

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SAU 19 Goffstown School District

DECISION OF THE HEARING OFFICER

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

Employer: SAU 19 Goffstown School District, 11 School St, Goffstown NH 03045

Date of Hearing: March 27, 2018

Case No.: 56731

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$13,224 in unpaid sick pay for eighty-seven days of accrued sick time accrued as of his separation with the employer.

The employer denies the claimant is due the claimed sick pay as sick days are only paid out under certain circumstances, which the claimant did not meet. Further, the written layoff policy allows for the reinstatement of accrued sick time if an employee is rehired, which shows the district intends that accrued sick time is not paid out at separation.

FINDINGS OF FACT

The claimant worked for the employer for approximately eighteen years from 2001 through January 2018, when he resigned. At the time he resigned, he had accrued eighty-seven sick days.

The claimant argues he accrued the sick days and should receive payment for them. The policy does not specifically state that sick days are not paid out at the end of employment.

The employer argues that the sick day policy specifically outline the use of sick days, which the claimant agreed he did not meet upon his separation of employment. The employer has no history of ever making a payment of accrued sick days to any employee upon separation. Further, the layoff policy clearly indicates that the District does not intend to pay out accrued sick pay as rehired employees will have their accrued sick balances restored.

The claimant asked the employer specifically prior to his separation if he would be paid for accrued sick days and was told no. This same rationale was used with him during this explanation.

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 sick leave 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.

The claimant agrees he is aware of the written policy regarding sick time through the Master Agreement, though no signed documentation was submitted. The claimant did submit a copy of the sick pay practices with his wage claim.

The written plan states, in relevant part, "Sick leave may be used for an occasional illness, a doctor's appointment that cannot be scheduled outside the school day and up to five (5) days may be used per year to care for an immediate family member who is ill or injured. The sick leave accumulation cap is established and intended to act as an insurance to cover an employee who has a major illness or injury and is not yet eligible for long term disability." The written policy also states that sick time accumulates. The policy also does not contain any language specific to end of employment sick time provisions.

Though the policy does not state that sick time is forfeited upon separation from employment, it specifically notifies the claimant that sick time is to be used only in certain instances for himself or specified family member under certain circumstances. It also specifies that sick time accumulates, it does not accrue. The employer also provided credible testimony that the practice of the employer has been that sick time is forfeited at separation. Further, the layoff policy of the employer states that a recalled employee shall retain their previously accrued benefits such as sick leave and seniority, which shows that there is no intention to pay out accumulated sick leave to separating employees.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed sick pay under the written policy and practice of the employer.

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 sick pay 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 due any sick pay, it is hereby ruled that the Wage Claim is invalid.

Date of Decision: March 29, 2018

Original: Claimant
cc: Employer

MJD/nm