

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

CLUB KIDZ

DECISION OF THE HEARING OFFICER

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

Date of Hearing: June 2, 2015

Case No. 50213

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 8, 2015. 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 May 8, 2015.

The claimant testified that she worked for the employer from January 25, 2010 until March 6, 2015. She further testified that after three years of continuous employment she received two weeks (80 hours) of Personal Time Off (PTO). The claimant stated that there was no handbook in place while she worked for the employer.

The claimant testified that in January of 2015 she had eighty hours of PTO reported. She had used 16 hours in the months before her separation from employment. The claimant maintains that she is due 64 hours of the earned time at the hourly rate of \$12.00 per hour. The claimant testified that she did not have knowledge of any payouts to other employees. She feels that she earned the time and that it was due upon her leaving the employment of the company. The Wage Claim is for \$768.00.

The employer testified that there has been no practice of paying out unused PTO when an employee leaves for any reason. In 2015 the claimant would have 80 hours of leave and she did use some in the early months prior to her leaving on March 6, 2015. The employer further testified that in past years, the claimant used all of her PTO.

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 was under the practice that the time was earned and it had to be paid. The claimant did show that she had the total time at the start of the year and that she did take some time off.

The employer said that it was company policy to not pay out the accrued leave but there was no written policy that showed this was the practice. The claimant did not believe it to be the policy and felt that she was owed the accrued time.

The employer is under the obligation to put in writing the policy of wages and benefits. Both sides testified that there was no policy in place. This decision comes down to one of credibility and the claimant proved that she had taken time off early in the year and was paid for that time. An accrual method would not have had that much time on the books so early in the year.

The Wage Claim is valid in the amount of \$768.00.

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 he was not paid all leave time due, it is hereby ruled that the Wage Claim is valid in the amount of \$768.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$768.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 23, 2015

TFH/kdc