

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

MONADNOCK COMMUNITY HOSPITAL

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation time
RSA 275:44 IV liquidated damages

Employer: Manadnock Community Hospital
452 Old Street Rd
Peterborough NH 03458

Date of Hearing: September 16, 2014

Case No. 48619

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 4, 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 August 20, 2014. The Wage Claim is for \$15,120.00 which includes the request for liquidated damages.

The claimant stated that she had ten days of time on the books at a rate of \$320.51 per day. She said that she gave a six week notice in the change of her employment status from part-time with benefits to one of a per diem status.

The claimant maintains that there is no language in the policy that leave is paid at separation or language that says the leave is lost if not used. The claimant feels that she is due the ten days that she accrued and that the employer was willful and did not have good cause for their action in not paying the leave.

The employer maintains that the policy is clear and there is no payout of vacation time when there is a change in employment status. The Policy and Procedure Handbook is given to

each new hire and the employee signs for the Handbook. The rules are very clear in stating that there is no dollar value to Paid Time Off.

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 is the section of the law that mandates an employer to 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 part of the law places an issue such as vacation time into the category of wages when the time is due and owing.

RSA 275:44 IV The commissioner may, upon written petition showing good and sufficient reason, permit payment of wages less frequently than weekly, except that it shall be at least once each calendar month. In all instances, payment shall be made regularly on a predesignated date. The commissioner may prescribe the terms and conditions of such permission, and limit the duration thereof.

This part of the law allows for a claimant to seek liquidated damages up to the amount of the claim if the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

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.

When an employer puts their policy in writing it becomes the benchmark for deciding a claim for benefits. If an issue is not addressed it cannot be assumed that it is part of or in addition to the written policy. In this case the employer has made it clear that there is no monetary value to the earned time. It is there to be used for time off.

The claimant cannot add her opinion that the time is due to be paid upon separation or changing job status. If this were the case, the policy would say just that.

The Wage Claim is invalid. There is no finding for liquidated damages.

DECISION

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

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 15, 2014

TFH/slh