

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

**V**

**Cleary Cleaners Inc**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Cleary Cleaners, Inc.  
67 Allen St.  
Rochester, NH 03867

**Date of Hearing:** August 21, 2014

**Case No.:** 48071

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$1,440.00 in unpaid vacation pay for three weeks of accrued time. She argues that she gave a two week notice and left on amicable terms therefore she should be paid the vacation pay. Other employees left in a similar situation and received their vacation pay.

She acknowledged that she did receive the written policy of the employer and was aware the contents of the policy. However, she was adamant that she did not attempt to recruit Cleary Cleaner employees to move with her to her new job, with a competitor.

The claimant was dissatisfied that she was not allowed to question Ms. Cole or Ms. Lovell as the employer did not call them as witnesses during the hearing.

The employer denies the claimant is due any vacation pay. The written vacation policy states, "Employees who are voluntarily terminating their employment (quitting) may be paid unused declared vacation pay at the discretion of management" and "Employees who are terminated by Cleary's forfeit any unused declared vacation days."

The claimant signed an acknowledgement for the written policy of the employer on November 8, 2005.

**FINDINGS OF FACT**

The claimant worked for the employer for twelve years in total during two periods of time, the most recent between November 8, 2005 and February 1, 2013.

The claimant provided the employer with a two week notice of her intent to quit. The employer decided they did not need a notice period and notified the claimant she was not required to work out her notice period. She was paid all wages due for time worked.

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 properly notified the claimant of the written policy and maintained on file a signed copy of the acknowledgement of the policy.

The written vacation policy states, "Employees who are voluntarily terminating their employment (quitting) may be paid unused declared vacation pay at the discretion of management" and "Employees who are terminated by Cleary's forfeit any unused declared vacation days."

The employer exercised their discretion to not pay the claimant her salary, pursuant to their written policy.

Neither party argued that because the employer did not accept the claimant's notice period, the claimant was terminated. However, using this argument, the employer properly notified the claimant that the vacation pay was forfeited upon termination by Cleary's.

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 the payment of 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 was due the claimed vacation pay, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: September 8, 2014

Original:

cc:   
Cleary Cleaners Inc.

MJD/klt