

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

[REDACTED]

**v.**

**Bedford Nursing & Rehab Center**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I Weekly, Unpaid Wages  
RSA 275:43 V Weekly, Unpaid Earned Time Pay

**Claimant:** [REDACTED]

**Employer:** Bedford Nursing & Rehabilitation Center

**Date of Hearing:** October 23, 2018

**Case No.:** 57788

**BACKGROUND AND STATEMENT OF THE ISSUES**

The employer provides residential nursing and rehabilitation care.

The claimant is a registered nurse who worked as a Weekend Clinical Supervisor for the employer.

The current issue concerns alleged unpaid earned time upon separation for which the claimant is seeking \$1,946.84.

The employer holds that, per company policy, the claimant is not owed the earned time she claims.

On the basis of the claimant's assertions she is owed payment for earned time she filed a Wage Claim with the Department on August 31, 2018. A Notice of Wage Claim was forwarded to the employer on September 4, 2018. The employer's objection was received on September 12, 2018 and a Notice of Employer's Objection was forwarded to the claimant this same date. On September 17, 2018 the claimant requested a Hearing. Hearing Notices were forwarded to the parties on October 2, 2018. Accordingly a Hearing was held at the Department on October 23, 2018.

**FINDINGS OF FACT**

The claimant worked for the employer from August, 2016 through her effective resignation date of August 17, 2018. She earned \$30.73 per hour and paid biweekly.

The employer maintains a written policy regarding their employees' earned time.

The claimant acknowledged signing a receipt for the handbook that contains the employer's policy regarding earned time. She testified she did not read it, but then testified she read some and the parts she did read were left to interpretation, particularly the word "terminated" in the earned time policy section.

Two bullet points in the employer's policy handbook where earned time is discussed under "Earned Time Off Benefits" / "How does it work?" read: "You will not be paid for earned time off during your notice period, after you give notice of separation" and "Upon termination, any unused earned time off will be forfeited."

Part of the claimant's duties as the Weekend Clinical Supervisor was to provide the employer's policy handbook to new staff. She testified she directed questions from the new employees regarding the policy handbook to human resources personnel.

## **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.

There is no New Hampshire Labor Law that currently exists that requires employers to offer paid earned time off (or any other benefit) to employees. However, if earned time (or any other benefit) is offered, the employer is required to comply with RSA 275:49. This statute reads in-part: "III. Make available to his or her employees in writing or through a posted notice maintained in a place accessible to his or her employees employment practices and policies with regard to vacation pay, sick leave, and other fringe benefits;" and with Lab 803.03 (b) which reads in-part: "Every employer shall 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 employee's expenses, pension and all other fringe benefits per RSA 275: 49." The employer maintains a written policy regarding earned time as required by RSA 275:49.

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. Earned time only becomes wages "when due." "When due" is a reference to the relevant contingencies specified in the employer's policy.

The claimant signed an acknowledgment of receipt of the employee's handbook as well as agreeing that it was her responsibility to read and understand the handbook and discuss any questions in its regard she may have with the employer. The claimant also acknowledged that it was part of her job on weekends to give the employer's handbook to new staff.

The claimant's arguments that she did not read the employer's policy regarding the status of employees' earned time upon termination of employment, even though she signed an acknowledgement that she did just that, nor did she have the opportunity to read the employer's policy when she provided it to new staff on weekends are not persuasive.

The claimant testified she found the employer's use of the word "termination" in their policy to be vague. It is this Hearing Officer's experience that the use of the term "termination" in the current context is an all-inclusive convention to describe the end of employment for whatever reason.

It is this Hearing Officer's reading of the employer's policy where the sentences: "You will not be paid for earned time off during your notice period, after you give notice of separation" and "Upon termination, any unused earned time off will be forfeited" when taken together, provide a context for the word "termination" to be synonymous with "separation." The claimant's argument that the employer's policy regarding earned time off is left up to interpretation is not persuasive.

Therefore, this Hearing Officer finds the claimant was unable to meet her burden to prove by a preponderance of evidence that she is owed additional wages in the form of accrued earned time.

### **DECISION**

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee at no cost to the employee and as RSA 275:43 V regards earned time to be wages when due and as this Department finds that the claimant did not prove by a preponderance of evidence that she is owed unpaid wages in the form of earned time, it is hereby ruled that this Wage Claim is invalid.

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Hearing Officer

Date of Decision: December 3, 2018

Original: Claimant

Cc: Bedford Nursing & Rehab Center  
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