

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE



v.

Queen City Bicycle Collective

Case #102187

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, pro se  
Amy Easterly, Peter Tamposi, for the Employer,

**NATURE OF DISPUTE:** RSA 275:43 V - Weekly, Unpaid (Vacation Pay/Sick Pay/Personal Day Pay) PTO  
RSA 275:44 IV – Employees Separated from Payroll Before Pay Days, Liquidated Damages

**DATE OF HEARING:** June 15, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a wage complaint on May 2, 2022, alleging unpaid accrued paid time off due on separation. Specifically, the claimant seeks compensation for 24 estimated hours of paid time off (PTO) in the amount of \$576.00. Notice of claim was sent to the employer on May 4, 2022. The employer filed a response with exhibits May 23, 2022. The hearing notice was issued May 25, 2022.

**FINDINGS OF FACT**

The following findings are based on the testimony of the claimant, exhibits offered by both parties, and matters of record in the Department file.

The claimant was the full time executive director of the Queen City Bicycle Collective from March 14, 2022 to April 29, 2022, when she was terminated. The claimant's letter of employment indicates her salary was \$1,920.00 biweekly. The employer testified that the claimant was terminated because she was not working 40 hours per week as the employer expected. The claimant testified that she was not told she had to work 40 hours every week. The letter of employment includes the words "full time" but does not indicate the claimant had to work 40 hours per week.

The parties agreed that, except for the first week in which the claimant worked 49 hours, the claimant did not work 40 hours per week. The claimant worked 240.5 hours out of an expected 280 in her seven-week tenure with the employer. The parties agreed that the claimant was paid her full salary.

The employer submitted the claimant's calendar and time sheets. While the calendar has many notes reading "██████████ unavailable", "██████████ physically not in office" and "██████████ out of office", there are no notes indicating the claimant used PTO. The time sheets do not indicate the claimant used PTO.

The claimant did not receive a cash payout for the accrued PTO. She believed she was entitled to one, so she filed the instant claim. The employer's paid time off policy (PTO) indicates that the claimant was accruing 16 hours per month in PTO. The policy also specifically notes:

"unused PTO, (sic) from last 4 pay periods can be paid out if employment is terminated".

The claimant argued that the 24 hours PTO she seeks is an estimate and the employer failed to pay her the PTO within 72 hours of her termination. Therefore, the claimant seeks liquidated damages. The claimant argued at hearing that the employer also failed to pay her full biweekly salary during her last pay period. However, the claimant failed to notice that issue for the hearing. That issue was not considered by the hearing officer.

The employer argued that the 39.5 hours the claimant was paid for and did not work during her tenure constituted usage of PTO and exceeded her PTO accrual. Therefore, the claimant is not owed PTO or liquidated damages.

## DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that she was owed unpaid wages, *i.e.*, unused PTO on separation. 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 V provides that,

"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."

Under RSA 275:44 I,

*"Whenever an employer discharges an employee, the employer shall pay the employee's wages in full within 72 hours"* (emphasis added).



Under RSA 275:44 IV,

"If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such *employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller;*" (emphasis added).

The employer paid the claimant her full salary knowing that the claimant did not work 40 hours per week. The employer offered no evidence that the employer had requested the claimant work 40 hours per week. The employer's evidence indicates that the claimant did not use PTO nor did the employer contemporaneously classify any of the claimant's time out of the office as PTO.

It is not contested that the claimant accrued PTO. It is not contested that the employer had a policy of paying out unused PTO pay upon termination from employment. It is not contested that the claimant was not paid her accrued PTO within 72 hours of termination. It is also not contested that the employer failed to pay the claimant her accrued PTO to recoup some of the salary the employer had paid the claimant.

The employer violated its own policy regarding payment of PTO to terminated employees. Therefore, the employer did willfully and without good cause fail to pay the claimant within 72 hours as required under RSA 275:44 IV. The claimant is entitled to compensation for 24 hours of PTO and an equivalent amount in liquidated damages.

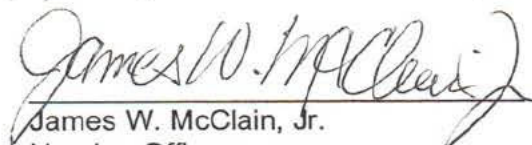
The claimant argued at the hearing that the employer also failed to pay her full biweekly salary during her last pay period. However, the claimant failed to notice that issue for the hearing. Therefore, that issue was not considered by the hearing officer.

### DECISION

The employer had a policy of paying out unused PTO upon termination and failed to apply it to the claimant. Under these circumstances, it is ruled that the claimant remained subject to the policy. Under the terms of that policy, she was entitled to a vacation payout of 24 hours at her hourly rate of \$24.00, totaling \$576.00. The claimant is also awarded \$576.00 in liquidated damages.

The employer is hereby ordered to send two checks to the Department of Labor payable to ██████████. One in the amount of \$576.00, less applicable deductions, for the PTO and one for \$576.00 for the liquidated damages. Both checks are to be sent together within 30 days of the date of this Order.

July 7, 2022  
Date of Decision

  
James W. McClain, Jr.  
Hearing Officer