

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SaaS North America Inc

DECISION OF THE HEARING OFFICER

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

Employer: SaaS North America Inc, 1330 Ave of America Ste 2319, New York, NY 10019

Date of Hearing: February 8, 2017

Case No.: 53898

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$1,708.00 for four weeks of wages because of her inability to file for Unemployment Compensation for that period; and \$2,101.72 for forty-six hours of unpaid vacation pay she argues was due upon her separation.

At the hearing, the claimant agreed to remove the issue of inability to file for Unemployment Compensation as this is not the correct jurisdiction or venue.

The employer argues the claimant received compensation for all vacation pay due.

FINDINGS OF FACT

The claimant's employment terminated on July 27, 2016. She received an annual salary of \$95,000.00.

The claimant argues she met with Mr. Doughty regarding her separation of employment on July 27, 2016, at which time they had a conversation in which he agreed to pay her outstanding employee expenses, commissions and vacation time. Though the written policy states an employee accrues up to twenty days of vacation per year and unused time is forfeited at calendar year end, she asserts Mr. Doughty agreed she had a carryover of eight unused days from 2015, and agreed to pay her a total of twenty vacation days (eight day carryover and 2016 accrual of twelve days).

She further argues that the employer improperly calculated the payment of the vacation pay using a 365 day calendar year, rather than a 52 week calendar, resulting in a balance of \$2,101.72 due to her.

The employer disagrees that the claimant is due any additional vacation pay. During the July 27, 2016, meeting they did discuss vacation pay in general terms pursuant to the written policy. He agreed she would have an accrual of twelve days as of the date of the meeting and he argues he agreed to a rollover of five days from 2016. Further, the claimant raised the issue of counting the rollover of days from the previous year, but specifically withheld the information that she had used five days of vacation in 2016.

He agrees that he used a 365 day year to calculate the vacation pay due, which he also agrees was an incorrect calculation. He initially paid the claimant twenty vacation days based on that calculation. However, after review realized that the twenty days of vacation pay was incorrect. Using the calculation he believed to be correct, the claimant was still over paid \$945.10.

The Hearing Officer is unable to determine that there was a "meeting of the minds" regarding the number of vacation days which the claimant had accrued.

The written policy, as required by RSA 275:49, reads in relevant part, "Full-time employees annual vacation entitlement is 20 days in the complete vacation year.... The vacation year runs from 1 January to 31 December..... You will accrue annual vacation on the basis of 1/12th of the annual entitlement for each complete month of service in the vacation year....."

Neither party appears to have properly calculated the vacation pay, based on the written policy and the vacation days which the claimant had accrued to her benefit.

Pursuant to the written policy, the claimant accrued only 6/12 of the annual vacation entitlement, or ten days, as she only completed six months of the year, not the seven months, or twelve days she argues she completed and accrued. She argues she carried over of eight days of vacation from 2015, though the employer says they discussed five days. She used five vacation days in May 2016. Using her more favorable number of carryover days, she would have thirteen days of unpaid vacation days upon her July 27, 2016, separation, pursuant to the written policy and vacation days used.

The claimant argues each vacation day should be valued at \$365.36, calculated at \$45.67 per hour for an eight hour day. Based on her numbers, the value of thirteen days of vacation at \$365.36 per day, the total due would be \$4,749.68. She received a payment of \$5,201.01 for her unused vacation pay, an overpayment of \$455.33.

Therefore, the Hearing Officer finds the claimant failed to prove she is due the claimed vacation pay.

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 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.

Melissa J. Delorey
Hearing Officer

Date of Decision: February 14, 2017

Original: Claimant
cc: Employer

MJD/das