

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

MAMMOTH TECH

CASE NO. 101506

DECISION OF THE HEARING OFFICER

Appearances: ██████████ the claimant appeared Pro Se.
No one appeared for the employer.

Nature of Dispute: RSA 275:43 I - Weekly, Unpaid Wages
RSA 275:43 V - Weekly, Unpaid Vacation Pay
RSA 275:43 V - Weekly, Unpaid Holiday Pay
RSA 275:43-b – Payment of Salaried Employees, Unpaid Salary
RSA 275:48 I – Withholding of Wages, Illegal Deduction from
Wages

Employer: Mammoth Tech

Date of Hearing: July 13, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on March 17, 2022, asserting that she is due unpaid wages in the amount of \$4,817.45 for unpaid vacation, holiday, and salary.

The employer was notified by the Department of Labor (DOL) via mailing dated March 21, 2022. There was no response from the employer within the ten-day period provided by statute. This hearing was then scheduled accordingly for review of the claimant's claim for unpaid wages on May 12, 2022 at 8:30 am. This hearing was conducted. However, it came to the attention of Hearing Officer McClain that the employer had multiple addresses and service may not have been sufficient. The hearing was continued, and a new notice was sent on June 21, 2022 to the employer's multiple addresses. The employer did not respond to the request for hearing. The hearing was held on July 13, 2022 at 8:30 am. The claimant appeared in person at the appropriate date and time. The employer did not send a representative. After waiting 15 minutes as required by the DOL's administrative rules the hearing proceeded in the employer's absence.

The claimant's exhibits for hearings included a Facebook messenger text stream with the employer. Although the claimant did not document that this was exchanged

with the employer prior to hearing pursuant to Lab 204.07 (a)(b), this evidence was admitted pursuant to Lab 204.06 as their review was more likely to promote a just and accurate result.

FINDINGS OF FACT

██████████ is a ██████████ who was employed by Mammoth Tech from 2012 through March 2, 2022. Mammoth Tech (Mammoth) is primarily a debt collection firm but did also perform other outsourced business functions for its clients. Mammoth was owned and operated by Jason Osborne. On March 2, 2022, the entire company received an email that the employer was closing as of that day.

The claimant was initially hired as a loan collector and was promoted to supervisor before 2020. The claimant retained her position as a supervisor when the COVID-19 pandemic began, and the employer's staff moved to a remote work model.

During the COVID-19 pandemic, the claimant and her team did outsource work evaluating claims to the State of North Carolina's Unemployment Insurance Program. Her team had certain metrics that had to be met with regards to this work.

In April of 2021, the claimant became the supervisor of the Mammoth team which handled complaints for Chipotle. Shortly after this, the claimant was again promoted. In her new job she was a training manager who oversaw the entire training bay including the supervisors. This also included a raise in pay to \$65,000.00 per year on a salary basis. The claimant indicated this was based on a 40-hour work week at \$31.25 per hour.

The claimant explained that Holidays at Mammoth were not handled in a standard manner. Given the nature of the company's business, Mammoth does not close on holidays, but provides a time bank of 32 hours (eight days) beginning on the first of the year to be used as eight floating holidays by employees as they chose during the year. The claimant's final paystub showed she had not used any of her floating holidays prior to the closing of Mammoth on March 2, 2022.

Per The claimant's final paystub dated March 11, 2022, showed she had a remaining vacation balance of 96.75 hours. This vacation paid out at the rate of \$31.25 per hour would be worth \$3023.44 gross pay.

The March 11, 2022 paystub also shows that she was paid for 64 hours instead of the usual 80. This meant her gross pay was short \$500.00 compared to the paystub from February 25, 2022. Her wage claim noted this was \$388.53. The claimant testified that she did not initially know where the \$388.53 figure came from. However, after some consideration she stated she may have been trying to estimate her net pay after taxes.

The claimant's final paystub also shows deductions for dental, medical, supplemental life and vision insurance which total \$351.95. However, all benefits were stopped at the company as of February 28, 2022. The claimant initially included the \$62.84 which was placed in her 401k account for a total of \$414.79. However, the

claimant stated at the hearing she later realized the money she put in her 401k at Mammoth could be rolled into another account, and as such she should not have included it.

On March 2, 2022, the claimant reached out via Facebook Messenger to Mr. Osborne and wrote: "Hey Jason hope you are doing okay! Wanted to reach out and first say thanks for everything! I heard we are not getting paid out vacation.. can you please re think [sic] that? We had absolutely no notice. I understand the company was struggling but we all need that right now. If there is anything you could do I would appreciate it." Mr. Osborne replied: "This is news to me. Everything that happens is up to the bank now but I can't imagine they would do that."

On March 5, 2022, Mr. Osborne sent a communication via Facebook which stated: "Had a meeting on the vacation pay yesterday. I at least figured out the source of the rumor. While the vacation pay will not make it into the same check as the regularly scheduled payroll, it will come separately. I will still have to make sure the bank doesn't step in to prevent it, but see no reason why they would try to do that. Please spread the word if you hear from anyone."

