

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

**V**

**SAU 70**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** SAU 70, 41 Lebanon St Ste 2, Hanover, NH 03755

**Date of Hearing:** February 17, 2016

**Case No.:** 51725

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of her wage claim, that she was owed \$1,496.16 in unpaid vacation pay due upon her separation from employment, and \$1,675.19 in liquidated damages because she did not receive her final pay in the required timeframe.

At the hearing, she amended her claim to remove the issue of liquidated damages. She also amended her claim from seventy-two hours of vacation pay to sixty-four hours, or \$1,329.92.

She now argues the employer did not notice her in writing that her vacation days were accrued during the year, therefore, she is entitled to the remainder of the annual allotment of vacation pay, sixty-four hours, or \$1,329.92.

The employer argues the claimant is not due any vacation pay because pursuant to past practice, vacation time is accrued based on time worked during a contract year. The claimant had a negative balance of eight hours in her vacation bank from FY 2015 and she had used more time in FY 2016 than she had accrued, therefore, she was not entitled to any vacation payout.

**FINDINGS OF FACT**

The claimant worked for the employer from May 13, 2014 through October 5, 2015, as a payroll clerk. The most recent contract for her employment commenced on July 1, 2015 and was scheduled to end June 30, 2016.

The claimant resigned via email on Saturday, October 3, 2015, and provided a separation date of October 16, 2015. Her last day physically worked was October 5, 2015. The employer continued to pay regular hourly wages through October 20, 2015.

She argues she did not receive the balance of her vacation time upon her separation on October 16, 2015, sixty-four hours at \$20.78 per hour, or \$1,329.92, which is now due. She also argues the employer failed to notice her in writing that the vacation time was accrued during the contract year.

The employer argues that she is not entitled to any vacation payout as she had used more vacation time than she had accrued as of the date of her separation. They further argue that their past practice for non-union employees has always been to accrue the vacation time over their contract year. They specifically note that the claimant was aware of the past practice because in her role as payroll clerk she processed terminations and transfers of employees. Though she did not specifically prepare the spreadsheets which determined the accrual, she did process the spreadsheets with the accrual information and had numerous occasions during her employment to see the evidence that vacation time is accrued.

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 written contract noticed the claimant that she was "entitled to ten (10) paid vacation days per year." Both parties agree that a verbal conversation granted the claimant fifteen days per year, though it was not reduced to writing. The written contract is silent as to the method by which an employee receives the totality of their vacation days.

The claimant admits that she was aware of the practice for employees to accrue the vacation time over their contract year, however, she argues they did not put this in writing to her.

The employer was negligent in failing to memorialize all of the practices and policies as they pertain to vacation pay, as required by RSA 275:49. However, the intent of the statute is notice to the employee. The employer did notice this particular employee regarding the past practice of the accrual of vacation time by virtue of her job duties.

The Hearing Officer finds that the employer was not in compliance with the requirements of Lab 803.03 (a) when they did not inform the claimant, in writing, of the accrual of vacation days. This does not automatically guarantee the claimant will prevail. The claimant was informed, verbally, and by virtue of her job duties, that the vacation days are accrued. The claimant knew that her vacation days were accrued over the contract year. The claimant, therefore, fails to prove by a preponderance of the

evidence that she is due any vacation pay under the written policy and past practice of the employer.

Further, the claimant ceased working on October 5, 2015, and the employer continued to pay her regular wages through October 20, 2015, or eleven calendar days. The employer paid her hourly wage for time not physically worked far in excess of the claimed sixty-four hours of vacation pay, for which they could have used any vacation pay available to the claimant.

### **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 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 this portion of the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: February 25, 2016

Original: Claimant  
cc: Employer

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