

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

  
**V**

**C&M SCREW MACHINE PRODUCTS**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/salary  
RSA 275:43 V unpaid vacation time

**Employer:** C & M Screw Machine Products, 25 Flagstone Dr., Hudson, NH 03052

**Date of Hearing:** December 18, 2013

**Case No.** 46828

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on October 10, 2013. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on November 15, 2013.

The Wage Claim was filed for one day of salary at a rate of \$280.00. The Wage Claim was also filed for vacation time in the amount of \$2,450.00.

The claimant testified that he was a salaried employee who worked for the company for about five years. He was salaried at \$1,400.00 per week and was on a Monday through Friday pay period. He said that there was no employee handbook in place but he may have signed some policy agreement at the time of hire.

The claimant stated that he gave a five week notice of separation and worked for four days of the last week and so he should be paid for the entire weekly salary. He believes it is illegal to change an employee's salary without written notice. He did not work on Friday, July 19, 2013. He feels that the company is trying to punish him for retiring.

The claimant also feels that there are very few rules regarding the accrual of vacation time. There is no policy for any payout at the time of separation. The written policy is not dated and is not on company letterhead.

The claimant stated that he was paid on July 19, 2013 for five days of vacation time. This was his unused time for the year 2013. He believes that he was accruing time for the calendar year 2014 and because he retired in July, he is owed for seven months of accrual. He also said that there had been discussions of the employee handbook in management meetings, in which he participated.

The employer testified that their policy was clear on vacation time. There was no accrual, it was a lump sum given on the first day of the year and the time was available for use up to the end of the year. The employer said that the claimant received fifteen days on January 1, 2013 and he had used ten of those days prior to retiring. The remaining five days were paid out to the claimant upon separation.

The employer also testified that there was no announcement of a change in the salary total for the work period. The claimant did not report to work on his last day and so his salary stopped because no work had been performed. If the claimant had come to work for any amount of time on the last day, he would have been paid his full salary.

### **FINDINGS OF FACT**

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43-b: Payment of Salaried Employees. –I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

- (a) Any pay period in which such employee performs no work.
- (b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.
- (c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.

- (d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.
- (e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This part of the law deals with the practice of placing an employee into a salaried position and how the employer is allowed to deal with the salaried employee when it comes to wages.

RSA 275:43 V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This is where the law places an issue such as vacation time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant was correct in stating that the employer had to notify the employee of a salary change. However, in this case the employer did not change the salary only changed a day in which no work was performed to a non-pay day. The claimant said that he would show up for work on the last scheduled day and he did not do so and was not in contact with the employer. Had the claimant worked any part of the last work day, he would be entitled to the entire amount of wages for the pay period.

The claimant also stated that vacation time was based on an accrual method. This does not prove to be true. The employer established a lump sum method of getting leave. Because of the seniority of the claimant, on January 1 of each year, the claimant received a full fifteen days of vacation time. In the year 2013, by July, the claimant had already used ten of the days and was paid out for the other five. If the leave was on an accrual basis, the claimant would not have had ten days to use.

The claimant felt that the time was accrued in the previous year so the ten days he took in 2013 he had actually accrued in 2012. Therefore he is seeking 7/12 of the accrual for 2014

that were being earned in 2013. The employer was credible in their testimony about how the leave worked and the claimant did not establish his position on this benefit.

The Wage Claim is invalid.

### **DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

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 the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: January 7, 2014

Original: Claimant  
cc: Employer

TFH/all