

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



V

**Compass Innovative Behavior Strategies LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay (paid time off –PTO)  
RSA 275:44 IV liquidated damages

**Employer:** Compass Innovative Behavior Strategies LLC

**Date of Hearing:** October 4, 2018

**Case No.:** 57573

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$274.68 in unpaid wages for 19.62 hours at a rate of \$14 per hour which were shorted to her during her employment and \$416.64 in unpaid Paid Time Off (PTO) pay for 29.76 hours at a rate of \$14 per hour due upon her separation. She further seeks liquidated damages.

The employer denies the claimant is due any further wages. She received wages as a result of an audit by this Department. She is not due any PTO pay per their written policy.

**FINDINGS OF FACT**

The claimant worked for the employer from April 2017 through April 13, 2018, when she resigned. Her rate of pay was \$14.

The claimant argues she was shorted hours by the employer during the course of her employment and that they owe her \$274.68 in unpaid wages for 19.62 hours. She previously submitted copies of her calendar of scheduled hours. She further notes her checks were wrong approximately 25% of the time. She also acknowledges the employer had cash flow issues. She agrees that one of the dates claimed for payment was paid through the Department of Labor audit and is not included in the total for today's claim.

The employer argues that the claimant was paid for all time worked. They had also been audited by this Department and found to owe the claimant wages, which they paid in full.

The claimant also seeks payment for 29.76 hours of accrued but unused PTO due upon her separation. She acknowledges she did not work out her complete notice, but argues she had a family emergency, which was unavoidable.

The employer argues their written policy, Defendant's Exhibit #1, states, in relevant part, "Payment of unused paid time off. Employees who retire or resign with required minimum notice (see Section 10.4 Termination), will be paid for all unused, accrued PTO. PTO cannot be paid out while employed. It is expected that a terminating Employee will work the entire time designated by his or her notice, at the convenience of the company, without using PTO.

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 properly noticed the claimant of the policies relating to PTO pay, including a notice that it is expected an employee will work the full resignation notice without using PTO time. The claimant signed an acknowledgement on December 7, 2017. The employer provided credible testimony that this policy was in effect for the entirety of the claimant's employment.

The claimant made a written claim for liquidated damages, but she did not make an argument for them.

The employer argued they paid all wages due and PTO was not paid pursuant to their written policy. Therefore, no liquidated damages are appropriate.

### **CONCLUSIONS**

The claimant's argument she was not paid for all time work is not persuasive. She provided copies of her scheduled work time, not the actual hours she submitted for payment. While the employer's argument that they had been audited and these wages claimed today, save one instance, were not cited by this Department, is not an absolute defense, it is found persuasive in light of the totality of the testimony and evidence presented at the hearing by both parties.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed wages.

As the employer properly noticed the claimant she was expected to work out her full resignation notice period and she acknowledges that she did not, the Hearing Officer finds the claimant failed to prove she is due the claimed PTO under the written policy of the employer.

As no wages are found to be due, liquidated damages cannot be awarded. However, even if wages had been found to be due, the claim for liquidated damages would have failed.

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 employer held a genuine belief that no wages or PTO were due to the claimant and the claimant acknowledged the employer had cash flow issues. Even if an award of these wages had been found through this Decision, the claimant would not have been able to prove the employer had knowledge of the obligation or the financial ability to pay.

### **DECISION**

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 failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers vacation pay (PTO) 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 she is due any vacation pay (PTO), it is hereby ruled that this portion of the Wage Claim is invalid.

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.

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Hearing Officer

Date of Decision: October 12, 2018

Original: Claimant  
cc: Employer