

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



**V**

**NUTFIELD PUBLISHING**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Nutfield Publishing, 2 Litchfield Road, Londonderry, NH 03053

**Date of Hearing:** January 9, 2017

**Case No.:** 54265

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on November 1, 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 15, 2016.

The claimant testified that she worked for the employer for almost ten years. She always had an accrual of vacation time and was paid for time not used. The vacation time was accrued on January 1<sup>st</sup> of each year.

The claimant testified that there is no written agreement in place for the accrual, the use and the payout of accrued leave. On October 28, 2016, the claimant was laid off from her position with the company. When she asked to be paid for the accrued leave she was told that the employer would look into it. The claimant further testified that when the employer separated from the employee leasing service, there would be no change in the leave policy. The claimant is seeking \$1,307.44 in accrued and unpaid leave.

The employer testified that there is no written policy in place. It is their position that no leave time is paid out upon separation. In 2014, the employer left from association with an employee leasing firm. After the separation there was no longer a written policy for the accrued leave.

The employer provided testimony that the claimant did use days off during the course of the year. But it was their practice to not pay out any unused time. There was no written vacation time policy.

## **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 valid. The claimant has the burden to show that there are wages due and owing and she met this burden.

The employer has an obligation to place in writing all policies on wages and benefits. In this claim the employer did admit that there was no written policy in regards to the issue of vacation time. The employer did testify that they had no history of paying out the leave.

The claimant was credible in her testimony that she was told that, when the employer took over the actual benefits for having employees, there would be no changes from the previous policy. In fact both parties testified that there was no written policy.

It is reasonable to come to the conclusion that accrued leave is paid out if it has been paid before and upon the change of the benefit package, to the current employer, that all would remain the same unless changed in writing. This did not happen.

The Wage Claim is valid in the amount of \$1,307.44.

**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 she was not paid all vacation pay due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,307.44..

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,307.44, less any applicable taxes, within 20 days of the date of this Order.

---

Thomas F. Hardiman  
Hearing Officer

Date of Decision: January 26, 2017  
Original: Claimant  
cc: Employer  
TFH/das