

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Summerhill Assisted Living LLC

DECISION OF THE HEARING OFFICER

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

Employer: Summerhill Assisted L & D Care
183 Old Dublin Rd
Peterborough NH 03458

Date of Hearing: October 2, 2014

Case No.: 48618

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$2,576.00 in unpaid vacation pay/PTO pay. She claimed the employer did not follow their written policy regarding the rollover and payout of vacation/PTO time on her anniversary.

She amended her claim, prior to the hearing, to add wages for unpaid lunch periods because she worked through many of her unpaid lunch periods.

At the hearing, the claimant amended her vacation/PTO pay claim to \$1,808.38, gross, for forty hours of vacation pay. She argued the written policy of the employer states, "On the employee's anniversary date, vacation/personal time not taken (up to a maximum of 40 hours) will be carried over to the next year. Calculation of annual payouts of vacation/personal time will be done on the employee's anniversary date. Any vacation/personal time in excess of 40 hours will be paid out on an annual basis at 50% of employee's shift differential hourly rate." She read this to mean she should have been paid out the 40 hours she had on the books and the remainder of the time should have stayed on the books. She argued that she does not have a shift differential.

She further argued she was not paid her vacation/personal time upon separation. She had already been scheduled for a vacation which was to occur three days after her termination date and believes she should be compensated for that time.

She removed the claim for the unpaid lunch periods.

The employer denied the claimant is due any vacation pay. She argued they never pay out vacation/personal time upon termination of employment. They would only pay vacation/personal time if an employee resigned and provided a two week notice and worked the notice or if any employee were to be laid off.

The hearing was left open until 4:30pm on October 6, 2014, for the employer to submit a copy of the full vacation policy. The employer submitted the documentation within the required time frame.

FINDINGS OF FACT

The claimant worked for the employer from February 22, 2013 through July 9, 2014, when she was 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.

Though the employer did not supply a copy of an acknowledgement of the notification of these policies by the claimant, the claimant was aware of the policies and had a copy.

The employer noticed the claimant, via their written policy, "On the employee's anniversary date, vacation/personal time not taken (up to a maximum of 40 hours) will be carried over to the next year. Calculation of annual payouts of vacation/personal time will be done on the employee's anniversary date. Any vacation/personal time in excess of 40 hours will be paid out on an annual basis at 50% of employee's shift differential hourly rate."

The plain reading of the policy states that on the employee's anniversary date, up to 40 hours of vacation pay will be carried over to the next anniversary year. Any balance over 40 hours is paid out at 50% of the employee's regular rate of pay including any differential pay that they may receive. The employer executed the proper payment and carry-over of her vacation time.

The employer also noticed the claimant that, "In the event of an involuntary termination where willful misconduct or gross negligence was the reason for termination, the employee is ineligible to be paid out vacation/personal time."

The employer provided the claimant with three separate written notifications for misconduct.

Therefore, the Hearing Officer finds the claimant is not due any vacation/personal pay upon separation from the company.

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:

MJD/slh