

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



**V**

**Laboratory Billing Solutions Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation, sick, and personal day pay  
RSA 275:44 IV liquidated damages

**Employer:** Laboratory Billing Solutions Inc, 195 NH Ave Ste 150, Portsmouth, NH 03801

**Date of Hearing:** April 13, 2017

**Case No.:** 54593

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$30,189.75 in unpaid wages for hours worked between February 28 and March 16, 2016, unpaid vacation pay, unpaid sick pay and unpaid personal day pay. She further seeks liquidated damages and attorneys' fees.

At the hearing, she clarified she had received a check in the amount of \$7,225.09, timely, and had refused to cash the check. The check represented, pursuant to her notes, 140 hours of vacation pay, 7.7 hours of sick pay, 80 hours of regular wages for time worked.

The employer denies the claimant is due any vacation time or sick time over the original check issued for \$7,229.05, which paid vacation and sick time accruals pursuant to the written policy and the payout according to the meeting regarding her layoff. They agreed to reissue the \$7,229.05 check as it had not been cashed and is now stale.

The hearing was left open until 4:30pm on April 27, 2017, for the employer to redraw a check in the amount of \$7,225.09. The check was submitted timely and forwarded to the claimant.

**FINDINGS OF FACT**

The claimant worked for the employer from March 9, 2004 through March 4, 2016, when she was laid off from her employment as the Director of Policy Compliance.

The claimant agrees she received a check for \$7,229.05 timely after her separation from employment. However, she refused to cash the check, which became stale. The employer reissued the check per their agreement at the hearing. The check represented,

pursuant to the claimant's notes, 140 hours of vacation pay, 7.7 hours of sick pay, 80 hours of regular wages for time worked.

The claimant seeks the balance as due.

The parties agree that they had a verbal conversation regarding her layoff that she would receive 100% of her accrued vacation balance and 50% of her accrued sick pay.

The claimant argues she is due 710.935 hours (850.935 hours less than the 140 hours paid April 14, 2017) of vacation pay accrued during her employment. She argues the employer's November 5, 2007, email exempted directors from having their vacation pay capped as the work load was unmanageable.

The employer notified the claimant in a May 25, 2005, memo, of the cap and reset of the vacation pay of 80 hours. They made a one-time exception to the vacation policy to allow her to roll time over to the next year and notified her she should plan accordingly for the following year. The employer argues the November 5, 2007, email she cited was a proposal exempting the directors from the vacation cap, not an actual policy. Another email sent on October 8, 2012, shows the cap of the vacation pay hours at 80 hours rollover per calendar year, as does the written policy of the employer.

The employer properly noticed the claimant of the written policy pursuant to RSA 275:49 and Lab 803.03 (b), (c) and (d). The policy does not exempt any employee from the cap on vacation time. Further, the employer's written policy states, "Employee's who have not given two (or three) weeks notice of resignation and those involuntarily discharged receive payment only for hours worked through termination. In these cases, no payment would be made for accumulated Vacation, Personal, Sick or Extended Illness hours."

The employer argues the claimant's accrued vacation hours were 140 pursuant to the written policy.

The employer's conversation with the claimant regarding her layoff in which they notified her she would receive 100% of her accrued balance supersedes the portion of the written policy which discusses payment of vacation pay at separation, not the accrual of cap of vacation time.

The employer properly and timely paid the claimant the 140 hours of vacation pay due pursuant to their written policy.

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

The claimant argues she is due an additional 1.39 hours of sick pay (over the 7.7 hours of sick pay paid April 14, 2017) as she should have accrued an additional pay periods' worth of sick time. She agrees she received 50% of the sick pay, as required by written policy, however, she argues the 50% is based on the wrong total amount. She argues the 7.7 hours of sick pay she received was 50% of her accrued balance as of the pay period ending February 13, 2017, and she should have accrued an additional 1.85 hours of sick pay in the time prior to her layoff on March 4, 2016.

No testimony or evidence was presented to show the how or when the accrual of time occurs or how it is credited to an employee's balance.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed sick pay.

The claimant argues she is due the balance of her personal day pay in the amount of 11.41 hours at \$31.73075 per hour, as it was not included in her final pay.

The employer's written policy states, "Employee's who have not given two (or three) weeks notice of resignation and those involuntarily discharged receive payment only for hours worked through termination. In these cases, no payment would be made for accumulated Vacation, Personal, Sick or Extended Illness hours."

The claimant was laid off, or involuntarily discharged; therefore, no personal pay is due.

The fact that the employer chose to pay the claimant vacation pay and sick pay does not negate the written policy stating they will not make payments for the personal pay.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed personal day pay under the written policy of the employer.

The claimant asserts liquidated damages are due.

RSA 275:44 Employees Separated From Payroll Before Pay Days. –

III. When work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the employer shall pay in full to such employee not later than the next regular payday, as designated under RSA 275:43, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

IV. If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

The claimant was laid off by the employer, which would require that she receive all wages due on the next regular payday, not within 72 hours, pursuant to RSA 275:44 III. The claimant agrees she received the check for \$7,229.05 prior to the next regular payday. The claimant admitted she refused to cash the check.

The employer cannot be held responsible for liquidated damages when the employer provided the wages to the claimant and she refused to cash the check. The employer reissued the check.

As no wages were found to be due, no liquidated damages can be awarded.

However, even if wages had been found to be due, liquidated damages would not be assessed.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The employer provided credible testimony and evidence they paid all wages they believed to be due, well within the required timeframe.

The Hearing Officer would find that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good case failed to pay her all wages due in the time required because the employer had a genuine belief that the wages were not owed.

RSA 275:51 V does not authorize this Department to award attorney's fees or costs. This is distinct from RSA 275:53 III that allows "costs of the action, and reasonable attorney's fees", but by a "court of competent jurisdiction". The New Hampshire Department of Labor is an administrative agency and a part of the executive branch of government. The Department is not a "court of competent jurisdiction". Therefore, no fees or costs can be awarded through this decision.

### **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 she is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers sick 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 sick pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers personal day 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 personal day pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a

preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: May 4, 2017

Original: Claimant  
cc: Claimant's Attorney  
Employer  
Employer's Attorney

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