

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

PLASTIC SUPPLY INC.

DECISION OF THE HEARING OFFICER

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

Employer: Plastic Supply, Inc., 8 Liberty Drive, Londonderry, NH 03053

Date of Hearing: September 20, 2016

Case No.: 53390

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 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 August 31, 2016.

The claimant testified that he is owed \$1,944.00 in unpaid vacation time. This amount is for eleven days of leave. The claimant further testified that he worked for almost two years with the employer. The claimant said that there was a written policy in place when he started his employment and that he signed off on the policy. That policy was changed prior to his leaving the company and it was handed out to each employee. The new policy allowed for the payout of earned vacation time upon separation from employment.

The employer testified that the claimant's anniversary date of hire was July 21. On the anniversary date the employee received the new provisions of the policy. The policy was very clear that it went into effect on the employee's anniversary date.

The employer testified that leave is not accrued. The total leave is placed on record on the anniversary date and can be used after that date or paid out upon separation. The new policy was to start on each employee's anniversary date.

The employer testified that the claimant gave his notice that he was leaving employment on July 15, 2016. That was to be his last date of working. The claimant actually left on July 11, 2016. If the claimant had worked until July 21, he would have been eligible for the leave and the payout of the leave. The claimant did not do this even though he was aware of the policy.

The employer testified that because the claimant left before his anniversary date of July 21, he never came under the new policy at all. The employer testified that the claimant was paid for all hours worked and any leave authorized under the previous rules.

The claimant testified that he did not believe the policy was clear and it was not explained adequately relative to accrual.

FINDINGS OF FACT

RSA 275:43 I

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 he did not meet this burden.

The written policy with the changes was very clear. The claimant left his employment ten days prior to the anniversary date and as the employer credibly testified to, the lump sum of time (and provision for payout of all time at separation) was activated upon the anniversary date.

Because the policy was in writing and known to the claimant, there is no possible way that he met the requirements to receive the payout of vacation time. The employer was credible in their testimony that the time was not accrued but given in a lump sum. In this case the claimant never fell under the new policy and so he was not entitled to the payout of vacation time. The date of July 21 was never reached by the claimant while employed by the company,

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 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 the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 12, 2016

Original: Claimant

cc: Employer

TFH/slh