed the \$250.00 in unauthorized payroll deductions.

RSA 275:44 IV holds that: "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition."

The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/he fails to pay them".

There were no credible written documents submitted that support the claimant's argument the employer willfully deducted payments for health insurance and loan repayments the employer otherwise knew she was prohibited from making. Thus this Hearing Officer finds the claimant did not prove by a preponderance she is due liquidated damages.

This Hearing Officer finds that the claimant met her burden to prove by a preponderance of evidence that she is due wages in the form of unauthorized payroll deductions in the amount of \$250.00.

This Hearing Officer finds the claimant did not meet her burden to prove by a preponderance of the evidence she is owed \$50.00 for a payroll deduction in the form of an employee's portion of premium for health insurance.

This Hearing Officer finds the claimant did not meet her burden to prove by a preponderance of the evidence she is entitled to liquidated damages for the employers improper deductions related to the loan repayment. As this Hearing Officer finds the claimant did not prove by preponderance of evidence that she is owed \$50.00 for a deduction towards a health insurance premium the issue of liquidated damages in this instance is moot.

### DECISION

Based on the evidence and testimony presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:48 prohibits employers from making deductions to employee's pay without the appropriate authorization and as this Department finds the claimant met her burden to prove by a preponderance of evidence she is owed \$250.00 in improper payroll deductions it is hereby rule that this portion of the wage claim is valid.

Based on the evidence and testimony presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:48 prohibits employers from making deductions to employee's pay without the appropriate authorization and as this Department finds the claimant did not meet her burden to prove by a preponderance of evidence she is owed \$50.00 in improper payroll deductions it is hereby ruled that this portion of the wage claim is invalid.

Based on the evidence presented and as RSA 275:44 IV holds that if an employer willfully and without good cause fails to pay an employee wages as required, and as the Department finds the claimant failed to prove by a preponderance of evidence that she is owed liquidated damages, it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to the Department, payable to Margaret Tully in the total of \$250.00 less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

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██████████  
Hearing Officer

Date of Decision: June 22, 2018  
Original: Claimant  
Cc: Primary Financial Care Providers, LLC  
Loudon Road, Suite 505, Concord, NH 03101  
Attention: ██████████  
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