

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



**V**

**CFS Sales LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay  
RSA 275:44 IV liquidated damages

**Employer:** CFS Sales LLC, 85 Allentown Rd, Allentown, NH 03275

**Date of Hearing:** June 8, 2017

**Case No.:** 55103

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$1,000 for two weeks of unpaid vacation pay. He further seeks liquidated damages.

The employer explained she is the court ordered legal representative of the company, documentation previously submitted, however, she is not a member of the LLC. She denies the claimant is due any vacation pay as he has been substantially overpaid for his work in 2017, which is more than the amount of the vacation pay sought.

**FINDINGS OF FACT**

The claimant worked for the employer from May 5, 2016 through April 7, 2017, when his employment was terminated. He earned an initial salary of \$500 per week, however, he received increases which were not reduced to writing. He seeks only the \$500 per week of the two weeks of vacation pay he claims as due.

The claimant argues he has a contract which grants two weeks of vacation pay for 2017, at the offered rate of \$500 per week.

The employer argues the claimant not is due any vacation pay as he has been substantially overpaid for his work in 2017, which is more than the amount of the vacation pay sought. No written policy exists for vacation pay as it has not been offered as a benefit to any employee prior to the claimant.

The employer specifically notified the claimant through a January 1, 2017, offer letter that, "You are also going to receive 2 weeks paid vacation each year. Staring

[starting] now you are entitled to 2 weeks paid vacation in the calendar year 2017. Vacation time is not accruable."

The employer does not have an employee handbook or written policy that informs the claimant of the policy and practices regarding vacation pay. The employer did not inform the claimant that he would not be paid for these benefits at termination.

Because the employer did not specifically inform the claimant that he would forfeit these benefits at termination, the Hearing Officer finds that the claimant earned, and is now due, the claimed vacation pay in the amount of \$1,000.

The claimant seeks liquidated damages on this wages because the employer left him unemployed without wages and yelled at him in a "brutal" manner during their final meeting.

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 Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without because failed to pay him all wages due in the time required because the employer had a genuine belief that the wages were not owed as he had received an overpayment of wages for 2017.

### **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 was not paid all vacation pay earned and due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,000.

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.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,000, 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: June 9, 2017

Original: Claimant  
cc: Employer

MJD/das