

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

MOTHER'S HARDWARE

DECISION OF THE HEARING OFFICER

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

Employer: Mother's Hardware, PO Box 365, Marlborough, New Hampshire 03455

Date of Hearing: January 12, 2017

Case No.: 54306

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 14, 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 has worked for the employer since 2011 or 2012. For the first seven months of this year she was working four days a week. In the eighth month she went to two days a week. The claimant testified that she was an hourly employee making a rate of \$10.00 per hour.

The claimant testified that in her years of employment she did take some vacation time and was paid for the time she took. She also stated that she was unaware of any payout being made, to others, upon separation. The claimant is seeking \$195.00 in accrued but unused vacation time.

The employer testified that all employees are actually employees of Surge, an employee leasing firm. The employer testified that there are no benefits paid to part-time employees. If any employees have accrued time on record, the time is lost upon separation. The policy is to use it or lose it.

The employer further stated that the actual business does not have any employee policies or procedures. When Surge took over, the employees all fell under the policies of Surge. Surge had written policies that were known to the claimant.

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 employer presented credible testimony that the written policies were in place and known to the claimant. The policy of vacation time is very clear as written. Accrued time cannot be carried over into another year and the time is lost upon separation of employment.

The claimant did testify that she received time in the past but she was not aware of any payout at separation, for any employee. The claimant did not feel that the Surge policy applied to part-time employees but the fact remains that she signed for the policy as written.

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, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 30, 2017
Original: Claimant
cc: Employer
TFH/das