

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Eptam Plastics LT
Case No.: 58499

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Date of Hearing: April 3, 2019

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$7,455.28 in unpaid wages for a Variable Compensation Plan. These wages were due in April 2018, after he separated from employment in January 2018.

The employer denies the claimant is due these wages as he was not an active employee when the payment of this plan was made.

FINDINGS OF FACT

The claimant worked for the employer as a project manager until he resigned on January 17, 2018.

The claimant earned a regular base salary from the employer and in addition, he had a potential of a 10% bonus opportunity through a Variable Compensation Plan.

There is no dispute that the claimant worked the entire calendar year of 2017 and according to the Variable Compensation Plan, earned a bonus of \$7,455.28.

The employer admits they do not have a written policy regarding the Variable Compensation Plan. The only documents that exist are targets and calculations as the claimant submitted with his Wage Claim.

DISCUSSION AND CONCLUSIONS

The claimant has the burden to prove the wages are due and owing.

The parties agree the claimant earned the \$7,455.28 claimed during his employment. The disagreement lies with the employer now asserting one has to be an active employee when the payment is made in order to receive the check.

The employer has the right to produce a policy with any requirements they wish, however, they are required by RSA 275:49 and Lab 803.03 (a) and (c) to notify employees of the changes, in writing, prior to the effective date of the changes, and maintain an employee signed copy of the notification, Lab 803.03 (f)(6).

RSA 275:49 Notification, Posting, and Records. – Every employer shall:

I. Notify the employees, at the time of hiring of the rate of pay, and of the day and place of payment;

and:

Lab 803.03 Notification and Records.

(a) Every employer shall at the time of hiring and prior to any changes notify his or her employees in writing as to the rate of pay or salary, whether by daily, weekly, biweekly, semi-monthly, or yearly, or by commissions, as well as the day and place of payment and the specific methods used to determine wages due pursuant to RSA 275: 49.

(b) Every employer shall provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employee's expenses, pension and all other fringe benefits per RSA 275: 49.

The employer admitted they did not notify the claimant in writing of the requirements of the Variable Compensation Plan. However, they argue that they have never paid an inactive employee under this bonus plan.

The employer's argument that it is a requirement to be an active employee to receive the bonus is not persuasive. The employer had the opportunity to put this and any other requirements they chose, in writing to the claimant, and they did not do so.

Because the parties agree the claimant earned the bonus, and the employer's argument that it is a requirement to be an active employee when the bonus is paid, is not persuasive, the Hearing Officer finds that the claimant proved by a preponderance of the evidence that he is owed the claimed wages in the amount of \$7,455.28.

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 \$7,455.28.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$7,455.28, less any applicable taxes, within 30 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: April 23, 2019

Original: Claimant
cc: Employer