

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Motors Insurance Corp

DECISION OF THE HEARING OFFICER

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

Employer: Motors Insurance Corp, 500 Woodward Ave, Detroit, MI 48226

Date of Hearing: May 25, 2107

Case No.: 54834

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$4,079.42 in unpaid vacation pay which the employer illegally withheld upon his separation from employment to cover monies for overpaid commissions owed to the company under the Direct Team Incentive Plan.

The employer argues the Direct Team Incentive Plan and RSA 275:48 I(f) allow the deductions from vacation pay.

FINDINGS OF FACT

The claimant worked for the employer from November 2015 through December 2016, when he resigned his position as the Area Growth Leader.

The claimant argues the employer illegally withheld his 89 hours, or \$4,079.42, of vacation pay because the employer had overpaid commissions.

The employer argues that section 6.7 of the 2016 Ally Insurance Direct Sales Team Incentive Plan allows the recovery of any compensation under this plan, for the overpayment of commissions to the claimant.

Further, they argue RSA 275:48 I (f) allows for the recovery of wages from vacation pay.

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.

Neither party submitted a copy of the written policies as they pertain to vacation pay. The employer only alleged that the 2016 Ally Insurance Direct Sales Team Incentive Plan allows the recovery of any compensation under this plan, and that they consider that to include vacation pay.

Nothing the 2016 Ally Insurance Direct Sales Team Incentive Plan allows the recovery of any compensation under this plan speaks to the recovery of vacation pay. Nothing in this plan mentions vacation pay as "compensation under this plan", as noted in the plan itself.

Neither party submitted a copy of the 2016 Ally Insurance Direct Sales Team Incentive Repayment Agreement, to show that the employer notified the claimant that vacation pay would be forfeited for the recovery of the overpayment of commissions.

RSA 275:48 I(f) allows an employer to recover vacation time they have advanced to an employee if the employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

This statute is not applicable to the facts of this case.

The Hearing Officer finds the employer failed to notify the claimant that any vacation payment due to him could be forfeited for the recovery of overpayments of commission. Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed vacation pay in the amount of \$4,079.42.

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 he is due the claimed vacation pay, it is hereby ruled that the Wage Claim is valid in the amount of \$4,079.42.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$4,079.42, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 2, 2017

Original: Claimant
cc: Employer

MJD/das