

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**CONCORD EYE CENTER**

**DECISION OF THE HEARING OFFICER**

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

**Date of Hearing:** May 18, 2015

**Case No.** 50050

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on March 16, 2015. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on April 16, 2015. The employer was represented at the hearing.

The claimant testified that she worked for the employer for about three months. She was an hourly employee. The claimant testified that in her hiring letter it stated that she was to receive leave time after a ninety day probationary period. The claimant said that she was led to believe that after the ninety day probationary period she would have nine days of vacation time on the books. She testified that there was no mention of an accrual process or of a payout upon separation.

The claimant maintains that she had forty hours of leave time after her probationary period. She was paid for 12.2 of these hours and is due 27.8 hours at her hourly rate of \$13.75. The claimant further testified that she did try numerous times to resolve this issue after she terminated because she could never get a clear understanding of the policy. There was no response from the employer by mail or phone as to the governing rules on the payout of the earned time.

The employer testified that in September of 2014 there was a merger of two practices. Because of the merger there were two sets of employee policies. One was for the South Campus location and one was for the Hospital Campus. The employer testified that the claimant was under the Hospital Campus rules. The employer further testified that they did not have any past practice of paying out of accrued leave upon separation.

Upon questioning by the claimant the employer said that there was no policy that described the payout of earned time.

### **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 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 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 of the parties, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and she met this burden.

The claimant provided credible testimony that she felt the time was earned and it was to be paid out. There was no proof of the employer's policy on this issue. In fact the very fact that

there were two sets of policy being combined to be used for all employees, led to some confusion.

The employer has the burden to show that the wages and benefits are in writing and available to all employees. In this Wage Claim there is no evidence of a signed document that explained the payout or non-payout of accrued leave. The only document provided was the hiring agreement that stated the claimant would have the time after a ninety day review period. The claimant completed those ninety days and did receive a written evaluation.

The employer stating that the leave only starts upon the completion of thirty days after the probationary period. There was no written policy presented on this issue.

The Wage Claim is valid in the amount of \$382.25.

### **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 was not paid all vacation pay due, it is hereby ruled that the Wage Claim is valid in the amount of \$382.25.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$382.25, less any applicable taxes, within 20 days of the date of this Order.

---

Thomas F. Hardiman  
Hearing Officer

Date of Decision: June 9, 2015

TFH/kdc