

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

GENTLE FAMILY DENTISTRY

DECISION OF THE HEARING OFFICER

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

Employer: Gentle Family Dentistry, 861 Lafayette Road, Hampton, NH 03842

Date of Hearing: July 21, 2016

Case No.: 52937

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on May 31, 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 June 30, 2016.

The claimant testified that she is seeking a payment of her earned time and payment for the scheduled days, not worked, during her last week. The Wage Claim is for \$3,843.00.

The claimant testified that she worked for the employer for about two and a half months. She had worked for the previous owner of the dental practice but did not go with the new ownership when the business was sold. After several discussions, the claimant came to work for the new owners.

The claimant testified that there was no written hiring agreement but she was to become an hourly employee with a guarantee of so many hours per week. The claimant also testified that she was told that she could have time off in October and December because of family plans.

The claimant believes that she gave her new employer fair notice of leaving the practice and as she was told not to come back for the scheduled hours in her last week and also as the October and December vacations were promised to her, she is due the wages for the vacation time, not used, and the days scheduled but not worked.

The employer testified that they bought the practice at the end of February 2016. At the time of purchase they were informed that the claimant would not be continuing employment with the new owners. After a series of conversations, the claimant agreed to come back to work. Her first day of work was March 22, 2016. Part of the hiring conversations was that the claimant would consider the employment as a long term commitment to the practice. Because the new owners were trying to build a patient base, they could only guarantee so many hours at the start of employment. The owners also testified that the vacation time in October and December was mentioned and they did not see any problem with the claimant having that time off for planned family vacations.

The owners testified that they met the promise of a set number of hours per week for the claimant. They also testified that they were putting in place a written policy that would have a formula for leave time accrual. The claimant worked for about two and a half months and then resigned from the practice to go to another position in another office.

The employer did not pay the scheduled hours in the last pay period in which the claimant did not work. The employer maintains that all hours worked have been paid. The employer also testified that the vacation time promised for at the time of hire was for the future when it would have been earned. The employer did not put 13 days of vacation on the books at the start of employment. The employer testified 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.

It is found by the Hearing Officer that the claimant started work with the employer in March of 2016. The claimant was an hourly employee and was paid for all hours worked. An hourly employee cannot expect pay for hours scheduled but not worked. There is no hourly wages due with this Wage Claim.

The Hearing Officer also finds that the employer provided credible testimony that there was leave time promised for October and December. The claimant left the employ of the practice in May of 2016. Although the time was promised for later in the year there is no finding that the claimant had the leave time available immediately. In fact, the claimant did take a sick day while employed and she testified that she was not paid for the hours scheduled that day and she did not put in for the time.

The Wage Claim for hours not worked and for leave time in the future 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; it is hereby ruled that the Wage Claim is invalid.

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.

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 12, 2016

Original: Claimant
cc: Employer

TFH/aph