

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**ANDOVER HEALTHCARE**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Andover Healthcare, 9 Fanaras Drive, Salisbury, MA 01952

**Date of Hearing:** January 3, 2017

**Case No.:** 54076

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on September 29, 2016. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on December 8, 2016. The employer was represented at the hearing. The claimant is seeking \$12,456.00 in unpaid vacation time.

The claimant testified that he worked for the employer for twelve years. He held the position of Chief Financial Officer/General Manager. The claimant testified that he worked under a known written policy and procedure manual. The policy of vacation time was addressed in the manual.

The claimant further testified that he retired on December 31, 2015. His anniversary date was in January. The claimant testified that he worked the first week of the year because he felt the employer could use the help during the transition. The claimant said that he made an offer to the employer to work on a part-time basis and this was rejected. The claimant testified that he was paid for his last two days of work after his retirement as a consultant.

Mr. Millyard, on behalf of the employer, testified that he was to start on January 1, 2016, to replace the claimant. Mr. Millyard testified that he did not start right away because of the death of his mother. Mr. Millyard testified that the claimant came into work without any authorization or request from the employer. Mr. Millyard testified that the claimant did offer to work on a part-time basis but this was rejected and the claimant was paid for all of the unauthorized extra work.

Mr. Millyard testified that all accrued leave has been paid and that the claimant retired before he earned more leave time.

## **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 leave 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.

It was clear that the claimant retired on December 31, 2015. It appears to be undisputed that the claimant did come into work on the first week of 2016 because he felt the employer could use his help because his replacement was delayed in Florida. It also appears to be undisputed that the claimant was paid for performance of this work in some consultancy capacity.

The claimant has failed in his burden of establishing any wages are owed as a result of unpaid vacation time, or for any other reason. The claimant went to work in an unauthorized position after his retirement and was paid for all work performed. 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 he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: January 19, 2017

Original: Claimant

cc: Employer

TFH/das