

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Cerium Labs Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay/paid time off
RSA 275:44 IV liquidated damages

Employer: Cerium Labs Inc, 5204 East Ben White Blvd, Buldt#1 Mail Stop 512, Austin TX 78741

Date of Hearing: June 15, 2016

Case No.: 52688

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$1,182.72 for twenty-four hours of unpaid Paid Time Off (PTO) pay due upon his separation from employment. He further sought liquidated damages.

On May 9, 2016, the claimant received a payment for twenty hours of unpaid vacation pay, or \$985.60. He amended the claim to \$197.12 for four hours of unpaid vacation pay and liquidated damages on the original amount of \$1,182.72.

The employer argues the claimant is only due twenty hours of PTO pay pursuant to their written policy.

Further, they were not willful in their failure to pay the PTO pay. Upon the claimant's separation they instructed the employee leasing company to pay the claimant's unpaid PTO pay. They no longer have a contract with the same employee leasing company they utilized at the time of the claimant's separation. Upon learning the claimant had not received his PTO pay, they have been actively working with the employee leasing company to procure payment.

The hearing was left open until July 8, 2016, for the employer to submit documentation regarding the employee leasing company contract and a closing statement. The claimant was given until July 22, 2016, to respond and provide a closing statement. All documentation was received within the required timeframes.

FINDINGS OF FACT

The claimant separated from employment on December 18, 2015. His hourly rate was \$49.28.

The claimant argues he is due an additional four hours of PTO pay due upon his separation in December 2015.

The employer argues the PTO hours accrue over the course of the year and they paid him the hours he had accrued but were unused, or twenty hours.

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/PTO 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 policy of the employer, previously submitted, reads, in relevant part, "The amount of PTO time employees are allotted each calendar year is shown in the following schedule:". The policy also states, "The Company will pay for allotted but unused PTO upon separation."

Nothing in the policy notifies the claimant that PTO time is granted on an accrual basis, as suggested by the employer's argument. The policy states time is allotted and that allotted but unused time will be paid out upon separation.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed vacation pay pursuant to the written policy of the employer in the amount of \$197.12, or four hours at \$49.28 per hour.

The claimant seeks to hold the employer liable for liquidated damages for the original twenty-four hours of PTO, or \$1,182.72.

The employer was a client company with an employee leasing company, Trinet SOI/Strategic Outsourcing Inc, at the time of the claimant's separation from employment. At the time the employer terminated the claimant's employment, they directed the employee leasing company to make the appropriate payments to the claimant, including twenty-four hours of PTO. The employee leasing company failed to make the appropriate payments. When the employer became aware the payment has not been received by the claimant, they made efforts to procure the payment from the employee leasing company, documentation previously submitted, which were thwarted by the fact the employer no longer had a contract with Trinet SOI/Strategic Outsourcing Inc.

The employer reexamined the PTO payment at the time the claimant notified them he had not received it. After reviewing the written policy, they determined he was only due twenty hours of PTO pay, not twenty-four hours.

The employee leasing company ultimately issued the payment for twenty hours of PTO, which the claimant received on May 9, 2016.

RSA 277-B:9 Employee Leasing Deemed Co-Employment. – An employee leasing company and a client company shall be deemed co-employers and shall divide employment responsibilities as follows:

I. An employee leasing company shall be solely responsible for:

(a) Paying wages to leased employees. The employee leasing company may rely on initial hiring documentation of wages, ongoing pay change documentation, and reported payroll documentation regarding hours worked or other measured unit of employee compensation received from the client company. An employee leasing company shall not knowingly rely on materially inaccurate information provided under this paragraph.

And:

II. A client company shall be solely responsible for:

(d) Providing accurate personnel and payroll information, and a record of hours and wages to the employee leasing company and department of labor when requested, as a co-employer on all leased employees as required of employers under RSA 279:27. Notification shall be made in compliance with the signed notice as required by rules adopted by the department.

The employer provided credible and persuasive testimony and evidence that they correctly directed the employee leasing company to make final payment of PTO wages believed to be due to the claimant, in a timely manner.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good case failed to pay him all wages due in the time required because the employer correctly directed the employee leasing company, or co-employer pursuant to RSA 277-B:9, to make final payment of PTO wages believed to be due to the claimant, within the required timeframe. Further, the employer held a genuine belief that the claimant was only due twenty hours of PTO pay pursuant to their written policy.

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 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 proved by a preponderance of the evidence that he is due the claimed PTO/vacation pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$197.12.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$197.12, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 9, 2016

Original: Claimant
cc: Employer

MJD/aph