

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Genesis HealthCare

DECISION OF THE HEARING OFFICER

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

Employer: Genesis HealthCare 175 Blueberry Lane, Laconia, NH 03246

Date of Hearing: June 21, 2017

Case No.: 55137

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant contends through the filing of a wage claim that he is due sixty-four hours of vacation time valued at \$1,460.48.

The employer denies the claimant is due any vacation pay pursuant to their written policy.

FINDINGS OF FACT

The claimant was an employee of Genesis HealthCare from June 19, 2007 until March 31, 2017, holding the position of Director of Food Services.

The claimant argued he is owed \$1,460.48 for vacation time accrued prior to his separation.

The employer notified the claimant on March 20, 2017 of an ownership change concerning the employer's business; a company had purchased the dietary services of his employer and the ownership change would be effective April 1, 2017.

On March 21, 2017, the claimant requested of the employer to use his vacation time which the employer denied on 3/22/17. On March 22, 2017, the employer denied the claimant's request. The claimant argued that because there was not enough time between March 20, 2017 and April 1, 2017, to use his vacation and therefore should receive payment for the time.

The employer argued: "Michael Murphy is an Exempt Employee, our policy states that 'Exempt Employees who have advanced vacation hours will not be compensated for paid time off as a terminable benefit.'"¹

The employer previously submitted a policy titled "Exempt Employee Vacation Withholding Authorization" signed by the claimant and dated 6-19-07. The employer testified that this document notifies employees that accrued time is not a terminable benefit. The employer testified at hearing that this policy remained in effect through the claimant's employment with the company.

The employer submitted an unsigned document entitled "HR700 Termination Benefits" noting an effective date of 6/1/02 and revision date of 4/1/16. This document reads in-part: "1. Except as otherwise required by state law, exempt employees and non-exempt employees who have advanced vacation hours will not be compensated for paid off as a termination benefit and will have to repay any paid time off taken if they terminate prior to their first anniversary date" and "Sick time and personal days are not termination benefits (unless otherwise be "exempt employees" required by state law or collective bargaining agreement). Refer to the specific vacation plan for an employee's assigned business unit to determine whether or not vacation hours are a terminable benefit." ¹

The policy above appears to address an audience of first year employees, classified by the employer to be "exempt employees" and the topic addressed being conditional status of "advanced vacation."

Neither party submitted the vacation plan referenced above to the Department.

Further, the Claimant did not provide or testify to an alternative employer policy or practice supporting his claim.

Therefore, the Hearing Officer finds the claimant failed to meet his burden, proving beyond a preponderance of the evidence he is due the claimed vacation time.

DECISION

Based on the testimony provided and evidence presented, as RSA 275:43 I requires employers to pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

¹ Passage quoted from employer's submission.

Date of Decision: July 12, 2017

Original: Claimant
cc: Employer

DMZ/das