

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

v.

Taylor Community

DECISION OF THE HEARING OFFICER

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

Employer: Taylor Community

Date of Hearing: June 25, 2018

Case No.: 57202

BACKGROUND AND STATEMENT OF THE ISSUES

The employer is a provider of elder care residential services.

The claimant worked in the facility's activities department as an Activity Assistant.

The current issue concerns alleged unpaid accrued vacation time; the claimant argues she is owed \$2,213.64

The employer holds the claimant is not eligible for a payout of her accrued vacation time consistent with their policy.

On the basis of the claimant's assertions she is owed unpaid wages she filed a Wage Claim with the Department on May 16, 2018; a Notice of Wage Claim was forwarded to the employer on May 17, 2018. The employer's objection was received by the Department on May 23, 2018. The claimant requested a Hearing on May 30, 2018. Notices of Hearing were forwarded to the parties on June 6, 2018. Accordingly a Hearing was held at the Department on June 25, 2018.

FINDINGS OF FACT

The claimant worked as an Activities Assistant for the employer for approximately five years, she earned \$14.19 hourly and paid biweekly.

The employer provided a chronology of documentation that reflects a pattern of concern with the claimant's work that was not changing. As a result, the employer terminated the claimant's employment on February 26, 2018.

The claimant submitted a number of letters of support from resident's families.

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 156.16 hours in accumulated vacation time she earned, valued at \$14.19 per hour, for a total amount due of \$2,213.64.

The State of New Hampshire does not require employers to offer benefits to their employees and if they do, does not require employers to implement specific terms or guidelines. However, *if* the employer offers benefits to employees a thorough description of how employees earn them, how employees are able to use them, what happens to any accrual at separation as well as any other stipulations the employer decides to include.

RSA 275:49 requires employers, in-part, to inform employees in writing, as to their employment practices and policies with regard to vacation pay and other fringe benefits.

The employer has a policy that describes employee's eligibility for the employer's benefit policy. The employer's benefit practices are consistent with RSA 275:49

RSA 275:43 V states in-part that vacation pay, 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].

Vacation time only becomes wages "when due." "When due" is a reference to the benefit guidelines specified in employers' policies.

The employer testified the claimant was discharged *for cause*, and therefore, consistent with their policy, she is ineligible for a payout of her accrued vacation time.

The employer's policy states, in-part, "After separation and the final payout of final wages, accrued and unused vacation hours will be paid out, except if separation is from misconduct, as determined by Taylor Community."

The current standard for a "for cause" termination is established by Lakeshore Estates Associates LLC v Michael F. Walsh (Belknap Superior Court No. 06-E-259, April 4, 2007). The Decision sets the standard as, articulated at 82 Am. Jur. 2D *Wrongful Discharge* § 183 (2003), which provides that an employer may dismiss an employee "for cause" if the employee engages in misconduct. An employee's misconduct must comprise reasonable grounds for termination, and the employee must have received notice, express or fairly implied, that such misconduct would be grounds for termination. 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003); see also *Lowell v U.S. Sav Bank*, 132 N.H. 719, 726 (1990) (an employer must offer an employee a proper reason for a "for cause" dismissal). In reviewing a "for cause" dismissal, "the fact finder must focus not on whether the employee actually committed misconduct, but rather on whether the

employer reasonably determined it had cause to terminate." 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003)."

This Hearing Officer finds the employer reasonably determined they had cause to terminate the claimant's employment as evidenced by the numerous documents that chronicled their issues with the claimant. The employer's policy stipulates that if a worker's employment is terminated for "cause," the employee is ineligible for a payout of their accrued vacation time.

It is not this Hearing Officer's role, or intention, to pass judgement on the claimant's commitment to the residents she served. It is clearly evident by the claimant's witness's testimony and the letters the claimant submitted from resident's families that her commitment to the residents she cared for was sincere.

In the end it is the claimant's burden to prove by a preponderance of the evidence that she is owed additional wages in the form unpaid vacation time; it is this Hearing Officer's finding the claimant was unable to do so.

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 279:43 V considers vacation time to be wages when due, and as this Department finds the employer reasonably found they had reason to terminate the claimant's employment, and as this Department finds the employer acted consistent with their policy by not paying out the claimant's accrued vacation time, and as the Department finds the claimant did not meet her burden to prove by a preponderance of evidence she is owed the claimed unpaid vacation time, it is hereby ruled this Wage Claim to be invalid.

Hearing Officer

Date of Decision: July 25, 2018

Original: Claimant
Cc: Taylor Community