

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Charles Gordon Insurance Group Inc.

DECISION OF THE HEARING OFFICER

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

Employer: Charles Gordon Insurance Group Inc.,
285 Calef Hwy Ste 12C, Epping, NH 03042

Date of Hearing: September 25, 2014

Case No.: 48650

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$750.00, gross, for four and one half days of unpaid vacation pay. She claims this should have been paid upon her separation from the employer. She provided a resignation letter to the employer, who stated they did not accept the resignation. She worked through her notice period, which was five days.

The employer denies the claimant is due any vacation pay because he interprets the employee handbook, previously submitted, that she abandoned her job. Job abandonment forfeits any vacation payout.

He feels she left them in a bad place. She did not give the requested two weeks' notice in the employee handbook. He did not accept her resignation.

He also contacted this Department regarding this issue and was advised to follow his policy handbook.

FINDINGS OF FACT

The claimant provided a resignation notice of five working days. She completed that notice period.

The employer's handbook defines job abandonment as, "If you fail to appear for work and do not call to report your absence within 48 hours, this will be considered job abandonment and you will be terminated for not reporting to work, unless there is a clear and substantial justification for your not calling in to notify the proper management personnel of your absence." and in a different section of the handbook as, "Two consecutive days of absence without properly notifying the Company will be considered a voluntary resignation (abandonment). The effective date of termination will be the last

day the employee reported to work. Employees who abandon their jobs will not be entitled to any accrued vacation pay.”

The claimant’s actions do not fall under the plain reading of the employer’s own policy. She provided a notice and worked out that notice.

The earned time policy states, “Voluntary resignation – Employees are asked to provide a minimum of two weeks written notice prior to the effective date of their resignation. The Company may permit an employee to continue employment during the two-week notice period or accept the resignation immediately. In the event the Company chooses to accept the resignation immediately, the employee will be paid through the remaining portion of the two-week notice period.”

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 policy regarding vacation pay asks employees to provide a two week notice of resignation in writing. Nowhere in the policy does it state that if this two week notice is not provided, that any accrued vacation time will not be paid out.

The employer had the opportunity to create the vacation policy in any manner they choose, including forfeiture of the vacation pay if a two week notice was not provided and completed. They did not do so.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence that she did not abandon her job and is due the claimed vacation pay under the written policy of the employer.

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 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 proved by a preponderance of the evidence that she is due the claimed vacation pay, it is hereby ruled that the Wage Claim is valid in the amount of \$750.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$750.00, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey

Hearing Officer

Date of Decision: September 30, 2014

Original: [REDACTED]
cc: Charles Gordon Insurance Group Inc.

MJD/klt