

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

NEEDHAM ELECTRICAL SUPPLY

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid Personal Time Off (PTO)

Employer: Needham Electrical Supply, 5 Shawmut Road, Canton, MA 02021

Date of Hearing: December 5, 2016

Case No.: 54056

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 22, 2016. The notice was sent to the employer and there was no written response. The Notice of Hearing was sent to both parties on November 4, 2016. The employer was represented at the hearing and did submit exhibits.

The claimant testified that his last day of work was August 25, 2016, and he took a Floating Holiday on August 26, 2016. He was working on a bi-monthly pay plan. He was an hourly employee.

The claimant testified that he was due 21.33 hours of PTO at a rate of \$14.00 per hour. He is also claiming one hour of overtime when he was asked to come in for an extra hour, for one day, during the last pay period. The claimant is seeking \$319.62 for the time not paid.

The claimant further testified that he sought a clarification of the lost time, several times from the employer. The claimant testified that he was never provided with a full explanation as to the process that was used to pay out the accrued PTO.

The employer testified and submitted exhibits that show their practice of the payout of the accrued time. The employer testified that the claimant was paid through August 31, 2016 and to reach that point they used his accrued time. The employer stated that to reach the payment for the full pay period they had to use the time. The employer maintains that all time has been paid.

FINDINGS OF FACT

275:43 Weekly. –

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 Personal Time Off into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written exhibits and the testimony of the parties, that the Wage Claim is valid in part and invalid in part. The claimant had the burden to show that there were wages due and owing and he met this burden, at least relative to certain of the claim.

The part of the Wage Claim that is invalid is the request for the hour of overtime pay. This was not an issue cited on the original Wage Claim and it is not clear if the overtime falls under the jurisdiction of the New Hampshire Department of Labor.

The claimant was credible in his testimony that he was never paid for 21.33 hours of accrued PTO. The documents submitted by the employer do not show the payment of the time. They are very hard to understand and there was no credible answer to the questions raised by the claimant.

It is the finding of the Hearing Officer that the claimant has proved that he is due some accrued PTO in the amount of \$298.62. There is no finding for the one hour of overtime.

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 proved by a preponderance of the evidence that he was not paid all vacation pay due, it is hereby ruled that the Wage Claim is valid in the amount of \$298.62.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$298.62, less any applicable taxes, within 20 days of the date of this Order.

There is no finding of overtime or premium pay due and owing.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 27, 2016
Original: Claimant
cc: Employer
TFH/das