

applications with respect to vacation pay, sick pay and personal time. Documentation of the policy was provided. The employer's written submittal shows the details of the PTO policy.

Regarding the claim for one week's wages, the employer's testimony and written submittal was that the payroll system is one week in arrears, meaning that the claimant was paid on March 18, 2022 for the week ending March 11, 2022 (the claimant resigned on March 10, 2022). The claimant did not contradict that testimony.

Regarding vacation pay, the PTO policy clearly states that employees are only eligible for one week of vacation pay *after* completion of 1 year of service. The claimant did not contradict the documentation.

Regarding sick pay, the policy clearly states that an employee can accrue 4 sick days per year and that unused sick days cannot be carried into the next year. The documentation shows that the claimant accrued two sick days and used them both. The claimant did not contradict the documentation.

Regarding personal days, the policy indicates that employees are given one personal day annually. The employer documentation showed that the claimant was paid for one personal day.

The claimant attempted to introduce a text message in Spanish from someone she claimed was the company HR representative. The employer testified that the person issuing the text message was not the HR representative but the claimant's immediate supervisor. The employer's representative translated the message at hearing. The message apparently indicated that the manager was referring the claimant's request regarding PTO to the employer's HR department who may or may not grant the request. The claimant did not contest the employer's translation of the text message.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that she is owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

RSA 275:43 I requires that an employer pay all wages due an employee within 8 days of the expiration of the work week.

RSA 275:43 I provides, in pertinent part:

- I. Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis,

or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis...

Here the claimant was paid her last week of wages in the regular pay cycle on March 18, 2022. It is found that the claimant is not owed wages.

Under RSA 275:43 V, "Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, *when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due*" (emphasis added).

In this matter the claimant credibly testified that she was employed by the employer. However, her testimony that she was owed PTO is not credible. The claimant's assertion that the employer's PTO policy guaranteed PTO regardless of tenure or accrual is not supported by documentation. The claimant's assertion that the employer's PTO policy allowed for payment of awarded and unused PTO upon resignation is not supported by documentation and is not credible.

The claimant was employed by the employer from April 19, 2021 to March 10, 2022, less than one year. It is found that the claimant was not eligible for vacation pay because she had not completed one year of service.

The employer's assertion that sick time and personal time are accrued is credible. The employer's assertion that the claimant was paid for all accrued time due is credible and was not contested by the claimant.

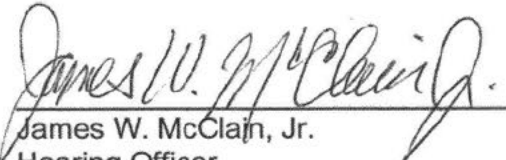
The claimant has not shown that she was owed PTO to be paid out upon resignation. Therefore, it is found that the claimant is not entitled to wages, vacation, sick or personal paid time off.

DECISION

Based on the testimony and evidence presented, this Department finds the claimant has not met her burden to prove by a preponderance of evidence that she is owed additional wages or PTO.

It is hereby ruled that this Wage Claim is **invalid**.

June 22, 2022
Date of Decision


James W. McClain, Jr.
Hearing Officer

JWM/cb