

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Sleepy's LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:44 IV liquidated damages
Claimant: Mark J. Cohen, 592 West St, Keene, NH 03431
Date of Hearing: June 8, 2015
Case No.: 50275

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$1,775.00 in unpaid wages and \$710.00 in liquidated damages as the wages were not paid in a timely manner.

The claimant previously amended his claim to include \$500.00 in unpaid vacation pay and an equal amount in liquidated damages.

The employer paid the claimant's wages of \$1,775.00 in full and an additional \$703.15 in liquidated damages in a good faith effort. The claimant continued the claim for \$500.00 in unpaid vacation pay and an equal amount in liquidated damages.

On June 5, 2015, the employer requested to appear telephonically. The claimant objected to the request.

Lab 203.07 Telephonic Hearing -

(b) If all parties do not agree to the presence of a party or the examination of a witness by telephone call or video networking conference, the commissioner, commissioner's representative or the panel shall allow the presence of a party or the ability of a witness to testify by telephone or video network conference upon a finding that:

(2) Allowing testimony in this form is necessary due to one or more of the following:

c. Distance to travel to the hearing from outside of New Hampshire;

The Department granted the request for the employer to appear telephonically pursuant to Lab 203.07 (b)(2)(c). The Department also extended the offer for the claimant to appear telephonically for the hearing, which he accepted.

The employer argues the claimant is not due any vacation pay under their written policy. As no vacation pay is due, they cannot be liable for liquidated damages.

FINDINGS OF FACT

The claimant worked for the employer from June 2, 2014 through April 11, 2015, as a Mattress Professional. The employer terminated the claimant's employment on April 11, 2015.

The claimant argues that New Hampshire Employment Security found that the employer did not terminate his employment for cause. The claimant alleges it is a matter for this Department to determine whether he was terminated for cause. He believes the vacation pay is due because the employer did not terminate his employment for cause.

The employer argues that the findings of New Hampshire Employment Security have no bearing on a hearing with this Department. Further, the written policy states if an employee is terminated for any reason they are not entitled to vacation pay. The policy does not distinguish between termination and termination for cause.

RSA 282-A:180 states, "Decisions rendered under this chapter shall not be admissible in any court or in administrative or other proceedings, not under or pursuant to this chapter, for the purpose of barring such court or proceeding from making independent findings of fact and rulings of law under the doctrine of collateral estoppel". Therefore, the decision of New Hampshire Employment Security does not bar this Department from making independent findings.

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 noticed the claimant of the written vacation policy, which reads in relevant part, "Employees who fail to provide at least two weeks of notice or are terminated for any reason will not be paid any of your unused accrued vacation time, except as mandated by applicable state law."

The claimant vehemently disagrees with the reason the employer provided for his termination. However, the reason for his termination is not at issue in the claim nor is it for this Department to determine. The written policy states an employee who is terminated for any reason will not receive accrued but unused vacation time.

Even if the claimant had disagreed with the fact that the employer terminated his employment, the written policy requires an employee who voluntarily resigns to provide a two week notice in order to receive vacation pay.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the claimed vacation pay under the written policy of the employer.

Because no vacation pay wages are found to be owed, no liquidated damages can be awarded.

DECISION

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 that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed vacation pay, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 18, 2015

MJD/kdc