

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Darrin Brown Law Group PLLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 279:21 VIII unpaid overtime pay

Employer: Darrin Brown Law Group PLLC, 633 Maple St Ste 5, Hopkinton NH 03229

Date of Hearing: March 23, 2017

Case No.: 53479

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$9,600 in unpaid wages and vacation pay, and an unspecified additional amount of unpaid overtime pay.

At the hearing, she clarified she was seeking \$240 in unpaid salary and \$7,665.00 in unpaid vacation pay. She removed the claim for unpaid overtime pay.

She sought to add liquidated damages to the claim at the hearing. However, pursuant to Lab 204.02, this issue was not presented timely and not heard at this hearing.

The employer denies the claimant was not paid for all wages and vacation pay due. He argues her calculations are incorrect and paid all the demands that she had made prior to filing this claim.

FINDINGS OF FACT

The claimant worked for the employer from January 13, 2012 through March 18, 2012, as a part time employee. On March 20, 2012, she began full time employment of thirty-two hours per week, which continued until April 28, 2015. She tendered her resignation on April 27, 2015, however on April 28, 2015, the employer told her she was not required to be in the office any longer, turned over her passwords and keys, and he advised her she was to use vacation time for the balance of her notice period.

The claimant argues she was initially offered full time of forty hours per week beginning on March 20, 2012, however, on that date the employer stated he could only afford to have her work thirty-two hours per week.

The parties had a meeting on May 12, 2015, to discuss outstanding wages. The parties disagreed regarding the outstanding wages due. Documentation, previously submitted, was reviewed regarding handwritten notes and an agreement for payment of wages and vacation pay.

The claimant agrees she received four checks for sixty-four hours each, or \$1,280, which she has credited to neither the outstanding wages nor vacation pay she seeks as due. She alleges these payments were severance package payments. The employer argues he never offered a severance package and these payments were for wages that she requested as due.

She argues she is due an additional \$240 in unpaid wages for twelve hours of work at \$20 per hour.

The employer argues she was a salaried employee, not an hourly employee, and he paid all wages due.

The claimant's calculations and interpretation of the documentation she submitted in support of this portion of her claim are, at best, inaccurate. The claimant did not provide credible evidence or testimony to prove that she is due the claimed wages.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed wages.

The claimant also alleges she is due \$7,665 for 383.25 hours of vacation pay at \$20 per hour.

The employer argues she did not correctly calculate the vacation pay due, as she is alleging she is due three weeks of vacation pay at forty hours per week, rather than the thirty-two hours per week that she worked. Additionally, he does not believe she is due the vacation pay is due.

The claimant admitted, upon direct examination of the Hearing Officer, that she had calculated the vacation pay at forty hours per week because she was initially offered full time employment at forty hours. She maintained that this was the appropriate calculation for the vacation time, even though she worked only thirty-two hours per week.

The claimant's calculations and interpretation of the documentation she submitted in support of this portion of her claim are, at best, inaccurate. The claimant did not provide credible evidence or testimony to prove that she is due the claimed vacation pay.

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

DISCUSSION

The claimant raised a number of issues regarding violations of statutes by the employer. An employer's violation of a statute does not necessarily mean the claimant will prevail.

The burden of proof lies with the claimant in these matters. The claimant has the burden to prove by a preponderance of the evidence that the claimed wages are due. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant failed to meet this burden as her testimony and evidence was not found to be credible.

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 that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

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 this portion of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 5, 2017

Original: Claimant
cc: Employer

MJD/das