

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

GOFFSTOWN CHIROPRACTIC CARE, PLLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation, sick and earned time

Employer: Goffstown Chiropractic Care, PLLC

Date of Hearing: September 7, 2016

Case No.: 52544

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on June 22, 2016. 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 August 16, 2016.

The claimant testified that she worked for the employer for thirteen years. She further testified that she was laid-off on January 14, 2016. Because of the method of earning sick time and vacation time, the claimant testified that on January 1, 2016, she had 40 hours of sick time and 106 hours of vacation time on her record. The claimant maintains that the time is due to be paid out upon separation from employment.

At the time of separation from employment the claimant was paid at a rate of \$25.00 per hour. The Wage Claim is for \$3,650.00.

The employer testified that the claimant worked under a written set of policies and procedures. The policies were known to the claimant and spelled out the use of and the earning of sick leave and vacation time. The policy in place for both of the leaves does not mention a pay out of accrued leave upon separation from employment. The employer testified that leave was to be used for the intended purposes while an employee was employed. Upon separation the leave was lost. The employer had a payroll system that reported time on the record but it was never meant to be wages if not used.

The employer further testified that there is no record of leave time ever being paid out to an employee upon separation from service. The leave was to be used while employed after consultation with other employees, and approval by the owner.

FINDINGS OF FACT

RSA 275:43 I:

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 issues such as sick leave, vacation time and Personal Time Off, into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions 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 she did not meet this burden.

The Wage Claim was filed for the payment of accumulated leave time upon separation from employment. It is found that there was a policy manual in place and the manual did

address leave time. The claimant is adding something to the intent of the manual that is not present in the written policy. The policy does not mandate a payout of time upon separation.

The employer was credible in the testimony that the policy was known to the claimant and that the business had never paid out this time in the past. The accumulated leave was to be used in accordance with the policy and was not to be converted to wages upon the completion of employment.

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 this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: September 23, 2016

Original: Claimant
cc: Employer

TFH/das