

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



V

**Rockingham Turf Care, Inc.**

**DECISION OF THE HEARING OFFICER**

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

**Date of Hearing:** January 3, 2019

**Case No.:** 58067

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$4,000 in unpaid vacation pay.

The employer denies the claimant is due any vacation pay as it is not accrued and is to be used during the winter off season.

**FINDINGS OF FACT**

The claimant worked for the employer from May 1, 2018 through October 12, 2018, when he was terminated. He was a salaried employee earning a weekly salary of \$1,000.

The employer runs a seasonal business with the main work between April and November, weather permitting. Reduced hours are worked during the off season.

The claimant argues he was offered four weeks of vacation pay as part of his compensation package and claims it is due upon his separation from employment.

The employer argues the vacation pay is clearly written as "vacation days are not accrued". The days are to be used during the slow winter months as a "reward" for good work during the year.

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 notified the claimant that the vacation days are not accrued in his May 1, 2018, offer letter, signed by the claimant. Additionally, the form notices the four weeks' vacation under the Dec-March timeframe.

The plain reading of the May 1, 2018, notifies the claimant that vacation pay does not accrue to his benefit as a vested right and is only to be used during a specific timeframe of December to March. The claimant separated from employment October 12, 2018.

The claimant's argument that the four weeks' vacation is part of his compensation package and is now due is not persuasive in light of the written notice to the contrary.


### **CONCLUSIONS**

Because the employer properly notified the claimant that the vacation time does not accrue and is time off during December through March only, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed vacation pay under the written policy of the employer.

### **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 the Wage Claim is invalid.

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Hearing Officer

Date of Decision: January 7, 2019

Original: Claimant  
cc: Employer