

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Complete Staffing LLC dba CSS Placement Services

DECISION OF THE HEARING OFFICER

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

Employer: Complete Staffing LLC dba CSS Placement Services, 15 Constitution Dr,
Bedford NH 03110

Date of Hearing: May 1, 2017

Case No.: 54936

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,384.32 in unpaid vacation pay/paid time off (PTO) due upon his separation from employment.

The employer denies the claimant is due any PTO, and in fact regularly used PTO days to the maximum amount allowed and in some cases, more than was allowed, which the employer continued to pay.

FINDINGS OF FACT

The claimant worked for the employer from January 2014 through February 16, 2017, when he resigned, though the employer paid his regular weekly salary through February 17, 2017.

The claimant argues he is due the balance of twelve PTO days, from the fifteen PTO days awarded to him on January 1, 2017. He agrees he used three day of PTO. He argues the employer did not have a written policy until 2017, and he was told upon hire that he had fifteen PTO days to "use as you like."

The employer agrees that they only implemented the written policy in 2017, but that days have always accrued. Further, the claimant used more time than he was allotted in given years, but they always paid his salary.

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 (PTO). 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 acknowledges they did not properly notify the claimant of the policy and practices as they pertained to the PTO policy. The employer also agrees they did not have an offer letter for the claimant, which they did for virtually every other employee.

The employer argues they verbally notified the claimant through at least one of two company meetings regarding PTO policies, which the claimant denies attending.

Because the employer did not specifically inform the claimant that the PTO time is accrued and that he would forfeit these PTO days at termination, as required by RSA 275:49 and Lab 803.03, the Hearing Officer finds that the claimant earned, and is now due, the claimed vacation pay.

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/PTO 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 was not paid all vacation pay/PTO earned and now due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,384.32.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,284.32, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 16, 2017

Original: Claimant
cc: Employer

MJD/das