

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

  
V

**SWING FOR THE STARS PEDIATRIC THERAPY CENTER LLC**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Swing for the Starts Pediatric Therapy Center LLC, 2 Pillsbury Street, Ste. 404,  
Concord, NH 03301-3549

**Date of Hearing:** February 26, 2014

**Case No.** 47207

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on December 23, 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 January 23, 2014.

The claimant testified that she worked for the employer for three years as an hourly employee. She stated that there was a handbook in place and it was known to her. The claimant also stated that when she left the employ of the company she had 119 hours of vacation time at a rate of \$25.38 per hour.

The claimant testified that she was told that she would get her accrued total upon separation. There were no posted regulations as to how the leave was to be used. The employee handbook was the only guide. The claimant did say that the handbook did change over the course of her employment. The claimant does not have any knowledge of others being paid the time upon separation. Her position is that the regulations do not say that it will not be paid out.

The employer testified that she opened the business six and a half years ago. It has grown from one employee to 12 at the present time. The employees helped to develop the current policy handbook and it has changed over the years. The employer testified that there

has never been any past practice of paying out the leave accumulation. All employees are aware of the rules and sign off on them.

### **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 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 she did not meet this burden.

The claimant said that she was told and she felt that the time was due. The policy that she signed for and knew, does not say that the time will be paid out. An employee cannot add language to a policy or take away the intent of the policy.

The employer was credible in her testimony that the policy was in place and there is no past practice of paying out the accrued time. The employer also stated that there were changes to the employee manual over the years and it has since been changed to clear up any misconception like the payout of time.

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 she is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: March 24, 2014

Original:      Claimant  
cc:              Employer

TFH/all