

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**M&M Ford Inc**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** M&M Ford Inc, PO Box 490, Epsom NH 03234

**Date of Hearing:** July 2, 2018

**Case No.:** 57054

**BACKGROUND AND STATEMENT OF THE ISSUES**

This hearing was consolidated with another claim against the same employer. Separate decisions have been issued for each case.

The claimant asserts he is owed \$312.50 in unpaid wages for hours worked and \$600.00 in unpaid vacation pay which was due upon the closing of the employer in April 2018.

The employer agrees the claimant is owed the \$312.50 for unpaid wages, however, they do not have the funds to make payment. They deny the claimant is due any vacation pay pursuant to their written policy.

**FINDINGS OF FACT**

The employer ceased their business operations in May 2018.

The parties agree the claimant is due \$312.50 in unpaid wages.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed unpaid wages in the amount of \$312.50.

The claimant feels he is due the vacation pay he had on the books when the business closed, regardless of the written policy.

The employer argues they are not required to pay vacation pay as their written policy states, in relevant part, "If you are dismissed from the company you forfeit any unused vacation time."

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 vacation 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 employer's policy exempts them from paying vacation pay to the claimant under RSA 275:49.

The claimant offered, in his closing statement, that the employer had indeed issued a check for vacation pay to him, but had asked for it back as it was issued in error. This argument is not persuasive because the claimant did not offer this evidence as testimony and because the employer made an error and corrected it. Their error does not negate their written policy.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed vacation pay.

### **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 this Department finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$312.50.

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 failed to prove by a preponderance of the evidence that he is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$312.50, less any applicable taxes, within 20 days of the date of this Order.

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[REDACTED]  
Hearing Officer

Date of Decision: July 17, 2018

Original: Claimant  
cc: Employer  
Employer's Attorney