

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



V

**Janos Technology, a subsidiary of Fluke Electronics Corp**

**DECISION OF THE HEARING OFFICER**

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

**Date of Hearing:** December 5, 2018

**Case No.:** 57779

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserted, through the filing of his Wage Claim, that he was owed \$11.40 in unpaid wages for hours worked on August 8, 2018 and \$676.86 in unpaid vacation pay for 29.7 hours accrued when he resigned his position.

At the hearing, the claimant removed the claim for unpaid wages and chose to continue with the claim for unpaid vacation pay.

The employer denies the claimant is due any vacation pay under their written policy.

**FINDINGS OF FACT**

The claimant worked for the employer from January 2008 to August 2018 when he resigned.

The claimant argues he was due his accrued vacation pay upon his separation from employment. He presented a vacation policy, which he agrees had been replaced with a new policy, previously submitted, which states accrued but unused vacation time will be paid to separating employees who have greater than six months of continuous service.

He also argues that the new vacation policy states that "If associates leave the company voluntarily or involuntarily, they will not be paid out any unused vacation allowance, except in states that require. The claimant argues that he was aware of this policy and that it was in effect, but he was "under the impression" that New Hampshire law requires employers to pay out accrued but unused vacation time.

The employer stands on their written policy which clearly notified the claimant that no vacation payments are made upon separation from employment. They expressed distress that the claimant was confused by an old outdated policy.

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 noticed the claimant of the new vacation policy which became effective January 1, 2015, which clearly specified that vacation payments are forfeited upon separation.

The claimant's argument that he was "under the impression" that New Hampshire law requires employers to pay out accrued but unused vacation time is not persuasive.

RSA 275:49 III allows an employer to determine their policy as it relates to vacation time pay, including if any payment is due at separation. The employer specifically notified the claimant that no payments are made for vacation time at separation.

### **CONCLUSIONS**

Because the employer properly notified the claimant that vacation pay is forfeited upon separation from employment, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed vacation pay under their written policy.

### **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 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.

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Hearing Officer

Date of Decision: December 13, 2018

Original: Claimant  
cc: Employer