

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Airex Corp

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid Paid Time Off pay

Employer: Airex Corp, 15 Lilac Lane, Rochester NH 03878

Date of Hearing: January 13, 2016

Case No.: 51964

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserted, through the filing of his wage claim, that he was owed \$792.52 in unpaid Paid Time Off (hereafter "PTO"). The employer reduced his employment status from full time to part time, at which time they notified him in writing that they would pay his accrued Paid Time Off (hereafter "PTO") balance on November 25, 2015. The claimant quit on November 24, 2015, without notice. The employer did not pay the PTO pay as promised.

The employer agrees they did not pay the PTO to the claimant because it was not due. On November 13, 2015, when the claimant's employment status was changed, the employer agreed to pay out the PTO balance on November 25, 2015.

The claimant then quit on November 24, 2015, without providing a two week notice. The written policy regarding the payout of PTO pay requires a two week notice to be given and worked in order to receive the PTO payment.

They argue they had every intention of paying the PTO according to the November 13, 2015, agreement, however, the claimant violated the terms of the written policy.

FINDINGS OF FACT

The employer changed the claimant's employment status from full time to part time on November 13, 2015. Pursuant to that written agreement which outlined the changes to the claimant's duties and benefits, the employer notified the claimant they would pay out the balance of his PTO pay on November 25, 2015.

On November 24, 2015, the claimant quit without providing and working out a two week notice.

The employer properly notified the claimant, pursuant to RSA 275:49, Lab 803.03 (b) and (f)(6), as to the policies and practices regarding PTO pay. The employer notified the claimant that "If an employee quits without a full two weeks' notice or is terminated for cause, unused PTO may not be paid upon termination of employment." The claimant signed an acknowledgement for the policy on December 16, 2013.

The claimant's argument that the November 13, 2015, agreement to pay his PTO supersedes the written policy of the employer is not persuasive. The November 13, 2015, agreement provided a payout of the claimant's PTO because of his change in status from full-time to part-time, as part-time employees do not accrue nor can they carryover PTO from a full-time status. The claimant is still subject to the employer's written policies regarding the payout of his PTO. He failed to provide a two week notice when he quit and left employment on November 24, 2015.

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

DECISION

Based on the testimony and evidence presented, as RSA 275:43 V considers PTO 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 PTO pay, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: February 9, 2016

Original: Claimant
cc: Employer

MJD/aph