

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



**V**

**Phoenix Auto Body Inc**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Phoenix Auto Body Inc, 5 Shore View Dr, Bow NH 03304

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

**Case No.:** 52844

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of his wage claim, that he was owed \$1,600 in unpaid vacation pay, \$960 in unpaid sick pay and \$1,600 in unpaid severance, all due upon his termination from employment.

At the hearing, he amended his claim, removing the claim for \$960 in unpaid sick pay.

The employer denies the claimant is due any vacation pay or severance pay.

**FINDINGS OF FACT**

The claimant worked for the employer from September 1999 through November 5, 2015. His rate of pay was \$20.00 per hour.

The parties disagree as to the reason for his termination. The claimant alleges he was terminated after having a personal car accident and the employer alleges the claimant was laid off after a conversation about the company's finances. The employer is now out of business.

The claimant argues he is due two weeks, or \$1,600, of vacation pay upon his separation.

The employer argues the claimant has received all payment due for vacation pay.

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 claimant agrees he had an employee handbook at one time, but had not looked at it in some time.

The handbook, previously submitted, reads, in relevant part, "Vacation pay<sup>1</sup> will not be granted in lieu of taking the actual time off." and "Eligible employees who have provided at least two weeks' advance notice of their resignation will be paid for the prorated earned but unused time upon termination."

The claimant provided credible testimony that he took a week of paid vacation during 2015, and received a cash payment, contrary to company policy, for one week of paid vacation time.

The employer's payroll records shows a discrepancy of four paid vacation days and the cash payment of one week of vacation pay.

The employer's written policy states vacation pay is not paid out in lieu of time off. The claimant did not meet the criteria to receive any vacation payout under the resignation policy.

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

The claimant alleges he is due two weeks, or \$1,600, of severance pay upon his separation because it would be fair.

The employer argues the company did not have a policy or practice to pay severance pay.

There are no statutes which require the payment of severance pay to employees.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed severance pay.

### **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 he is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers severance 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 severance pay, it is hereby ruled that this portion of the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: August 9, 2016

Original: Claimant  
cc: Employer  
Claimant's Attorney

MJD/aph