

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.
KIDS CULTURE CHILDCARE

Case No. 62210

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] on her own behalf, Pro Se
Ms. Erin Kniphfer, on behalf of the employer

Nature of Dispute: RSA 275:44 IV - Employees Separated From Payroll Before
Pay Days, Liquidated Damages

Date of Hearing: April 8, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

On the basis of the claimant's assertions that she is owed \$1,230.77 in liquidated damages, she filed a Wage Claim with the New Hampshire Department of Labor on February 22, 2021; a Notice of Wage Claim was forwarded to the employer on February 23, 2021. The employer objected to the Wage Claim in writing on March 3, 2021. The claimant requested a hearing on March 10, 2021. Notices of Hearing were forwarded to both parties on March 17, 2021, and a hearing was scheduled accordingly.

A formal hearing was held by the New Hampshire Department of Labor (DOL) in Concord, New Hampshire on April 8, 2021 at 1:00pm. All parties appeared telephonically. Telephonic testimony was provided by [REDACTED] claimant, on her own behalf, and Ms. Erin Kniphfer, on behalf of the employer.

FINDINGS OF FACT

[REDACTED] holds an Associate's Degree in Child Development and has 15 years of experience working as a classroom teacher in early childhood settings. She began employment at Kids Culture Childcare in October 2020 as a classroom teacher and was quickly promoted to Center Director of the Somersworth Center. As the Director, she earned an annual salary of \$40,000.00 which was paid biweekly through direct deposit in the amount of \$1,538.46.

Ms. [REDACTED] testified that she was terminated without notice at 3:00p.m. on February 8, 2021 after requesting an accommodation from the employer. She did not

receive her final paycheck until February 19, 2021. She was paid by a check for her usual net pay; however, she contends that the final payment was late and is requesting liquidated damages.

Duly Sworn, Ms. Kniphfer testified that, regrettably, the claimant was terminated on February 8, 2021. She received an email from the claimant on February 7, 2021 advising that she would need to work from home. Ms. Kniphfer explained that this was not a viable option as licensure requires the presence of the Site Director so many hours per day. Ms. Kniphfer and her executive director discussed the circumstances and determined that the best course was to terminate the claimant's employment.

Ms. Kniphfer testified that she had every intention of paying the claimant her full salary at the next scheduled payday. She explained that she was unaware of the requirement to make the final payment within 72 hours of an employee's termination. She explained that once she became aware of the requirement, she contacted her payroll company, cancelled the scheduled direct deposit for the February 22, 2021 pay day, and had a manual check cut for the claimant's final check. She made arrangements to have the executive director, Stephanie, meet the claimant the very next day and give her the paycheck. The claimant received her final pay check on February 19, 2021. The employer acknowledged the error. She testified that as soon as she learned that she was in the wrong, she corrected the error. She advised that this is now something she will be aware of going forward so that it doesn't happen again.

APPLICABLE LAW

RSA 275:43 I states that every employer shall pay all wages due to employees. Applicable law, RSA 275:43-b states in part:

275:44 Employees Separated From Payroll Before Pay Days states:

- I. Whenever an employer discharges an employee, the employer shall pay the employee's wages in full within 72 hours.*
- II. Whenever an employee quits or resigns, the employer shall pay the employee's wages no later than the next regular payday, as provided under RSA 275:43, either through the regular pay channels or by mail if requested by the employee, except that if the employee gives at least one pay period's notice of intention to quit the employer shall pay all wages earned by the employee within 72 hours.*
- III. When work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the employer shall pay in full to such employee not later than the next regular payday, as designated under RSA 275:43, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.*
- IV. 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.

V. Regardless of the reason for an employee's termination of employment the employer shall pay to the appropriate administrator or other designated officials all wages in the nature of hourly health and welfare fund or pension fund contributions due with respect to such employee at the time of the next succeeding payment date applicable to such contributions.

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 \$1,230.77 in liquidated damages. Proof by a preponderance of the evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

Ms. [redacted] asserts that the employer was obligated to pay her wages within 72 hours of her termination of employment and failed to do so. She was paid her wages 8 days after the 72-hour requirement. The claimant argued that the employer should have known the law. The employer's failure to pay timely entitles her to receive liquidated damages.

Ms. Kniphfer, on behalf of the employer, does not contest Ms. [redacted] accounting of the facts; however, she asserts that the claimant was paid in full on February 19, 2021. She acknowledged that this was more than 72 hours after the claimant's termination from employment. She explained that it was not her intent to not pay the claimant. She wishes the claimant well.

Ms. [redacted] arguments for liquidated damages are not found to be persuasive. Liquidated Damages are explained by Ives v Manchester Subaru, 126 N.H. 796, 498 A.2d 297 (1985), which notes that the phrase "willfully and without good cause" means voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed. This is an extremely high legal standard to meet.

Regarding liquidated damages, it is clear from the testimony and evidence presented that the employer was not withholding Ms. [redacted] wages in an intentional manner. She testified, persuasively, that she was unaware of the requirement to make the final payment of wages within 72 hours of the claimant's termination. She testified that upon becoming aware of the requirement she took immediate action to remedy the situation. She contacted her payroll company, had a manual check cut, and made arrangements for the executive director to meet with the claimant to deliver the check in hand the very next day. There is no dispute that the wages were paid late. However, the evidence does not support that the failure to pay timely was willful and without good cause. The employer's lack of knowledge with respect to requirements of RSA 275:44 I

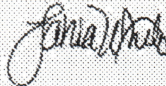
may not constitute good cause for failure to pay timely, but the evidence it it's entirely does not support that the late payment was willful and without good cause.

Therefore, as it is not found that the employer withheld Ms. [redacted] wages "willfully and without good cause," it is determined that Ms. [redacted] is not entitled to liquidated damages.

DECISION

Based on a thorough review of the evidence and testimony presented, the claimant has failed to show that the employer's late payment of wages was willful and without good cause; it is hereby ruled that **this Wage Claim is invalid.**

Such is the Order of the Department.



April 13, 2021
Date of Decision

Tahra White, Hearing Officer

Original: Claimant
cc: Employer
TW/sw