

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



**V**

**The Homemakers Health Services Inc**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** The Homemakers Health Services Inc, 215 Rochester Hill Rd, Rochester,  
NH 03867

**Date of Hearing:** April 5, 2017

**Case No.:** 54762

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of her wage claim, that she was owed \$780-825 in unpaid wages for hours worked on November 16, 2016, and the balance of her vacation pay. She received a written notice from the employer that she would receive 100% of her accrued vacation pay, but she only received 50%. She seeks the remaining 50% as due.

At the hearing, she removed the claim for the hours worked on November 16, 2016, as the employer provided proof those hours had been paid. She also clarified the amount for the claim for vacation pay is \$750.

The employer denies the claimant is due the 50% balance of her vacation pay. They properly noticed her in the employee handbook she would receive only 50% of her accrued vacation pay at separation. The November 17, 2016, letter which told her she would receive 100% was sent in error.

**FINDINGS OF FACT**

The employer laid the claimant off on November 17, 2016. She received a letter from the employer stating that though the written policy only requires a payout of 50% of her accrued vacation pay balance, they would pay 100% of her accrued vacation pay balance under the given circumstances.

On November 29, 2016, they rescinded the November 17, 2016, letter, and notified her that she would receive only 50% of her accrued vacation pay balance. She received a check which included only the 50% accrued vacation balance.

The claimant argues she should receive the balance of the vacation pay because the employer notified her in writing that they would pay 100% of the accrued vacation balance.

The employer argues the November 17, 2016, letter notifying the claimant they would pay her 100% of her accrued vacation pay balance was an error, which they corrected. Further, they paid her according to the employee handbook policy.

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 notified the claimant of their policy to pay 50% of the accrued vacation pay at separation, given her longevity with the employer.

However, the employer provided a notification on November 17, 2016, which recognized the written policy, but stated they were going to pay 100% of her accrued vacation pay "given the circumstances".

This November 17, 2016, letter became the controlling notice of the employer's treatment of the vacation pay for the claimant.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed vacation pay under the written notice of the employer.

### **DISCUSSION**

The burden of proof lies with the claimant in these matters. The claimant has the burden to prove by a preponderance of the evidence that the claimed wages are due. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant met this burden.

### **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 is due the claimed vacation pay, it is hereby ruled that the Wage Claim is valid in the amount of \$750.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$750, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: April 6, 2017

Original: Claimant  
cc: Employer

MJD/das