

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

**V**

**Harborside LLP dba Pheasant Wood 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 sick pay

**Employer:** Harborside LLP dba Pheasant Wood Center, 50 Pheasant Road,  
Peterborough, NH 03458

**Date of Hearing:** July 2, 2014

**Case No.:** 48014

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$1,381.49 in unpaid vacation pay, or 59.47 hours at a rate of \$23.23 per hour; and \$662.52 in unpaid sick pay, or 28.52 hours at a rate of \$23.23 per hour.

At the hearing, the claimant removed the claim for the unpaid sick pay.

She testifies that she was hired by Sunbridge in August 2010 and then the employer was purchased by Genesis in 2012. She was not aware of the Harborside name or their ownership of the business. She argues that she utilized the employer's intranet to find a Genesis handbook policy, dated July 2008, which states, "Except as otherwise required by state law, if a non-exempt employee has available but unused paid time off and has completed more than one year of service, he or she will be paid for such time."

The employer denies the claimant is due any vacation pay under their written policy. In 2007 Harborside was purchased by Sun Healthcare and in December 2012, Sun Healthcare was purchased by Genesis. They did not change to the Genesis vacation or sick policy at the time of the purchase and still have not as of the date of the hearing. Two handbooks exist on the intranet, one for Genesis Legacy groups as they own over four hundred locations nationally, and one for the Sun Legacy group, which is the handbook for this employer. The Sun Legacy handbook on the intranet does not specifically address the vacation and sick policy, but the written policy is available at the work location. The written vacation policy in effect states, "Pay-out of vacation balances

at termination occurs when you retire, if you are impacted by a reduction in force, or if your termination is due to a permanent disability. All earned vacation will be paid out for these termination reasons. Termination for all other reasons will not result in any pay-out of a vacation balance unless there is a state law requiring payouts of vacation hours accrued or earned. Currently payouts of this type are required only in the states of CA, CO, IL, MA, MT and RI after a year of service.”

They argue they properly notified the claimant of the written policy in effect for her. She was given a copy of the handbook and she signed a written acknowledgement upon hire on August 9, 2010. She was given another copy of the handbook on CD and she signed an acknowledgement on January 29, 2012. No further acknowledgments were required because the written vacation and sick policy did not change upon the purchase of the employer in December 2012.

### **FINDINGS OF FACT**

The claimant worked for the employer from August 2010 through January 31, 2014, when she resigned.

The claimant argues the written vacation policy she found on the company intranet advised her that, “Except as otherwise required by state law, if a non-exempt employee has available but unused paid time off and has completed more than one year of service, he or she will be paid for such time” and that she should be paid for the time she had accrued.

The employer argues they properly notified the claimant of their written policy which states, “Pay-out of vacation balances at termination occur when you retire, if you are impacted by a reduction in force, or if your termination is due to a permanent disability. All earned vacation will be paid out for these termination reasons. Termination for all other reasons will not result in any pay-out of a vacation balance unless there is a state law requiring payouts of vacation hours accrued or earned. Currently payouts of this type are required only in the states of CA, CO, IL, MA, MT and RI after a year of service.” Therefore, no payment for vacation pay is due the claimant.

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 Hearing Officer finds the employer properly notified the claimant of the written policy and maintained her signed acknowledgement on file. The employer did not notice the claimant that any other policy other than the copy provided to her, for which she signed an acknowledgement, was in force.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed vacation pay under the written policy of the employer.

### **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.

/s/

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Melissa J. Delorey  
Hearing Officer

Date of Decision: July 18, 2014

Original: Claimant  
cc: Employer

MJD/cag