

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Odd Fellows Home, Inc., dba Presidential Oaks

DECISION OF THE HEARING OFFICER

**Nature of Dispute:** RSA 275:43 V - Unpaid Earned Time  
**Employer:** Odd Fellows Home, Inc., dba Presidential Oaks  
**Date of Hearing:** June 19, 2018  
**Case No.:** 57172

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant worked as a [REDACTED] for the employer beginning in [REDACTED], 2009. The employer is a provider of elder services.

The claimant provided the employer a notice of her resignation after learning she would soon be scheduled to work twelve (12) hour shifts

The employer made changes to their benefit policy effective May 1, 2018, changing the conditions for the pay-out of employees' earned time.

The employer holds the claimant is only eligible for the earned time she accumulated according to the updated benefit policy.

The claimant argues she is entitled to the earned time she accumulated as set-forth in the employer's policy in effect prior to the implementation of the version that became effective May 1, 2018.

On the basis of the claimant's assertions she is owed wages in the form of accumulated earned time, she filed a Wage Claim with the Department on May 10, 2018; a Notice of Wage Claim was forwarded to the employer on May 11, 2018. The department received the employer's objection on May 15, 2018. A Notice of Employer's Objection to Wage Claim was forwarded to the claimant on May 16, 2018. The claimant requested a Hearing on May 23, 2018; Notices of Hearing were forwarded to the parties on May 30, 2018 and accordingly a Hearing on the matter was held at the Department on June 19, 2018.

Both parties participated telephonically.

The claimant modified her claim amount at the Hearing to \$3,036.34, crediting receipt of the employer's partial payment of \$1,043.66 prior to the Hearing.

### FINDINGS OF FACT

The claimant earned \$27.20 per hour and a shift differential of \$29.20

The claimant resigned her position giving a two (2) week notice on April 23, 2018 to be effective May 7, 2018 after being informed by the employer she would be expected to work twelve (12) hour shifts beginning May 13, 2018.

The claimant argues she had accumulated one hundred fifty (150) hours of earned time prior to her separation from employment. The employer calculated her accumulated earned time to be one hundred fifty three and one-half (153.50) hours.

The employer's earned time policy prior to May 1, 2018 states in-part: "When you resign your position (including changing to a non-benefited position) you must provide and work the requested Advance Notice to receive accrued Earned Time.

The employer made changes to their benefit policy effective May 1, 2018. The claimant acknowledged, in writing, receipt of these changes made to the employer's benefit policy.

### 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 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 holds she is owed the earned time she accumulated according to the employer's policy that was in effect prior to the update that became effective May 1, 2018.

The employer argues the claimant acknowledged the update to the benefit policy and therefore her accumulated time is subject to the conditions set forth in their updated version.

RSA 275:43 V states in-part that earned time, 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]. Earned time only becomes wages "when due." "When due" is a reference to the contingencies, or rules, specified in employers' policies.

In both versions of the employer benefit policy the employer set forth the conditions of how employees earn and use their accumulated earned time as well as specifying the status of the earned time upon separation. The employer's benefit

practices are consistent with RSA 275:49 which requires employers to inform employees in writing, as to their employment practices and policies with regard to vacation pay, sick leave, and other fringe benefits.

Lab 803.03 (e) states in-part:

Pursuant to RSA 275:49 fringe benefits earned, accrued, or vested prior to any changes made prior to changes in the employer's benefit policy ***shall not lapse due to the change*** (emphasis this writer's).

Pursuant to RSA 275:49 and Lab 803.03 employers are precluded from making changes to their benefit policies that would be retroactive. Whatever benefit an employee earns is subject to the specific conditions set forth in the policy in effect at the time the benefit is earned.

Therefore, this Hearing Officer finds the claimant is owed additional earned time conditional upon the employer's policy in effect at the time she earned the benefit.

The employer reported the claimant had accrued more time, one hundred fifty three and one-half (153.50) hours than what the claimant argued, one hundred fifty (150) hours. The claimant used her rate of pay of \$27.50 to factor her claim amount of \$4,080.00. Using the employer's record of one hundred fifty three and one-half (153.50) hours of earned time as the claimant's balance at separation, the original claim amount should have been one hundred fifty three and one-half (153.50) hours multiplied by a factor of an hourly rate of pay of \$27.50, or  $153.50 \times \$27.50$ , or \$4,221.25. Less the employer's payment of \$1,043.66 ( $\$4,221.25 - \$1,043.66$ ) this Hearing Officer finds the claimant is owed an additional \$3,177.59 in accrued time.

Therefore, this Hearing Officer finds the claimant met her burden to prove by a preponderance of evidence that she is owed wages in the form of unpaid earned time in the amount of \$3,177.59.

## 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 earned time, when such a benefit is a matter of employment practice or policy, or both, shall be considered wages when due, and as Lab 803.03 (e) states pursuant to RSA 275:49 fringe benefits earned, accrued, or vested prior to any changes made prior to changes in the employer's benefit policy shall not lapse and as the Department finds the claimant proved by a preponderance of evidence she is owed unpaid earn time in the amount of \$3,177.59, it is hereby ruled this Wage Claim to be valid.

The employer is hereby ordered to send a check to this Department, payable to ██████████ in the total of \$3,177.59, less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

Decision of the Hearing Officer

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██████████  
Hearing Officer

Date of Decision: July 19, 2018

Original: Claimant

Cc: Odd Fellows Home