

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/PTO

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

Date of Hearing: May 24, 2017

Case No.: 54884

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts that she is owed approximately \$1,120 in unpaid vacation pay. She argues the employer paid her a portion of the vacation/PTO when she resigned according to the written policy, however, other employees who were let go by the company received 100% of their vacation/PTO.

The employer denies the claimant is due the remaining 50% balance of her vacation pay. They properly noticed her in the employee handbook she would receive only 50% of her accrued vacation/PTO pay at separation and paid according to that policy.

FINDINGS OF FACT

The claimant worked for the employer from May 10, 2010 until December 19, 2016, when she resigned.

The claimant argues she should receive the balance of the vacation/PTO pay because the employer provided a 100% payout of vacation/PTO balances to three employees who were laid off. Because they changed the policy for these three employees, she should receive the same pay out.

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 argues they properly noticed the claimant of the policy pertaining to the payment of vacation/PTO payment upon separation and paid her according to that policy.

A prior CEO of the company did make an exception for three employees being laid off to receive 100% of their accrued vacation/PTO time at separation, as more of a "severance package". The original policy has not changed and has been upheld since February 2016, when the Board of Directors was made aware of the deviations allowed by the prior CEO.

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. The fact that the employer made exceptions to the vacation/PTO payout policy for three employees does not change the written notice that they provided to the claimant. The claimant was properly noticed as to the terms and conditions of the vacation/PTO policy and received the proper payment according to that policy upon her separation.

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 prove by a preponderance of the evidence that she is due the claimed vacation/PTO pay, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 31, 2017

Original: Claimant
cc: Employer

MJD/das