

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

ANIMAL Emergency Medical Center of New England

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid paid time off

Employer: Animal Emergency Medical Center of New England
168 Main Dunstable Road, Nashua, NH 03060

Date of Hearing: January 10, 2018

Case No.: 56314

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the matter of unpaid accrued paid time off (PTO) following separation.

The claimant holds she resigned her position and is owed a portion of her accrued PTO consistent with the employer's policy.

The employer holds the claimant was let-go and is therefore not owed twenty (20) hours of PTO consistent with company policy.

On the basis of the claimant's assertion she is owed unpaid wages in the form of accrued PTO 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 22, 2017 and forwarded to the claimant the same day. The claimant requested a hearing on November 27, 2017; notices of Hearing were forwarded to the parties on December 20, 2017 and accordingly a hearing was held on January 10, 2018.

FINDINGS OF FACT

The claimant worked for the employer, a veterinary practice, as an evening supervisor and ICU technician.

The claimant earned \$23.00 per hour and paid biweekly.

The claimant worked for the employer from December 7, 2013 through October 11, 2017.

On October 6, 2017 a meeting took place between the claimant and employer during which the claimant stated her intention to resign to the employer. In response the employer offered to attempt to resolve the reason for resignation, on-going conflict between the claimant and a senior colleague. The employer also offered the claimant a raise if she were to remain with the organization.

On October 11, 2017 the claimant notified the employer through email correspondence of her resignation. The claimant refers to ongoing issues with a senior colleague as reason.

At the employer's request an exit interview took place with the claimant on October 20, 2017. At this meeting the claimant credibly testified that the employer promised her a check for the twenty (20) hours of the PTO she accrued.

On October 24, 2017, and then again on November 3, 2017 the claimant reached out to the employer concerning the missing payment of her twenty (20) hours of PTO. On November 3, 2017 the employer responded to the claimant by writing that per policy handbook she was not entitled to use PTO during or after the period of formal notice."

On November 3, 2017 the claimant responded to the employer stating she was not asking to use PTO and repeated her request to be paid for twenty (20) hours of her accrued PTO.

The claimant separated from the employer with 45.30 hours of PTO.

DISCUSSION

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she 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 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 employer's policy regarding termination of employment reads in-part: "Staff members who quit, are discharged, or fail to respond to a recall are considered to be

separated from employment...” and “Upon voluntary termination of employment for any reason, employees will be paid for no more than twenty (20) hours of any PTO that has been earned and not used.”

In addition the handbook states in-part: “We request that the staff member give two weeks’ notice so a replacement can be found...”

A section of the employer handbook under “Communications” states that communication is done primarily through department meetings, individual meets and e-mail.”

A section of the employer handbook under “Attendance” requires employees to notify the employer at least one hour before the beginning of their shift or else it would be considered job abandonment. The employer defines job abandonment in their employee handbook as failure to contact a manager when absent.

The employer acknowledged the claimant’s resignation both to the claimant herself as well as sharing the notice to others in the organization. Later, the employer adopts a position that the claimant’s resignation letter does not meet the norms of professionalism and is not “official” according to policy.

The employer then regards three days she was scheduled to work as job abandonment and terminates her employment involuntarily effective October 20, 2017. These three days followed the effective date specified in the claimant’s resignation correspondence.

The Hearing Officer finds the employer’s request for an advanced two week notice in their employee handbook, as just that, a request. The employer’s policy does not mention a two week notice to be a contingency for the receipt of the twenty (20) hours of accrued time.

The Hearing Officer finds the employer’s use of the claimant’s failure to use “official” communication and being inconsistent with professional norm in order to support their nonpayment of PTO to be unpersuasive and inconsistent with the employer’s previous acknowledgement of the claimant’s resignation via email.

Further, the employer did not request an “official” resignation letter at the claimant’s exit interview and the employer acknowledges in their written submissions to this Department their receipt of a notice from the claimant notifying them of her resignation.

It needs to be noted that the employer’s argument that its employee handbook had pre-approval by the New Hampshire Department of Labor is not found to be persuasive. As a service to the business community this Department does review company policies when requested. This review is **limited** to flagging statements that conflict with New Hampshire labor statute. This is not an “approval” process, nor does this Department inform an employer in any way that their employee handbook is “approved” or “accepted” by the New Hampshire Department of Labor.

The claimant’s position is found to be persuasive. She provided notice of her resignation and is entitled to her 20 hours of accrued PTO.

DECISION AND ORDER

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, sick and personal time to be wages when due, if a matter of employment practice or policy or both and as this Department finds that the claimant proved by a preponderance of the evidence that she is owed the claimed wages in the form of unpaid PTO, it is hereby ruled that this Wage Claim is valid in the amount of \$460.00.

The employer is hereby ordered to send a check to this department, payable to [REDACTED], in the total of \$460.00, less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

Date of Decision: February 9, 2018

Original: Claimant
cc: Animal Emergency Medical Center of New England
168 Main Dunstable Road, Nashua, NH 03060
Attention: Nadia Choudhry, Hospital Manager