

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

LANGDON PLACE OF DOVER (GENESIS HEALTHCARE LLC)

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation, sick and personal time off

Employer: Genesis Healthcare LLC 60 Middle Rd, Dover NH 03820

Date of Hearing: **October 1, 2014**

Case No. 48471

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 15, 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 September 9, 2014. The claimant was allowed to appear telephonically at the hearing.

The claimant testified that she worked for the employer from April 12, 2011 until June 20, 2014. She was an hourly employee and there was a time clock in place.

The claimant stated that when she first started to work for the employer she was under a Sun Handbook. Later, Genesis took over and she was under their handbook. Under the Sun Handbook there was no payout of accrued vacation time. On June 12, 2014 the new employer presented a buyout plan for a select period of time. This plan was just for employees, not exempt from overtime. The claimant was in a position to participate in the program.

The claimant further testified that she was often asked to fill in for certain positions. It was during these "fill-in" times that she maintained her time clock recording. The claimant feels that the employer did not pay her for all time earned while she was filling in these positions.

The claimant also stated that she had to fill in for some administrative positions and they required her to take calls on her e-mail and respond within thirty minutes. The claimant said that

she often worked from home and this time was not recorded. She also took multiple weekend calls and these calls were logged into the employer's system.

The claimant said that there were a few times were she filled in for special occasions at the facility. She felt that in order to be a "team player" she took these jobs to help out the administration.

At the end of her employment she said that the employer instituted a buyout program for accrued leave. The claimant said that the employer said that she would be eligible for this program but she never received any payment for her accrued leave.

The employer testified that the claimant had a tremendous work ethic and often volunteered for jobs to help others out. The employer did say that they had to speak to her about taking too many things on and it could be a detriment to her work product. The claimant was paid for all hours on the clock and did sign off that all hours were paid.

If the claimant came into work for a voluntary type of duty she was not paid and was not asked to come in. When the claimant did come in for a special function and clocked in, she was paid for all hours worked.

The claimant did request to participate in the Genesis buy out of leave time but she was not eligible for it. The buyout was only for full time employees and when it happened the claimant had already given her notice.

The claimant signed off at a seminar where all time was reviewed. When asked if she was owed any time, the claimant answered in the negative. The employer maintains that all time due has been paid to the claimant.

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.

This part of the law mandated that an employer 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 issues such as earned 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 and the testimony presented for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The testimony shows that the claimant did do a lot of work for the employer but all the work that was recorded on the time clock was paid. The voluntary functions the claimant went to help out were not paid unless the claimant clocked in to the system.

The employer provided credible testimony that they did investigate employees working extra hours and not being paid and where this was discovered, the employees were paid. The claimant did participate in at least one of these sessions and did sign off to the fact there was no time due and owing.

The payout of leave was a unique program and only available to full time employees. The claimant had already given her notice and therefore did not qualify under the terms of the buyout.

The Wage Claim is invalid.

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 this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 28, 2014

TFH/slh