

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Gemini Screenprint LLC

DECISION OF THE HEARING OFFICER

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

Employer: Gemini Screenprint LLC, 149 Emerald St Ste N, Keene NH 03431

Date of Hearing: April 30, 2018

Case No.: 56880

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$499.80 for 35 hours at \$14.28 per hour, in unpaid vacation pay due upon his separation from employment. He further seeks liquidated damages.

The employer denies the claimant is due any vacation pay as he did not work the required 35-40 hours to be considered a full time employee. He only worked 29-30 hours per week on average.

FINDINGS OF FACT

The claimant worked for the employer from November 15, 2016 through January 8, 2018, earning a rate of \$14.28 per hour.

The claimant argues he had 35 hours of vacation pay accrued when he separated from employment on January 8, 2018, which he seeks as due.

The employer denies the claimant is due any vacation pay as he did not work the required 35-40 hours to be considered a full time employee. He only worked 29-30 hours per week on average. The employer concedes there are no written requirements to work 35-40 hours weekly to earn vacation time.

RSA 275:49 III requires the employer to make available to employees, in writing or through a posted notice, employment practices and policies with regard to vacation pay. Lab 803.03 (c) requires the employer to inform employees in writing of any change in vacation pay practices or policies prior to the effective date of the change.

The employer failed to notify the claimant in writing of any requirement to maintain 35-40 hours worked per week to receive vacation time.

Because the employer did not adequately notify the claimant in writing of any the terms and conditions in the vacation pay practice or policy, the Hearing Officer finds that the claimant testified credibly and persuasively that he was not told of any requirement to work 35-40 hours per week in the vacation pay practice or policy.

The employer's argument that the vacation policy is "use it or lose it" is not persuasive. The written policy does note that the vacation time resets each January 1, however, it does not notify the claimant that vacation time is forfeited upon separation.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed vacation pay under the existing written policy of the employer, in the amount of \$499.80.

The claimant seeks liquidated damages on these wages.

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 claimant made no argument regarding whether the employer willfully and without good cause withholding these wages.

The Hearing Officer finds that the employer held a genuine belief that the vacation pay was not due to the claimant because he did not work a full time schedule. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the employer should be liable for liquidated damages.

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 pay 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 he is due the claimed vacation pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$499.80.

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 failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$499.80, less any applicable taxes, within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: May 15, 2018

Original: Claimant
cc: Claimant's Attorney
Employer

[REDACTED]