

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Richard W Miller DMD PC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:48 I/II illegal deductions

Employer: Richard W Miller DMD PC, 11 Hampton Rd, Exeter, NH 03833

Date of Hearing: February 13, 2017

Case No.: 54455

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$1,081.20 in unpaid vacation pay due upon her separation, an undetermined amount for retirement plan monies and interest.

At the hearing, the claimant agreed to remove the claim for retirement monies.

The employer denies the claimant is due any vacation pay. The written policy states vacation pay is only given when the office is closed.

FINDINGS OF FACT

The claimant worked for the employer from June 2013 through July 19, 2016, when the employer terminated her employment. She began as a part-time employee and moved to full time employment during her tenure.

The claimant argues she should have received vacation pay for two weeks in 2016. In 2014, she worked the three weeks that the office was closed, and received vacation pay for the two weeks that the office was closed in 2015. Further, another employee has received vacation pay for more than the weeks the office was closed.

She alleges she never received an employee manual from the employer, but did check the copy that was at the front desk before her departure, to understand how the vacation policy worked. She also argues the policy is confusing because it discusses vacation pay when the office is closed, but then talks about vacation requests when the office is not closed. She also alleges the employer changed the written policy after she left to avoid paying her vacation pay.

The employer argues the written policy states vacation is only paid when the office is closed, and that any vacation taken while the office is open is without pay. The policy gives instruction on vacation requests while the office is open.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly noticed the claimant of the vacation policy, as the claimant signed an employee handbook acknowledgement on January 9, 2007, and the claimant was aware of a copy of the handbook at the front desk.

The written policy expressly notifies the claimant that vacation pay is only used when the Doctor is out of the office, and will fluctuate from year to year. The policy also notes that any vacation time taken while the office is open for business will not be reimbursed in any fashion. Employees may elect to take time off unpaid if they choose.

The claimant's argument that the employer changed the policy after her termination is not persuasive. Her argument that another employee was paid for time off when the office is open is also not persuasive, as each employee may have a different benefits package.

The policy grants time off with pay only when the Doctor is not in the office. There is no accrual of calculated amount of time for vacation pursuant to any schedule, only payment of vacation pay during the Doctor's absence.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed vacation pay under the written policy of the employer.

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 he is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: March 7, 2017

Original: Claimant
cc: Employer

MJD/das