

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



**v.**

**Henniker Brewing Company, LLC**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Henniker Brewing Company, LLC

**Date of Hearing:** October 25, 2017

**Case No.:** 55897

**BACKGROUND AND STATEMENT OF THE ISSUES**

The current issue concerns a dispute between the parties as to the status of unused vacation time following the claimant's termination of employment.

The claimant served as Director of Sales for the employer, a craft brewer operating a restaurant and retail establishment in Henniker, NH as well as an interstate wholesale distributor of their product.

The claimant asserts he is owed \$4,250.00, or seventeen (17) days, in unpaid vacation time.

The employer holds the claimant has been paid all wages due.

On the basis of the claimant's assertion he is owed back wages from unused vacation time the claimant filed a Wage Claim with this Department on August 31, 2017. A Notice of Wage Claim was forwarded to the employer on September 1, 2017. The employer's objection was received by the department on September 18, 2017; the objection was forwarded to the employee on the same date. The claimant requested a hearing on September 25, 2017. Notices of hearing were sent to the parties on October 4, 2017 and accordingly a hearing was held on October 25, 2017.

**FINDINGS OF FACT**

The claimant worked for the employer from June 1, 2016 through August 4, 2017.

The claimant's compensation included a \$65,000.00 per year base salary, three (3) weeks of vacation, two (2) personal days, potential quarterly bonus and medical benefits.

Upon separation the claimant received his salary for the pay period he last worked, bonus pay for the employer's first quarter, bonus pay for the employer's second quarter as well as a check equal to his salary for one pay period he did not work. The employer described this check as "severance" pay.

### **DISCUSSION**

The parties agree as to what constituted the compensation package offered to the claimant at the time of hire, including the amount of vacation time.

The claimant holds he is due unused vacation time because it was part of his compensation package.

The employer argues he never intended for unused vacation time to be paid out separately to employees upon their separation. He considers the time is included as part of a severance check along "with anything else they may be due." The employer holds that the severance check in this case settles everything owed to the claimant.

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. This statute allows an employer to determine their policy concerning vacation, including **if** any payment is due at the employee upon separation

Both parties agree as to the benefits that were offered the claimant at hire. They were presented in an offer letter submitted earlier by the claimant. Both parties agree this is the only document that mentions vacation; it only mentions the amount of vacation not policies or practices concerning the benefit. The employer concedes he has no written policy concerning benefits as required by the above statute, specifically the status of accumulated vacation upon separation – the apparent reason for this claim.

RSA 275:43 V states that 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].

The claimant argues vacation was part of his compensation package and therefore is owed for the time and due the *commensurate* ? wages.

The employer holds it is not his intent to payout unused vacation to employees.

The Hearing Officer finds that the employer was not in compliance with the requirements of RSA 275:49 when he did not inform the claimant, in writing, of his practices and policies regarding vacation pay.

However, the Hearing Officer also finds that this does not automatically guarantee the claimant the claimed wages. The Hearing Officer finds that the claimant testified as credibly, not more credibly than the employer. Neither party presented convincing evidence. It was clear neither party had a clear understanding as to what could reasonably be expected as to the payment of vacation pay upon separation. The claimant did not have an expectation grounded in facts, based upon more than an assumption, to prove he is owed additional wages.

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds that the claimant failed to meet this burden. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed the claimed wages.

### **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 considers vacation time 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 owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

---

David M. Zygmunt  
Hearing Officer

Date of Decision: November 22, 2017

Original: Claimant

cc: Henniker Brewing Company, LLC, P. O. Box 401  
Henniker, NH 03878

DMZ/nm