

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Perez Restoration Services LLC dba ServPro

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages and commissions
RSA 275:43 V unpaid vacation and sick/personal pay

Employer: Perez Restoration Services LLC dba ServPro, 21 Technology Dr Ste 1,
W Lebanon, NH 03784

Date of Hearing: July 10, 2017

Case No.: 55157

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed between \$4,520 and \$7,520 for unpaid commission, vacation pay, and sick/personal day pay.

At the hearing, he clarified he is seeking 3% of \$75,000 in commission on sales for “any month”. He also seeks seventy-six hours of vacation pay and sixty-four hours of sick/personal day pay, at a rate of \$20 per hour.

The employer denies the claimant is due any commissions, vacation pay or sick/personal day pay.

FINDINGS OF FACT

The claimant worked for the employer from July 14, 2014 through April 7, 2017.

The parties tell differing accounts as to the cessation of employment. The claimant argues the employer laid him off and the employer maintains they terminated his employment.

The claimant argues he is due 3% of \$75,000 in sales for “any month.”

The employer provided credible testimony and evidence, previously submitted, that the claimant did not meet the criteria to receive commissions for March or April 2017.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed commissions.

The claimant argues he had seventy-six hours of vacation pay and sixty-four hours of sick/personal day pay accrued at his separation, which he argues is payable at a rate of \$20 per hour.

The employer argues he is not entitled to vacation pay or sick/personal day pay pursuant to the written policy

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 vacation and sick/personal day pay. The written policy regarding vacation pay reads, in relevant part, "Employees who are terminated or do not give and work a two-week notice will forfeit any unused vacation time." The written policy regarding sick/personal day pay reads, in relevant part, "You will not be paid for unused sick/personal leave benefits while you are employed and you will also not be paid for unused sick/personal leave benefits when your employment terminates."

Black's Law Dictionary defines "termination" as end in time or existence; close; cessation; conclusion. The Hearing Officer finds the word termination refers to the cessation of employment, not whether or not the claimant was terminated or fired by the employer or laid off by the employer. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due any vacation pay or sick/personal day pay under the employer's written policies.

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 this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages/commissions, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers vacation pay and sick/personal leave 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 is due any vacation pay or sick/personal leave, it is hereby ruled that this portion of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: July 11, 2017

Original: Claimant
cc: Employer

MJD/das