

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Dartmouth Hitchcock Medical Center

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: Dartmouth Hitchcock Medical Center, Meaghan Smith, OBGYN Dept, 1
Medical Ctr Dr, Lebanon NH 03756

Date of Hearing: December 5, 2017

Case No.: 55782

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$6,699.06 in unpaid wages. At the hearing, she clarified she was seeking \$2,379.10 in tuition reimbursement and \$100 for a Wellness Event in which she participated and did not receive her incentive. She further seeks liquidated damages in the amount of \$4,319.96, as she did not receive her vacation pay in the timeframe allowed by statute.

RSA 275:44 IV was not originally noticed for this hearing, but was added with the agreement of both parties.

The employer denies the claimant is due any wages. She did not meet the criteria to receive the tuition reimbursement requested. They have a record of her participation in only one Wellness event and showed proof of the \$100 payment. They deny they should be liable for liquidated damages.

FINDINGS OF FACT

The claimant worked for the employer in a secretarial position from October 13, 2014 through January 13, 2015, when she was transferred to a janitorial position. On January 13, 2015, her doctor took her out of work and she never returned to work for this employer again. The claimant submitted her resignation to the employer on July 31, 2015, which the employer acknowledged via letter on August 14, 2015.

The claimant used the employer's short term disability policy for her absence beginning January 13, 2015, for the following six month period. The short term disability

policy was administered through the employer as it was a self-insured program, and her payments for the insurance were paid through the employer's regular payroll.

When the short term disability policy expired July 13, 2015, she applied for benefits under the long term disability policy, which was underwritten and administered through The Hartford. The claimant resigned her position effective July 31, 2015. Her application for long term disability was approved for the period of July 14, 2015 through July 31, 2015, on November 4, 2015. The employer contacted the claimant on November 28, 2015, to inquire as to whether she would be appealing the decision to approve the long term disability only through July 31, 2015. She responded she would not be appealing as she had a new job as of August 3, 2015.

The employer had kept the claimant's status as active on their payroll system even after her resignation as she had a pending long term disability claim. The purpose of this status remaining active was to allow the claimant access to insurances throughout the claim process and for the 180 day appeal timeframe following the long term disability insurance decision. When the claimant notified the employer she would not be taking advantage of the appeal process, they processed her resignation which changed her status to inactive.

Upon the status change to inactive, the system produced a check for her remaining vacation pay on December 15, 2015.

The claimant argues that the employer willfully and without good cause failed to pay her vacation pay when she provided her resignation on July 31, 2015.

The employer argues the claimant remained active on their system during the long term application process and subsequent appeal timeframe for her benefit. She had access to her insurances during this timeframe. Once they were notified that she was not appealing the long term disability decision, they processed her paperwork and generated the check for her vacation pay. There was no attempt to harm the claimant by denying vacation pay, but to offer the full benefits to her during this period.

The claimant raised the issue of RSA 275:44 IV, liquidated damages, for the first time at the hearing. The employer agreed to hear this issue and waive the 14 day notice.

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 employer provided credible testimony and evidence that the delay in processing the payment of vacation pay was not willful and without good cause, it was the result of keeping her insurances available to her during the long term disability application and appeal timeframe.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence the employer is liable for liquidated damages.

The claimant argues she is due a tuition reimbursement. She submitted the paperwork according to the program and should receive payment. She argues the employer cannot allow her to keep some of her benefits, like the insurances, and not grant her access to the tuition reimbursement benefit.

The employer argues the tuition reimbursement policy states that she has to return for at least one day if she has been on a leave of absence in order to receive the benefit. As she did not return, she is not eligible for reimbursement.

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 tuition reimbursement. 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 tuition reimbursement policy reads, in relevant part, "D-H employers on a leave of absence must return to work before receiving tuition reimbursement. If there is no position available when the leave ends, or the D-H employee does not return to work, the D-H employee will not be eligible for tuition reimbursement."

The employer properly noticed the claimant as to the policies and practices regarding the tuition reimbursement program. The employer is free to create written policies that offer some benefits and not others while an employee is on leave. The claimant was on a leave of absence and did not return to work as required by the policy.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due tuition reimbursement under the written policy.

The claimant argues she did not receive a Wellness benefit of \$100. She completed two Wellness activities and received payment for only one activity.

The employer argues they only have a record of one Wellness activity and subsequent payment.

Wellness benefits are not considered wages under RSA 275:42 III, and therefore, cannot be handled through this jurisdiction.

DECISION

Based on the testimony and evidence presented, 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.

As RSA 275:43 V considers tuition reimbursement (employee expense) 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 she is due any tuition reimbursement, it is hereby ruled that this portion of the Wage Claim is invalid.

As Wellness incentives are not considered wages under RSA 275:42 III, it is hereby ruled that this portion of the Wage Claim is invalid due to a lack of jurisdiction by this Department.

Melissa J. Delorey
Hearing Officer

Date of Decision: December 22, 2017

Original: Claimant
cc: Employer

MJD/nm