

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

**V**

**GENESIS LANGDON PLACE OF KEENE**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Genesis Langdon Place of Keene, 136A Arch Street, Keene, NH 03431

**Date of Hearing:** June 14, 2016

**Case No.:** 52711

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on April 18, 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 May 20, 2016.

The claimant testified that she worked for the employer for six years. The claimant testified that she gave her verbal notice of leaving on March 26, 2016 and later followed up with a letter of resignation. She said that her last day of work would be April 22, 2016 because she was going to use up all of her vacation time.

The claimant testified that her actual last day of work was April 8, 2016 because the employer said that they did not have to pay out the unused vacation time. The claimant testified that she believes other employees were allowed to use their accrued vacation time and then resign. The claimant also testified that the process for requesting vacation time was very informal.

The employer testified that there is no policy to pay out unused time. The employer testified that this is a management policy and is known to the employees. The policies are available to all employees at the time clocks. The employer further testified that there was time off request sheets that needed the approval of a manager.

The employer maintains that all rules were followed and that all wages have been paid.

**FINDINGS OF FACT**

RSA 275:43 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.

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 an issue such as vacation time 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 employer provided credible testimony that their policy and practice was to not pay out any accrued vacation time upon separation. The claimant resigned her position for personal reasons and did not have approval of unused vacation time to stay longer as an employee.

The claimant admitted that she never read the policy but felt that the time was earned and so she should be able to use it. She did state that she made the decision to leave the company very quickly.

The Wage Claim is invalid.

### **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 this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, namely that the claimant failed to prove by a preponderance of the evidence that as a matter of policy or practice leave time was to be paid out, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: June 28, 2016

Original: Claimant  
cc: Employer

TFH/aph