

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



**V**

**TWEC/FYE**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** TWEC/FYE, 38 Corporate Circle, Albany, NY 12203

**Date of Hearing:** January 23, 2014

**Case No.** 46927

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on October 30, 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 December 4, 2013. The employer was telephonic for the hearing,

The claimant testified that she put in for two weeks of vacation time and it was approved. Before she was able to take the time, she was asked to work those two weeks and not take the time off. Her District Manager, John Crynock, e-mailed her to say she would be paid for the two weeks because it was the company who asked her to work the approved weeks.

The claimant stated that because of her multiple years with the company she was aware that PTO was not paid out. She said that there was a handbook in place and she was aware of it. However, the claimant feels that this is a unique situation and it was because of a company request, she did not take the leave. Because of her knowledge of the policy, the claimant sought to protect her approved leave. She did receive, in writing, by an agent of the employer, that the leave would be paid because it was the company who asked her to work instead of taking the time.

The employer explained that New Hampshire does not mandate the payout of unused time and so the company is under no obligation to pay the time, not used. It is not the policy to pay the time and the District Manager did not have the power to grant payment of the leave. The only person allowed to grant payment of the unused leave is the Chief Operation Officer and this was not done. The employer did testify that the store was very busy at the time of the approved leave.

### **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 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 part of the law places an issue such as leave time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the submissions and the testimony presented for the hearing, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and she met this burden.

The claimant was credible in her testimony that the requested leave was approved. She also testified credibly that the company asked her not to take the leave because of the work needed in the store. The District Manager put in writing that the leave would be paid because the claimant was working at the behest of the company.

If the CEO was the only one who could waive policy, that should have been known to the District Manager. The claimant did not have any obligation to seek approval from the CEO when she requested the payment of the leave from her supervisor and that request was approved.

There is not enough information to include the extra day (eight hours) in this decision. That part of the Wage Claim is invalid. The Wage Claim is valid in the amount of \$471.00.

### **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 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 proved by a preponderance of the evidence that she was not paid all vacation pay due, it is hereby ruled that the Wage Claim is valid in the amount of \$471.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$471.00, less any applicable taxes, within 20 days of the date of this Order.

All other requests are invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: February 21, 2014

Original: Claimant  
cc: Employer

TFH/all