

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



V

**Plimpton Tool of NH, Inc.**  
**Case No.: 58354**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/SEP contribution

**Date of Hearing:** March 14, 2019

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of her Wage Claim, that she was owed \$8,112 in unpaid SEP contributions for 2017 and 2018.

At the hearing, the employer agreed the 2018 SEP contribution was due and would be paid March 15, 2019.

The claimant amended her claim to \$4,188 for the 2017 SEP contribution,

The employer denies the claimant is due a SEP contribution as his accountant advised and the IRS rules state if he does not pay every participant a SEP contribution, he is not required nor allowed to make any payments for any employees.

**FINDINGS OF FACT**

The claimant worked for the employer from June 2016 through January 2019, when she resigned. The claimant's annual salary for calendar 2017 was \$41,880.

The employer agrees a 10% SEP contribution payment was part of the claimant's benefits package.

The employer supplied a written plan to the claimant, which she submitted for hearing, which reads, in relevant part, "PENSION PLAN: EMPLOYEES ARE ELIGIBLE FOR PENSION AFTER ONE YEAR OF EMPLOYMENT. THE PENSION DEPOSIT IS 10% OF THE EMPLOYEES SALARY, AND IS PAID TO THE EMPLOYEE'S CHOICE OF INSTITUTION."

The claimant was eligible for the 2017 SEP payment, due by April 15, 2018, as she had completed one year of service.

## **DISCUSSION AND CONCLUSIONS**

The claimant argues she is due the 2017 SEP contribution of \$4,188 pursuant to the written policy of the employer. She argues she inquired about the contribution in April 2018, and the employer told her they were in a “cash crunch” and he would make it up by years’ end.

The employer argues he did not tell the claimant he would make up the 2017 SEP payment by the end of the year because IRS rules require that these contributions are paid by April 15 of each year. He concedes he may have told her that he would try to make it up in another way. He further argues no one received a 2017 SEP contribution and IRS rules do not allow him to make a contribution to one employee’s account unless everyone receives a contribution.

The claimant bears the burden to prove she is due the claimed wages.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including any bonus, at the time of hire. 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.

The employer properly notified the claimant that she would receive a SEP contribution equal to 10% of her salary after a full year of employment. Nothing in the written policy of the employer provides the employer any discretion to fail to make these payments. The claimant was eligible for the 2017 SEP contribution because she had completed one year by April 15, 2018, when the payment was due.

Because the employer did not provide any notice to the claimant that there could be any circumstances under which she would not be entitled to the annual SEP payment after completing one year of employment, the Hearing Officer finds the claimant is due the claimed 2017 SEP contribution in the amount of \$4,188 (her annual salary \$41,880 x 10%)

## **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 she is owed the claimed wages/SEP contribution, it is hereby ruled that the Wage Claim is valid in the amount of \$4,188.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$4,188, less any applicable taxes, within 20 days of the date of this Order.

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[REDACTED]  
Hearing Officer

Date of Decision: April 1, 2019

Original: Claimant  
cc: Employer