

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


V

DMB Enterprises LLC dba Little Hands Childcare Center

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:43 V unpaid personal day pay

Employer: DMB Enterprises LLC dba Little Hands Childcare Center, 48-2
Wildflower Circle, Somersworth, NH 03878

Date of Hearing: June 11, 2014

Case No.: 47900

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$504.12 in unpaid wages for fifty-four hours of vacation pay and four and one half hours of personal day pay, at \$9.25 per hour. She argues she always received her vacation pay on April 1 and her last day was April 2, therefore, she is entitled to the six days of vacation pay at nine hours per day, or fifty-four hours. She further argues she had perfect attendance for February 2014, for which she would earn four and one half hours of personal day pay. She acknowledged she did have a scheduled day off on February 5, 2014, but it was scheduled, not a call out, so she should still be eligible for the personal day pay.

The employer denies the claimant is due any vacation pay or personal day pay. They argue the vacation pay is awarded on an employee's anniversary day, not the first of the month of their anniversary. The claimant's anniversary is April 13.

They further argue she is not due the personal day pay because the policy reads, "Accrued time builds up when an employee has perfect attendance for an entire month" and the claimant was scheduled out on February 5, 2014. They record they submitted erroneously stated February 6, 2014, was the date she was absent. Both parties agree the correct date of the absence is February 5, 2014.

FINDINGS OF FACT

The claimant worked for the employer from May 17, 2011 through April 13, 2012, as a part time employee. On April 13, 2012, she became a full time employee.

The claimant argued she is due four and one half hours of personal day pay for perfect attendance for February 2014. Both parties agree the claimant had scheduled February 5, 2014, as a day off and she was absent from work on that date.

The employer argued the claimant is not due the personal day pay because the policy reads, "Accrued time builds up when an employee has perfect attendance for an entire month" and the claimant was scheduled out on February 5, 2014. They record they submitted erroneously stated February 6, 2014, was the date she was absent.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding personal day pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The written policy reads, "Accrued time builds up when an employee has perfect attendance for an entire month." The policy does not provide any exceptions to the term perfect attendance.

The Hearing Officer finds the claimant was absent on February 5, 2014, which disqualifies her for the award of personal days under the written policy of the employer. Therefore, the claimant failed to prove by a preponderance of the evidence she is due the claimed personal day pay.

The claimant argued she is due fifty-four hours of vacation pay at \$9.25 per hour. She argued she had always received her vacation pay on April 1. Because her last day was April 2, she is entitled to the six days of vacation pay at nine hours per day, or fifty-four hours.

The employer argued the vacation pay is awarded on an employee's anniversary day, not the first of the month of their anniversary. The claimant's anniversary is April 13 and as her last day was April 2, 2014, she is not entitled to any vacation pay.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification. The employer failed to properly reduce the vacation policy to writing.

The employer did not provide a written policy specific to vacation pay. However, the policies they did provide regarding Accrued time and Absences read, in relevant part, "ACCRUED TIME – an employee will gain 3 personal days each year on their anniversary date" and "ABSENCES – absences are figured on a 12-month cycle beginning on an employee's anniversary date." The employer's written policies

regarding time off benefits similar to vacation pay indicate award of such benefits on an employee's anniversary date.

The claimant's argument that she "always received her vacation pay on April 1" is not persuasive as she had only been a full time employee since April 13, 2012. She had only received benefits once, for her anniversary date of April 13, 2013, prior to filing this claim. This does not establish a policy or practice that the employer paid her vacation pay on April 1 of each year.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed vacation pay.

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 personal day 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 personal day pay, it is hereby ruled that this portion of the Wage Claim is invalid.

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 this portion of the Wage Claim is invalid.

/s/

Melissa J. Delorey
Hearing Officer

Date of Decision: June 17, 2014

Original: Claimant
cc: Employer

MJD/clc