

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Pressed Café LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Date of Hearing: January 8, 2019

Case No.: 57960

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$9,393.85 in unpaid salary because the employer changed her from a salaried position to an hourly position but did not put the change in writing as required.

The employer argues they notified the claimant verbally she would be changed to an hourly rate from a salaried position. Further, the claimant reconciled payroll, including her own hourly pay.

FINDINGS OF FACT

The claimant began working for the employer on October 1, 2017, as a salaried employee, pursuant to a September 1, 2017, offer letter of a \$1,500 weekly salary.

The employer's pay week is Monday through Sunday with a payday of Wednesday.

On November 8, 2017, the claimant received a direct deposit of less than her regular salaried gross rate of \$1,500. Upon contacting the employer, the employer produced a check that same day, payday, for the balance of \$243.75, with an apology. The payroll company had erroneously changed the claimant's status to hourly for this pay period when the employer had instructed the change to begin the pay period of November 15, 2017.

The employer argues they spoke with the claimant on or around November 13, 2017, to notify her she would be changed from salary to an hourly rate. The claimant recalls a conversation on or about November 17, 2017, regarding this change.

On November 15, 2018, the claimant received wages in the amount of \$1,462.50 for the pay period of November 6, 2017 through November 12, 2017. The payroll sheet

shows wages paid erroneously of \$1,706.25, because it is inclusive of the \$243.75 paid to the claimant on November 8, 2017, to correct her wages.

The claimant began reconciling her wages as hourly on November 17, 2017, pursuant to her own testimony.

On November 17, 2017, the claimant was in the duration of the pay period beginning November 13, 2017 and ending November 19, 2017.

On November 22, 2017, the claimant received wages in the amount of \$758.30 for the pay period of November 13, 2017 through November 19, 2017.

The claimant received a written notice of the change from salary to hourly in February 2018, but did not sign a copy until June 2018.

The claimant seeks \$9,393.85 for November 15, 2017 through June 28, 2018, during which she was paid hourly, but had not signed a written notice for the change from her salaried position to an hourly rate.

Pursuant to RSA 275:43-b, 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. There are exemptions to this requirement which do not apply to the facts of this case.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including any bonus, at the time of hire and II requires an employer to notify his or her employees of any changes in the arrangements specified above prior to the time of such changes. Lab 803.03 (a) requires 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.

As the employer did notify the claimant, albeit verbally, conservatively on November 17, 2017, of change in method of payment, the soonest the change could be effective would be the start of the following pay period, November 20, 2017.

The claimant is not due any further salary after November 19, 2017, because she was aware of the change from salary to hourly, and chose to continue to work under that arrangement.

The claimant's argument that employer did not reduce the change from salary to hourly to writing until February 2018 and she did not sign it until June 2018, is not persuasive as she was not only aware of the change in pay, but she reconciled her own wages on an hourly basis for the payroll system.

For the pay period ending November 12, 2017, the claimant is due an additional \$37.50 to complete her regular salary of \$1,500 (\$1,500 salary - \$1,462.50 received).

For the pay period ending November 19, 2017, the claimant is due an additional \$741.70 to complete her regular salary of \$1,500 (\$1,500 salary - \$758.30 received).

CONCLUSIONS

The Hearing Officer finds that the claimant proved by a preponderance of the evidence that she is owed the difference in her salaried wages for the pay periods ending November 12 and November 19, 2017, for a total of \$779.20 (\$37.50 + \$741.70).

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 proved by a preponderance of the evidence that she was not paid all wages/salary due for the pay periods ending November 12 and November 19, 2017, it is hereby ruled that this Wage Claim is valid in the amount of \$779.20 (\$37.50 + \$741.70).

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$779.20 (\$37.50 + \$741.70), less any applicable taxes, within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: January 17, 2019

Original: Claimant
cc: Employer