

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Greater Nashua Mental Health Center

DECISION OF THE HEARING OFFICER

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

Employer: Greater Nashua Mental Health Center, 100 West Pearl Street
Nashua, NH 03060

Date of Hearing: February 28, 2018

Case No.: 56658

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the status of accrued earned time off (ETO) upon separation.

The claimant asserts the employer owes her the time she earned.

The employer holds the claimant is not owed the ETO consistent with company policy.

On the basis of the claimant's assertions she is owed unpaid earned time the claimant filed a Wage Claim with this Department on January 16, 2018; a Notice of Wage Claim was forwarded to the employer on January 17, 2018. The employer's objection was received by this Department on January 25, 2018 and forwarded to the claimant this same day. The claimant requested a Hearing on February 2, 2018. Notices of Hearing were sent to the parties February 8, 2018 and accordingly a Hearing was held on February 28, 2018.

FINDINGS OF FACT

The claimant worked as a case manager for the employer from July 7, 2016 through January 3, 2018; she earned an annual salary of 30,000.00 and paid biweekly.

The claimant accumulated forty nine and seven tenths (49.7) hours of ETO worth \$869.77.

The claimant gave notice of her resignation to the employer on December 18, 2017, to be effective January 2, 2018.

Ten days prior to the claimant submitting her notice of resignation, on December 8, 2017 she requested the use of two days of her ETO. The employer approved the claimant's request on December 12, 2017. The two days coincided with the claimant's period of notice.

On her last day with the employer the claimant was informed she would not be receiving the balance of her ETO.

The employer requests that separating employees provide the employer a period of notice at least equal to the employee's base annual earned time. The amount of the claimant's base annual earned time was twenty (20) days. *See Employer's Response to Wage Claim.*

The employer argues they are required to use the word "request" in their policy handbook when addressing employee expectations because New Hampshire is an "At-Will" state.

DISCUSSION AND CONCLUSIONS

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.

The claimant submits she is owed the balance of her ETO valued at \$869.77

RSA 275:43 V reads in part:

"...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].

ETO only becomes wages "when due." "When due" is a reference to the contingencies specified in the employers' policies that define how earned time is earned, when the time may be used and addresses what happens to the time upon separation. These terms are at the sole discretion of the employer. The employer argues that the claimant is not entitled to her ETO because she provided the employer an insufficient period of notice

and she used two days of her accrued ETO during her period of notice against the employer's policy thus nullifying her eligibility to receive her ETO.

The employer's policy uses the word "request" when the employer asks employees to give a specific period of notice regarding resignation in order for the employee to be eligible for ETO. This writer finds that the employer's use of "request" is

just that, a request, not a requirement. This writer finds that the employer's argument that this state's status as an "At Will" state precludes their use of the word "required" in their policies regarding ETO eligibility is not persuasive. This writer is not aware of any New Hampshire Labor Law that precludes the employer from using the word "required" in personnel policies.

The employer further argues that it was against the employer's policy for the claimant to use ETO during her period of notice, therefore making her ineligible to receive the balance of her ETO following separation. The claimant asked to use the time, the employer approved the request and the claimant used the time during her period of notice. Nothing more was discussed between the parties regarding the matter after the request was approved, and the claimant used the time, until the end of the claimant's employment. The employer testified she knew of no efforts to rescind their approval of the claimant's request.

This Hearing Officer finds that for the employer to now deny the claimant the balance of her ETO after they acted contrary to their own policy by allowing the claimant to use some of her ETO during her period of notice – without her extending the period of her notice - is contradictory and not persuasive. The Hearing officer finds that the claimant detrimentally relied upon the employer's approval of her time off request and that the claimant remains entitled to the balance of her unused ETO.

This Hearing Officer finds the claimant met her burden to prove by a preponderance of evidence she is due wages in the form of her Earned Time Off in the amount of \$869.77.

DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:43 V requires employers to pay employees earned time when such a benefit is due and as this Department finds the claimant has proven by a preponderance of the evidence that she has not been paid all wages due, it is hereby rule that this Wage Claim is in the amount of \$869.77.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$869.77, less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

David M. Zygmunt
Hearing Officer

Date of Decision: March 30, 2018

Original: Claimant
Cc: Greater Nashua Mental Health Center, 100 West Pearl Street
Nashua, NH
Attention: Ellen Constant

DMZ/nm

Decision of the Hearing Officer
Chris Webby v. Zocalo Street Food Tequila