

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Wentworth Douglas Hospital

DECISION OF THE HEARING OFFICER

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

Employer: Wentworth Douglas Hospital, 789 Central Avenue
Dover, NH 03820

Date of Hearing: January 8, 2018

Case No.: 56312

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the matter of liquidated damages the claimant submits is due her because the employer delayed the payment of her earned time.

The employer holds that the delay was due to legitimate reasons.

On the basis of the claimant's assertion she is owed liquidated damages the claimant filed a Wage Claim with this Department on November 6, 2017; a Notice of Wage Claim was sent to the employer this same day. The employer's objection to the claim was received on November 21, 2017 and forwarded to the claimant the same day. The claimant requested a hearing on November 29, 2017; notices of Hearing were forwarded to the parties on December 20, 2017 and accordingly a hearing was held on January 8, 2018.

FINDINGS OF FACT

The claimant worked for the employer for approximately ten (10) years. Her last position with the employer was as a Cash Control Specialist earning \$22.73 per hour and paid biweekly. The claimant provided the employer advanced notice of her resignation; the claimant's last day of work was October 4, 2017.

The employer's biweekly payroll runs from Sunday through Saturday with payday the following Friday.

On October 13, 2017 (the designated Friday payday) the claimant's final check for the pay period September 24, 2017 through October 7, 2017 was direct deposited into her checking account, without her accrued earned time.

On October 23, 2017 the claimant contacted the employer to follow up on payment of her missing earned time.

On October 24, 2017 the employer contacted the claimant informing her it would resolve the issue with their payroll department *and have acted upon straight away.*

On November 1, 2017 the claimant contacted the employer notifying them the earned time had not been deposited into her account. The employer responded that they could no longer make a deposit into her account because she was a former employee. Employer informs the claimant they will send the check to her via certified mail to her home address.

On November 6, 2017 the claimant received a check for her earned time in the incorrect amount. The claimant reached out to the employer this day who directed her to return the check and a replacement will be issued. The employer assured the claimant the check could be direct deposited into her account, despite the employer previously informing her otherwise that it couldn't be. The claimant elects the direct deposit option.

On November 13, 2017 the employer contacted the claimant with the news that her check could not be direct deposited, the claimant confirmed her address for the employer to mail her check.

On November 20, 2017 the claimant received her check for her accumulated earned time.

DISCUSSION

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed any 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.

RSA 275:43 I requires that an employer pay all wages due an employee, in full, on regularly scheduled paydays and 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.

The parties agree the claimant was owed earned time in the amount the claimant testified to, 140.21 hours or \$3,186.96.

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 Hearing Officer finds the claimant credibly testified to making multiple efforts to obtain the earned time she felt she was owed.

The employer testified that their payroll direct deposits can only be made on pay dates and that, and combined with human error, the employer should not be held responsible for liquidated damages for their late payment of the claimant's earned time.

The Hearing Officer finds that the employer willfully and without good cause failed to pay the claimant her wages in the form of earned time in the time frame required by law because the employer knew that the wages were owed, had the financial ability to pay the wages, and simply failed to pay them. The employer's defense for not paying the claimant because of a company rule that they only make deposits on designated paydays and that the failure to pay the claimant was merely human error is not persuasive.

The Hearing Officer finds that the claimant was due her accumulated earned time on October 13, 2017 and that she was not paid by the employer until November 20, 2017. This period constitutes (38) calendar days. Thus the employer liable for liquidated damages.

The formula prescribed in RSA 275:44 IV for calculating liquidated damages uses 10 percent of the unpaid wages (\$3,186.96) or \$318.69 for each day the employer fails to pay an amount due, except Sunday and legal holidays. The result is 31 days (38 days minus 6 Sundays minus one legal holiday – Veteran's Day = 31 days).

This formula calculates to a dollar amount (\$9,878.39) that exceeds the limit set forth in RSA:44 IV which is an amount equal to the amount of the unpaid wages (\$3,186.96)

The Hearing Office thus finds the employer liable for liquidated damages in the amount of \$3,186.96

DECISION AND ORDER

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 proved by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the timeframe required by statute, it is hereby ruled that the employer is liable to the claimant for liquidated damages in the total of \$3,186.96 assessed at 10% of the unpaid wages due per day for each day of nonpayment past the statutory limit until equal to the amount of wages due.

The employer is hereby ordered to send a check to this department, payable to [REDACTED], in the total of \$3,186.96, less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

Date of Decision: February 8, 2018

Original: Claimant

cc: Wentworth Douglas Hospital, 789 Central Avenue, Dover, NH 03820
Attention: MariBeth Hathaway, Senior Human resource Partner