

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Allied Universal LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:44 IV liquidated damages

Date of Hearing: January 17, 2019

Case No.: 58169

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$500 in unpaid vacation pay which was due to him after one year of service with the employer. He also seeks liquidated damages on these wages.

The employer denies the claimant is due any further vacation pay pursuant to their written policy.

FINDINGS OF FACT

The claimant worked for a prior employer who acquired the client location of his work around August 2017. He is an hourly employee earning a rate of \$12.50.

The claimant remains employed with the current employer as of the date of the hearing.

The claimant argues he was verbally promised one week, or forty hours, of vacation pay and a raise to \$12.50 per hour for staying on with the new employer in August 2017. He received the promised raise. He seeks payment for the one week of vacation pay of \$500.

The claimant received a payout of vacation time, or "buy back", of 13.8 hours, or \$172.50, pursuant to his request on October 3, 2018.

The employer argues the claimant is not due the vacation pay as claimed under the written policy of the employer.

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 presented an electronic signature from the claimant for the policies and procedures of the employer, dated August 30, 2017. The claimant argues he did not "sign" any documentation and was not aware of any policies therein.

Neither party presented a complete copy of the written vacation policy. Understandably, the partial portions submitted were difficult to follow without all the information.

Because no complete copy of the policy was submitted, the Hearing Officer cannot determine if any payment is due.

Even if the claimant had proven he had been due a payment for a week of vacation, or forty hours, he had received a payout for 13.8 hours of vacation pay, or \$172.50, which would leave a maximum balance of 26.2 hours, or \$327.50.

DISCUSSION

As no wages were found to be due, no liquidated damages can be assessed. Because the claimant is still employed, the statute is not applicable as it relates to final wages only.

CONCLUSIONS

As the Hearing Officer was unable to determine if any vacation pay is outstanding to the claimant, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages.

Because no wages are found to be owed, no liquidated damages can be awarded.

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.

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.

Hearing Officer

Date of Decision: January 28, 2019

Original: Claimant
cc: Employer