

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Southeastern New Hampshire Alcohol & Drug Services

DECISION OF THE HEARING OFFICER

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

Date of Hearing: November 1, 2018

Case No.: 57814

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$7,249.75 in unpaid vacation pay for the banked vacation amount of 141:39 hours/minutes and the vacation accruals she did not receive of 21:27 hours/minutes, all at a rate of \$44.57 per hour, which she believes was due upon her separation from employment.

The employer denies the claimant is due any further wages.

FINDINGS OF FACT

The claimant worked for the employer as the Executive Director from June 2016 through September 13, 2018, as a bi-weekly salaried employee. She performed no work for the employer after August 14, 2018 and through her official separation date of September 13, 2018. She earned a bi-weekly rate of \$3,565.38, or \$44.57 per hour based on eighty hours of work for the bi-weekly period.

The claimant provided her resignation from employment to the employer on August 3, 2018, while she was out of work on medical leave. Her intended last day of work was September 13, 2018.

She returned to work from medical leave on August 14, 2018. The employer called a meeting with the claimant on that date and it was determined it would be best for the claimant not to return to work and that was her last day of work performed. Her "second in command" had been in charge during her medical absence and the claimant agreed it would be confusing for other employees for her to return to work only to leave a few weeks later. She advised the employer to hire this individual into her vacant position. It was agreed the claimant would remain an employee through September 13, 2018, and the employer did continue her health insurance through that date.

The claimant used 24 hours of vacation around Labor Day weekend.

The claimant argues the employer also agreed she would be a full time salaried employee receiving her regular salary through September 13, 2018. As such, the claimant argues that the employer wrongly used her earned vacation pay to her salary from August 15, 2018 through her separation date of September 13, 2018, when they should have paid her regular salary. She then should have received payment for her full earned vacation bank of 141:39 hours/minutes at her separation on September 13, 2018.

The employer disagrees that they told the claimant she would receive her full salary as full time salaried employee through September 13, 2018.

She performed no work after August 14, 2018, and the employer used a combination of the vacation time in her bank and "severance pay" because ultimately her vacation time was not enough to cover the value of her salary through September 13, 2018. The employer paid the claimant a total of 153 hours of vacation pay, in excess of the 141:39 hours/minutes of vacation pay she had in her bank. They covered the remaining time through her resignation date as "severance" on the final pay stub, though there was no formal severance agreement. The severance payment equaled 24:00 hours, which is greater than the claimed vacation accruals of 21:27 hours/minutes.

The parties did not have a written agreement to continue the claimant's salary through her resignation date of September 13, 2018.

The claimant agrees that she received the full payment of the bank of her earned vacation bank of 141:39 hours/minutes, though she feels it was paid in error.

Further, the employer argues that the claimant was not due any accruals for vacation pay after she submitted her resignation as she was not regularly scheduled to work full time hours, as required by the written 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 properly noticed the claimant of the vacation policy.

The employer previously provided two policies, both effective April 1, 2016, a Definition of Employment Status, which defines as Full-Time Employee as Employees who work 40 hours per week and who maintain continuous regular employment status; and a Vacation Benefits policy which states, in relevant part, "SENHS will award vacation benefits to full-time employees who are hired and scheduled for 20 or more hours of work per week. " and "Vacation will be accrued at the end of each two-week pay period. Vacation is pro-rated is based on the employee's regularly scheduled hire hours."

The claimant also previously provided a vacation policy from July 1, 1998, revised January 6, 2006, which was not in effect during the claimant's tenure.

Because the claimant provided notice of her intent to resign from employment on August 3, 2018, pursuant to the most current written policy, her status changed on that date from a full time employee who works 40 hours per week and who maintains continuous regular employment status, to an employee who did not maintain a regular employment status. Further, between August 3, 2018 and September 13, 2018, she only worked on August 14, 2018, she was not scheduled to work any additional hours after that date or through the end of her employment on September 13, 2018. Therefore, she is not due any vacation accrual after August 3, 2018. As vacation is accrued at the end of the pay period, she was not due any vacation accruals for the pay period ending August 9, 2018, as the policy does not provide for a proration of accruals for portions of the pay period for a change in status.

CONCLUSIONS

The claimant agreed she received her vacation pay bank in full, though she feels it was paid in error. She also had planned vacation days, 24 hours, around Labor Day weekend. As she received the full amount of the vacation pay, as evidenced by her pay stubs, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed earned vacation bank.

The employer notified the claimant, in writing, that she was not eligible for vacation accrual if she did not maintain her full time status and a regular schedule of hours. She provided her resignation on August 3, 2018, which changed her status on that date. She is not due any vacation accrual after that date and as the vacation accrues at the end of the pay period and the policy does not provide that accruals for the pay period can be prorated based on status change, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed vacation accrual.

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 she is due any claimed vacation pay or accruals, it is hereby ruled that the Wage Claim is invalid.

████████████████████
Hearing Officer

Date of Decision: November 26, 2018

Original: Claimant
cc: Claimant's Attorney
Employer

MJK/so