

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SENTINEL TITLE SERVICES

DECISION OF THE HEARING OFFICER

Appearances: Joseph R. Russell Esq., Attorney for the Employer

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

Employer: Sentinel Title Services

Date of Hearing: July 22, 2014

Case No. 48013

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 30, 2014. 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 June 17, 2014. The employer gave an Offer of Proof as their presentation to the Wage Claim.

The claimant testified that she was not seeking any personal days. The Wage Claim was for \$3,220.00 all of which is vacation time. The claimant said that she worked for the employer for twelve and a half years and in her position she was the keeper of the records.

At the start of the year 2014 the claimant had three weeks of vacation time on the books. The claimant stated that a few years back the employer changed the accrual date from the anniversary date to the issuing of vacation time on January 1. There was no employee handbook in place and there was no formula for the accrual of leave. The spoke rule was that after four months of employment the employee received four paid personal days and after one year you received two weeks of vacation time. Once you had worked the full year, your vacation time started on January 1 of the next year. All vacation and personal days were available at the first of the year after you had worked one full year.

The claimant is seeking fourteen unused vacation days which amounts to \$3,220.00.

In their Offer of Proof the employer stated that there was no written handbook in place but the accrual of leave started on January 1 and the total time was not “gifted” on that date.

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 part 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 section 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, the claimant’s oral testimony and the Offer of Proof, that the Wage Claim is valid. 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 she was the “keeper of the records” for the employer. She was also credible in talking about the practice of addressing the leave issue with new employees.

The employer admitted that there was no written policy, in a handbook, that explained the policy of leave accrual. The Offer of Proof only stated that the leave was not “gifted” on January 1, but had to accrue.

The Wage Claim is valid in the amount of \$3,220.00.

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 he was not paid all vacation pay due, it is hereby ruled that the Wage Claim is valid in the amount of \$3,220.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$3,220.00 less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 13, 2014

Original: [REDACTED]
cc: Sentinel Title Services
[REDACTED]

TFH/klt