

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



v

**CHARLES C. HUGO LANDSCAPE DESIGN**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Charles C. Hugo Landscape Design, PO Box 263, South Berwick, Maine 03908

**Date of Hearing:** November 2, 2015

**Case No.** 51449

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on September 2, 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 October 13, 2015.

The claimant testified that he worked for the employer for four years as an hourly employee. When there was a separation in the employment, the claimant said that he had 64 hours of accrued vacation time on the record. He said that this time was earned and owed to him. The claimant further testified that there was no employee handbook or written hiring agreement in place.

Although the claimant did not have any knowledge of past pay outs of accrued leave, he did request documentation of any relevant policy from the payroll company. When the payroll company could not give any direction on this issue, the claimant went to the employer and was told that it was a company policy not to pay out the time. The claimant asked for the written policy and none was provided.

The employer testified that there was no history of paying out accrued leave at the end of employment. The employer further stated that they were putting in place an employee handbook of the rules and practices, but the handbook was never finished.

In their written objection the employer put in writing the intent of the policy and that there was no pay out of accrued time. The exhibit was in the form of a letter and not an actual page from an employee handbook.

### **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 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 submission 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 he did not meet this burden.

The employer did not have written documents to show the policy of the company. He testified that there was a time in the past where the policies were to be put in writing but it was never completed. The employer however, presented documentation to show that there was no past practice of paying out of the accrued time upon separation.

The claimant did use time while employed but did not produce any evidence or testimony that would show, that as a matter of employment practice or policy, accrued time was paid out at separation by this employer. The claimant worked for the company for four years and never heard of the accrued time being paid after separation. The claimant stated that he sought documentation after separation and there was none to be given to him about the policy.

The law says that wages and benefits should be in writing so they are known. However, the lack of written policy does not necessarily show that there is a practice.

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 accrued vacation pay to be wages, when due, if as a matter of employment practice or policy, or both, they are paid out on separation, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: December 1, 2015

Original: Claimant  
cc: Employer

TFH/cag