

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

DUNKIN DONUTS

DECISION OF THE HEARING OFFICER

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

Employer: Dunkin Donuts PO Box 245, Tilton, NH 03276

Date of Hearing: December 3, 2014

Case No. 48974

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 30, 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 November 6, 2014. The Wage Claim is for \$340.00 in unpaid vacation time.

The claimant testified that she worked for the employer from March 8, 2013 until May 15, 2014. She was an hourly employee working on an average of 32 to 38 hours per week. While she was employed she put in for July 4, 2014 until July 14, 2014 for vacation time. The claimant stated that as an employee she could put in for the time off or be paid for the time off. The claimant wanted the time off.

On May 15, 2014 the claimant suffered an off the job injury and was unable to work. She did not get clearance from her treating physician and was out of work May 15, 2014. The claimant was finally taken off the employment rolls because she could not work. The claimant feels that she earned the vacation time and the block of days were approved. She feels that she worked the required time to accrue the vacation leave and she should be paid for it.

The employer testified that the claimant was a very good worker and he would take her back if she was able to work with the approval of her doctor. The employer says that their policy is clear and is available to all employees. The employees, including the claimant, sign the policy statement. The claimant had to call in when she could not come to work and because of the

duration of the out of work time the employer had to terminate the claimant. Because of the termination of employment, there is no payout of earned time.

The employer stated that this was a past policy practice in regards to unused leave.

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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the part 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 section of the law places an issue such as vacation 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 of the parties, 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 showed that the claimant did not work after May 15, 2014. The claimant could not get any clearance to work from her doctor. The claimant is seeking her scheduled vacation time that was planned for July 6 through July 12 (employer's dates).

The employer was credible in the testimony that it was a policy not to pay out accrued leave if the employee was no longer an employee. This is the case here. The claimant was taken off the employee rolls when she could no longer report to work or give a date when she might be able to continue her employment. The leave was lost.

The claimant said that because she earned the time then she should be paid for it. This is not provided for in the employee policies and it has never been a past practice to pay out the leave. 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 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.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 19, 2014

TFH/kdc