

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

V

Town of Colebrook

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid sick leave pay

Employer: Town of Colebrook, 17 Bridge St, Colebrook, NH 03576

Date of Hearing: December 28, 2015

Case No.: 51726

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$5,598.37 in unpaid sick leave pay. He argues he had a conversation twenty years ago with town officials when he became the Public Works Director that he would receive all of sick leave pay when he retired.

The employer denies the claimant is due any sick leave pay under the written policy.

FINDINGS OF FACT

The claimant retired from his employment with the employer.

He argues that upon his retirement he should receive the 207.45 hours, or \$5,598.37, of sick time he had accrued during his tenure. He recalled a conversation with town officials from twenty years ago in which they stated he would receive his sick leave pay upon his retirement. He also referenced notes from Selectboard meetings in 2011 and 2013, previously submitted, which referenced a reduction in his sick leave payout at retirement because he donated sick time to fellow employees. He further argues that though he was aware of the policy and practice that forfeits sick leave pay upon separation, his earlier conversation permitting him to receive the sick leave pay payout should prevail. He agrees this conversation was not reduced to writing and that none of those officials are with the employer currently.

The employer argues the claimant is not due any sick leave pay at separation of employment under the written policy or practice of the employer. Further, Ms. Merrow

provided credible testimony and evidence, previously submitted, that none of the four employees who have retired during her tenure, since May 2011, with accrued sick time have been paid those sick leave pay balances.

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 sick leave 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 properly provided the claimant with a written policy regarding sick leave pay policies and practices. The claimant refused to sign an acknowledgement for the policy, however, he agreed he was aware of the policy and in fact had been on the committee to clarify the policy.

The employer's written policy reads, in relevant part, "Definitions: H. SICK LEAVE: Shall mean time off due to illness, injury, bereavement, dependent care, or pre-approved medical appointments" and "XV. LEAVE OF ABSENCE: A. SICK LEAVE: Employees may use sick leave for a legitimate illness, injury, medical or dental appointment, bereavement, dependent care, or other health related purpose."

The employer further clarified the policy on May 11, 2015, adding, in relevant part, "Employees will not be paid earned, unused sick days upon separation from employment."

The employer agrees there may have been instances where sick leave had been paid to employees prior to 2011, however, it would have been a Selectboard decision to override the practice.

The sick leave policy expressly defines the usage of the sick leave, which does not include the payment of sick leave pay upon separation. The employer's has held a practice to forfeit sick leave pay upon separation of employment. The employer further clarified this prior practice in writing to the claimant.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed sick leave pay under the written policy and practice of the employer.

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 sick leave 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 he is due any sick leave pay, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 7, 2016

Original: Claimant
cc: Town of Colebrook, 17 Bridge St, Colebrook, NH 03576

MJD/mjd