

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

HRP

DECISION OF THE HEARING OFFICER

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

Employer: HRP

Date of Hearing: September 8, 2016

Case No.: 53231

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 5, 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 over twenty years. She testified that she had a confrontation with her supervisor and she was fired. At the time she was fired she had one-week of vacation time on the books.

The claimant feels that because she was fired, and because of her longevity with the company, she should be paid for the vacation time. The Wage Claim is for \$400.00. The claimant testified that there was a policy in place, but in this situation the entire confrontation was not necessary and it was escalated a level it did not need to be at by other employees.

The employer testified that every employee is given an amount of vacation time at the first of the year along with a listing of holidays. Vacation time must be scheduled with a two-week notice. The written policy is that if you do not use the time, you lose the time.

The employer testified that the claimant was not fired; she quit on her own. There was a work problem and when the claimant was confronted by a supervisor she said she was just going to leave. The supervisor told her to leave and not come back and the claimant went to the office to do the paperwork for leaving the company.

The employer maintains that there is no written policy to pay out unused vacation time upon separation from service. This has never been a past practice of the company.

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:

- (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 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 issue about the termination, or more specifically the reasons leading to the termination, is not at issue in the Wage Claim process. In New Hampshire an employer can let an employee go at any time and an employee can quit at any time.

The issue of the vacation pay or more specifically if there was a requirement to pay for unused vacation time at separation is at issue for this decision. The employer was credible in their testimony that there are written policies and procedures in place and that these were known to the claimant. The employer stated that there were no previous pay outs of unused vacation time upon separation. The policy was one of "use it or lose it".

Any type of seniority does not prevail over the written policy. 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 27, 2016

Original: Claimant

cc: Employer

TFH/das