

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

PROGRESSIVE INSURANCE

DECISION OF THE HEARING OFFICER

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

Employer: Progressive Insurance, 40 Commerce Court, Newington, CT 06111

Date of Hearing: January 5, 2017

Case No.: 54253

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 31, 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 December 8, 2016.

The claimant testified that she worked for the company for about four years. She was a salaried employee and paid on a bi-weekly pay schedule. The claimant testified that she was discharged "for cause".

The claimant testified that the records show that she took October 10 and October 11 as earned time days. The claimant testified that she worked on those days and should not have had time deducted.

There was also an issue of when the claimant's insurance coverage had expired. The claimant did not use the coverage during the time when she said she was not covered.

The employer had a different date for the expiration of the insurance coverage. However there was no use of the coverage during the period of time in question.

The employer asked for additional time to find out about the two days in question. They were given extra time to respond after a review of the records. The employer did submit an explanation that the time was recorded in error. The time should have been deducted for the previous week and time used on October 3 and October 4. The error occurred and the

employer stated that the previous week had time used and not recorded but paid. There was a mistake but there was no loss of wages.

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 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 she did not meet this burden.

The issue at the hearing came down to two dates in which the claimant said she worked and had leave deducted for the same days. The employer requested time to review their

records and they did get back to the Department of Labor. It appears from the records that the leave request should have been for the prior week. The time was deducted by error and should have been recorded for the previous dates.

The claimant was paid for the two days, in question, as she was out of work and the time was not deducted. The record shows that the claimant was paid for all time worked and all time used under the accrued time policy.

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 she is due any vacation pay, or that time was used in error. it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 24, 2017

Original: Claimant

cc: Employer

TFH/das