

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE



Prime Communications, L.P.  
CASE #62937

**DECISION OF THE HEARING OFFICER**

**APPEARANCES:** Claimant, self-represented  
Employer, self-represented (did not appear)

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid wages)  
RSA 275:43, I — Weekly (unpaid commissions)

**DATE OF HEARING:** September 9, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed on June 22, 2021, alleging that he was employed as a salesperson in the employer's workplace, an AT&T authorized retail store, located at 356 Amherst Street, Nashua, NH 03063. He identified the employer contact person as Liz Frazee, district manager. His job was to meet sales quotas. He listed the employer's mailing address and corporate mailing address as 12550 Reed Rd., Sugar Land, Texas 77478.

He asserted two claims. First, that he was required to attend 30-minute meetings for which he was not paid. This claim was for \$300.00. Second, that he was owed unpaid commissions for the last two months of his employment, totaling \$3,500.00.

Notice of claim was sent to Liz Frazee at the employer's Texas address on July 23, 2021. No objection was received at the Department. The claimant requested a hearing and the hearing notice was sent on August 12, 2021, again to Liz Frazee at the employer's Texas address. None of the mail sent to the employer was returned to the Department as undelivered.

The employer did not appear for the hearing. After waiting 15 minutes, the employer still had not appeared or contacted the Department. It was determined

that the employer had received adequate notice. The hearing proceeded in the employer's absence, pursuant to Department administrative rule Lab 203.04.

### FINDINGS OF FACT

The following findings are based on the testimony of the claimant, exhibits offered by the claimant (cc'd by email to portalsupport@primecomms.com), and matters of record in the Department file. During the course of the hearing, the claimant acknowledged under oath that his written submissions to the Department were true and accurate to the best of his knowledge and belief, and those statements are treated herein as part of the testimony in the case.

The claimant is 27 years old and lives in Concord. He has a high school diploma awarded in 2013. Prior to working for the employer, he worked in wireless retail sales for about five years and also did some carpentry.

He started working for the employer around December 12, 2020. He was a sales associate at the employer's AT&T authorized retail store in Nashua. His schedule varied from month to month. He usually worked five days a week, 9:45 a.m. to 6:00 p.m. or 11:00 a.m. to 8:00 p.m. He was paid \$12.00 per hour. His hours were tracked electronically by means of a mobile app. He was paid bi-weekly by direct deposit.

In addition to his hourly pay, he received incentive payments on a monthly basis. The payments were based in part on a percentage of his monthly sales in various categories: upgrades, pre-paid accounts, premium products, accessories, and insurance. Each category had its own percentage. If he met his monthly quota of premium sales, he received 100 percent of the sales-based commission, referred to as a sales incentive. Using a company-provided mobile app, claimant could check his sales incentives earned from week to week. Sales incentives were paid out two months after the month in which the sales occurred.

In March of 2021, claimant was offered an opportunity to become a sales manager. As part of the training, he was required to participate in manager calls with other sales managers from the New England area. The calls lasted 30 minutes and were scheduled outside of the claimant's regular working hours. Claimant was advised not to clock in for these calls. During these telephone conferences, matters relating to sales activities, current promotions, etc., were discussed. Commencing around March 16th, claimant participated in 25 such calls.

In May 2021, claimant gave two weeks' notice. His last day worked was June 4, 2021. He was never paid for the time spent in the sales manager calls, a total of 12.5 hours. Also, he never received his sales incentives for the last two months of his employment. The April sales incentives were due in June, and the May sales incentives were due in July. Claimant did not have exact totals for his

sales incentives; after leaving the company, he no longer had immediate access to that information. However, he said that his April sales incentives due were at least \$2,000.00 and his May commissions, \$1,500.00. He testified that the discrepancy was because he worked much less in May.

Claimant's evidence included sales-incentive pay stubs covering the months of February and March 2021. In February, he earned a sales incentive of \$2,430.52; in March, \$2,571.89. Claimant's evidence also included regular-earnings pay stubs for his last three pay periods from April 24, 2021 through June 4, 2021. During these pay periods, he worked 72.46 hours, 71.57 hours, and 26.96 hours, respectively. He testified that these totals did not include the time spent participating in the sales manager calls.

### **DISCUSSION AND CONCLUSIONS**

The claimant had the burden of proving by a preponderance of the evidence that he was owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

Claim for unpaid time participating in 30-minute sales meetings. Pursuant to RSA 275:42, "wages' means compensation...for labor or services rendered by an employee." If the time spent participating in the manager calls constituted hours worked for the employer, then claimant as an hourly employee was entitled to be paid for it. As to what constitutes hours worked, Department Administrative Rule Lab 803.04 incorporates Title 29 Part 785 of the Code of Federal Regulations, promulgated by the United States Department of Labor. In pertinent part, the referenced federal regulations provide as follows:

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

- (a) Attendance is outside of the employee's regular working hours;
- (b) Attendance is in fact voluntary;
- (c) The course, lecture, or meeting is not directly related to the employee's job; and
- (d) The employee does not perform any productive work during such attendance.

29 C.F.R. 785.27.

Based on the claimant's testimony, which is credited, it appears that he was required to participate in the telephone conferences as part of his training, and that the activity was directly related to his job. Thus, at a minimum, the above criteria (b) and (c) were not met: attendance was required and the training was related to claimant's work. Accordingly, it is found that the time spent

participating in the sales calls constituted hours worked, for which the claimant was entitled to be paid at his regular hourly rate.

Claimant testified that the meetings were held on an irregular basis about two to three times a week. He participated in the meetings from March 16, 2021 up until he gave two weeks' notice on May 21, 2021, i.e., for about nine and a half weeks. He testified that he attended 25 meetings during that period of time, or 12.5 hours of time for which he was not paid. (He testified that his written claim for \$300.00 was in error.) The claimant satisfied his burden of proving that he worked off-the-clock for 12.5 hours earning \$150.00 for which he has not been paid.

Claim for unpaid commissions. RSA 275:43, I requires that an employer pay all wages when due. Wages include commissions. In this case, the claimant described the employer's earnings incentive program in some detail and presented documentary evidence showing that he was paid \$2,430.52 for February 2021 and \$2,571.89 for March 2021. He testified that he earned at least \$2,000.00 in commissions in April 2021 and \$1,500 in May. This is consistent with his commission history for February and March and is also corroborated by his regular pay stubs for the last three pay periods, which show that he worked about 72 hours during the first two pay periods and only 28 hours during the last one. He satisfied his burden of proving that he earned a total of \$3,500.00 in commissions for April and May 2021, for which he has not been paid.

### DECISION

Based on the testimony and evidence presented, and as RSA 275:43, I requires employers to pay employees for commissions at the agreed rate, it is found that employer failed to pay claimant for his commissions earned in April and May 2021, totaling \$3,500.00. His claim for unpaid commissions is therefore found to be **valid**.

Based on the testimony and evidence submitted, it is further found that the claimant worked a total of 12.5 hours off the clock for which he has not been paid the wages due of \$150.00. His claim for unpaid time is therefore found to be **valid**.

The employer is hereby ordered to send a check to the Department of Labor, payable to ██████████ in the amount of \$3,650.00, less any applicable taxes, within 30 days of the date of this Order

October 1, 2021  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/cb