On March 11, 2022 at 7:41 pm, The claimant sent a communication via Facebook which stated: "Hi there! Are you aware that every salary employees [sic] check was short this week?" Mr. Osborne responded: "No, I was not. Maddie ran it herself like normal. How much short? Everyone the same amount or all different?" The claimant then responded: "All are different I know mine was close to \$500 others were short like high \$300's. Seems like it was only salary people." (Emphasis in original). Mr. Osborne then responded: "I gone one email from someone that I know of that is being investigated. I guess I'll have them look at all of them. Not sure what else could possibly go wrong. But I'm sure it will."

On March 11, 2022 at 8:14 pm, The claimant sent a communication via Facebook which included a screen shot from a different conversation which stated: "That liquidating firm was at the office at 2pm when that email was sent at 12:53 and he was from Cleveland which is a good 2.5-3 hours away[.] I felt terrible having to adjust cards from 80 hours to 64, but in reality that is what worked." The claimant then added: "Jason, HR manually adjusted salary employees to actual hours worked. I am not hourly, I am salary. I am owed 80 hours of work and my vacation time." There was no further response form Mr. Osborne.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she is owed unpaid 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 argued that she had a bank of 32 hours of holiday pay which she had not used and was not paid out when the company shut down. The claimant further argued that she had a bank of 96.75 hours of vacation pay which she had not used and

had not been paid to her despite her employer's promise to do so. The claimant further argued that her final paycheck was issued as if she was an hourly employee, not a salaried employee and was therefore less pay than she was entitled to. Building on this, the claimant argued that the corrected amount to be considered for this short is \$500.00 gross pay, not the \$388.53 listed on the original claim form. Finally, the claimant argued that the employer withheld benefits premiums from the claimant's final paycheck despite the benefits being terminated as of February 28, 2022 prior to the final paycheck being issued on March 11, 2022.

The employer did not respond to the notice of wage claim sent by the DOL. Furthermore, the employer did not appear at hearing to dispute the claimant's argument with evidence or testimony.

The claimant's argument that she had a bank of 32 hours of holiday pay which she had not used and was not paid out when the company shut down is persuasive. The claimant's final paystub dated March 11, 2022 clearly showed that the claimant had 32 hours of holiday pay left to be taken. Furthermore, the claimant reached out to Mr. Osborne and was told she could expect the remaining pay in a different paycheck. Despite these assurances, the claimant had not received this pay as of the date of this hearing. These 32 hours would result in the claimant being owed \$1,000.00 in gross pay.

The claimant's argument that she had a bank of 96.75 hours of vacation pay which she had not used and had not been paid to her despite her employer's promise to do so is also persuasive. The claimant's final paystub dated March 11, 2022 clearly showed that the claimant had 96.75 hours of holiday pay left to be taken. Furthermore, the claimant reached out to Mr. Osborne and was told she could expect the remaining pay in a different paycheck. Despite these assurances, the claimant had not received this pay as of the date of this hearing. These 96.75 hours would result in the claimant being owed \$3,023.44 in gross pay.

The claimant's argument that her final paycheck was issued as if she was an hourly employee, not a salaried employee and was therefore less pay than she was entitled to is found to be persuasive. The March 11, 2022 paystub showed that she was paid for 64 hours instead of the usual 80. This meant her gross pay was short \$500.00 compared to the paystub from February 25, 2022. The claimant did bring this to the attention of her employer, who claimed to have no knowledge of a reason why this would happen but promised to look into the matter. However, The claimant was later provided information that human resources from the company had reduced her pay to hours worked. When The claimant confronted the employer with this information he did not refute this and did not respond at all. The claimant's original wage claim form showed an amount of \$388.53. However, the claimant credibly testified that this amount was likely due to her attempt to estimate the net amount owed. As such the claimant was owed an additional \$500.00 gross pay for her final pay period.

Finally, the claimant's argument that the employer withheld benefits premiums from the claimant's final paycheck despite the benefits being terminated as of February 28, 2022 prior to the final paycheck being issued on March 11, 2022 is found to be

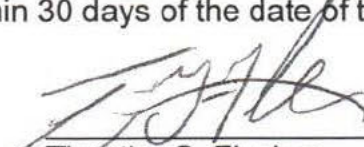
persuasive. It is reasonable to conclude that any such premiums owed for the month of February would have to be paid by the claimant and her employer before the end of the month. As this paystub was dated March 11, 2022, it is reasonable to conclude that these premiums would have been for coverage in March of 2022. The claimant testified credibly that the employer stopped all benefits effective February 28, 2022. As such she should not have had these premiums withheld from her final paycheck and is owed \$351.95 gross pay.

Based upon a preponderance of the evidence, it is determined the claimant has met her burden and she should be paid her wages which include unpaid vacation time, unpaid salary, unpaid holiday time, and illegally deducted insurance premiums.

DECISION

Based on the evidence and testimony presented, the claimant has showed by a preponderance of the evidence that wages were due for \$4,875.39. The claimant's request for payment of unpaid wages is approved. It is found that the wage claim for unpaid wages is valid.

Therefore, the employer is ordered to send a check in the amount of \$4,875.39 to this Department payable to ██████████ less any applicable taxes, for the unpaid wages to this Department within 30 days of the date of this order.



Timothy G. Fischer
Hearing Officer

Date of Decision: July 28, 2022

TGF/cb