

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

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v.

MobilityWorks dba Ride-Away

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid personal time off (PTO)

Employer: MobilityWorks, LLC

Date of Hearing: June 7, 2018

Case No.: 57091

BACKGROUND AND STATEMENT OF THE ISSUES

The employer is a national provider of assisted mobility devices.

The claimant worked for the employer's local subsidiary Ride-Away. He was a technician servicing a range of the employer's mobility products.

Part of the claimant's compensation was receipt of paid time off (PTO).

The claimant argues he is owed the PTO he accumulated prior to separation. The employer holds their policy is not to pay out PTO at termination.

On the basis of the claimant's assertions he is owed unpaid wages in the form of unpaid PTO he filed a Wage Claim with the Department on April 24, 2018; a Notice of Wage Claim was forwarded to the employer on April 25, 2018. The employer's objection to the claim was received by the Department on May 1, 2018; a Notice of Employer's Objection was forwarded to the claimant on the same day. On May 7, 2018 the Departments received the employer's request for Hearing; on May 9, 2018 the claimant's request for a Hearing was received. Hearing notices were forwarded to the parties on May 9, 2018; accordingly a Hearing was held at the Department on June 7, 2018.

FINDINGS OF FACT

The claimant worked for the employer as a technician serving the employer's assisted mobility products.

The claimant earned \$22.40 per hour and paid biweekly.

The claimant resigned his position effective April 6, 2018.

The claimant had accrued thirty-two (32) hours of PTO prior to his resignation.

The claimant argues he is owed \$716.80 (32 x \$22.40 hourly rate-of-pay) for his accumulated PTO.

The employer holds the claimant's accumulated PTO is not paid out per company policy.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed 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 in-part that PTO, when such a benefit is a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, **when due** [emphasis added by this writer]. PTO only becomes wages "when due." "When due" is a reference to the contingencies specified in employers' policies.

The employer maintains a PTO policy. The employer's policy states in-part "Upon termination, employees are not paid for accrued but unused PTO unless otherwise required by applicable state law."

The claimant signed an acknowledgement of receipt of the employer's policy handbook that contains their PTO policy.

RSA 275:49 III and Lab 803.03 (d), (f) (6) require employers who offer benefits, like PTO, to have a policy in their regard in writing. However, the State of New Hampshire does not have labor law that requires employers to offer benefits.

This Hearing Officer finds the employer's use of the sentence "Upon termination, employees are not paid for accrued but unused PTO unless otherwise required by applicable state law" to be unambiguous.

This Hearing Officer finds the employer acted consistent with their policy and the requirements of RSA 275:43 V and Lab 803.03.

In the end it is the claimant's burden to prove by a preponderance of evidence that what he claims is true. This Hearing Officer finds the claimant was unable to do so.

Therefore, this Hearing Officer finds the claimant did not meet his burden to prove by a preponderance of evidence that he is owed wages in the form of unpaid PTO.

DECISION

Based on the evidence and testimony presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:43 V states that PTO, when such a benefit is a matter of employment practice or policy, or both, shall be considered wages when due, and as the Department finds the claimant did not prove by a preponderance of evidence that he is owed unpaid PTO it is hereby ruled this Wage Claim to be invalid.

Hearing Officer

Date of Decision: July 5, 2018

Original: Claimant

Cc: MobilityWorks, LLC