

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Atlantic Plastic Surgery Associates Inc

DECISION OF THE HEARING OFFICER

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

Employer: Atlantic Plastic Surgery Associates Inc, 100 Griffin Rd Ste B, Portsmouth
NH 03801

Date of Hearing: April 18, 2016

Case No.: 52318

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$1,681.25 for 1.25 hours of unpaid wages and sixty-six hours of unpaid vacation pay due upon her separation. She argues the employer is not including her prior years of service to properly determine the annual accrual of her vacation time.

The employer provided documentation to show the claimant had previously been paid the claimed 1.25 hours of regular pay. He further paid eighteen hours of vacation pay, which he argues is the full amount she is due. He argues her prior years of service do not count towards her vacation accrual because she had a break in service. He did note that her prior years of service did count towards her 401(k) plan, but not the vacation accrual.

The claimant chose to continue with her claim for the balance of forty-eight hours of vacation pay, or \$1,200.

FINDINGS OF FACT

The claimant initially worked for the employer from September 2003 through April 11, 2008. She then returned to the employer's service in August 2011 and ended employment in January 2016.

The claimant argues the previous office manager verbally notified her she would be given credit for her prior years of service for the purposes of vacation pay accrual and therefore she is due four weeks, or one hundred sixty hours, of vacation time pursuant to the written policy.

The employer argues the claimant's prior years of service were not counted for the purposes of vacation pay accrual and therefore is due only three weeks, or one hundred twenty hours, of vacation time pursuant to the written policy. As she used one hundred two hours of vacation time and he paid eighteen hours, she now has a zero balance on her vacation time.

The claimant did receive credit for her prior years of service for the employer sponsored 401(k) vesting requirements. That is a separate program and operates on a separate set of rules and regulations from the vacation policy.

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 properly noticed the claimant of the policies regarding vacation pay. Nothing in the written policies establishes a policy or practice of counting prior years of services after a break in service, towards current vacation accruals in current service.

The claimant's argument that a prior employee had told her that the prior years of service would count towards her current service vacation accrual is not persuasive.

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

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet her burden in this claim.

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 the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 25, 2016

Original: Claimant
cc: Employer

MJD/aph