

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


V

PON Management LLC dba Pines of Newmarket

DECISION OF THE HEARING OFFICER

Appearances: Sean O'Brien, Esq., representing PON Management LLC
dba Pines of Newmarket

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid sick pay
RSA 275:43 V unpaid vacation pay/earned time pay

Employer: PON Management LLC dba Pines of Newmarket
17 Regency Dr., Andover, MA 01810

Date of Hearing: September 10, 2014

Case No.: 48230

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant, through a consolidated hearing with five other former employees of the employer, asserts she is due \$306.60 in unpaid vacation pay/earned time pay which was due upon the sale of the employer to a new company.

She argues that the vacation pay is due because she never received any written notification that her employment with PON Management LLC dba Pines of Newmarket had terminated. She was aware of the written policy in the employee handbook but feels the policy is unclear.

The claimant reads the employer's policy as accrued time is not paid, but earned time is paid. She believed she would not be paid for the hours accrued in the last pay check, but that the time showing as having already been earned on her pay stub would be paid.

The employer denies the claimant is due any vacation pay. The written policy, previously submitted, states in relevant part, "Benefit payout: Employees are NOT paid for any accrued but unused Earned Time upon termination of employment." The claimant signed an acknowledgement of the policy handbook on August 1, 2012.

The employees were terminated as of May 26, 2014, in accordance with the sale of the company to a new entity. All employees terminated and began new employment with the new owner.

FINDINGS OF FACT

The employer sold the business to a new entity on May 26, 2014. At that time, the claimant's employment was terminated with PON Management LLC dba Pines of Newmarket.

Nothing in the statute requires an employee to be notified via written statement that their employment has been terminated.

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's written policy states in relevant part, "Benefit payout: Employees are NOT paid for any accrued but unused Earned Time upon termination of employment." The claimant signed an acknowledgement of the policy handbook on August 1, 2012.

The employer properly notified the claimant of the policy and practice as it pertains to the vacation pay/earned time policy and maintained on file a signed copy of the notification.

The Hearing Officer finds the claimant has misinterpreted the written policy regarding vacation pay/earned time pay. The plain reading of the statement indicates that any time that has already been accrued to the benefit of the employee but has not yet been used by the employee, is not paid out at the termination of employment.

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

Melissa J. Delorey
Hearing Officer

Date of Decision: September 29, 2014

Original:

cc: 
PON Management LLC dba Pines of Newmarket
Sean O'Brien, Esquire

MJD/klt