

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



**V**

**Bootstrap Software Partners LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay/paid time off pay (PTO)

**Employer:** Bootstrap Software Partners LLC, 655 Portsmouth Ave #11, Greenland, NH  
03840

**Date of Hearing:** July 10, 2017

**Case No.:** 55139

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of his wage claim, that he was owed \$3,029.40 in unpaid PTO pay which, he argues, was due upon his separation.

At the hearing, the claimant amended his claim to fifty-eight hours of vacation pay at a rate of \$36.06 per hour (from an annualized salary of \$75,000, based on a forty hour work week), for a total of \$2,091.48.

The employer denies the claimant is due any PTO pay under their written policy.

**FINDINGS OF FACT**

The claimant worked for the employer from October 2016 through May 2017, when the employer terminated his employment.

The claimant argues he was due his accrued vacation pay of fifty-eight hours upon his termination because RSA 275:43 V states the vacation pay/PTO is considered wages when due. He further argues that an employer's written policy that states PTO is not paid out upon separation cannot absolve an employer from the requirement to pay PTO of RSA 275:43 V. He also argues that the employer's PTO policy only addresses forfeiture of PTO pay if an employee resigns, not termination.

The employer argues that the claimant is not due any accrued PTO under their written policy. Even if he were due PTO, the claimant's calculations are incorrect.

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 properly notified the claimant in writing of the policies regarding PTO pay. The written policy regarding PTO pay reads, in relevant part, "Employees who resign from their position will be paid out any PTO that they have accrued but has not been used as long as the employee gives at least a 2-week notice."

The claimant's argument that the written policy addresses only resignations, not terminations, is not persuasive. The employer expressly noticed the claimant that only employees who resign with a two week notice will be eligible to receive a payment of accrued but unused vacation time at separation of employment.

The claimant's argument that the employer's written policy does not absolve them of the requirements of RSA 275:43V is also not persuasive as RSA 275:43 V reads, Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, **when due** [emphasis added].

RSA 275:49 III allows an employer to determine their policy as it relates to PTO time pay, including if any payment is due at separation. The employer specifically notified the claimant of the circumstances under which PTO time pay would become due, and therefore wages. The claimant did not separate from service under criteria for which PTO pay would become due and subsequently wages.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed PTO 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 PTO 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 to prove by a preponderance of the evidence that he was due PTO pay, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: July 11, 2017  
Original: Claimant  
cc: Employer

MJD/das