

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Ossipee Concerned Citizens

Case No. 102888

DECISION OF THE HEARING OFFICER

**APPEARANCES:** [REDACTED] Claimant  
Misty Ryder, for Employer

**NATURE OF DISPUTE:** RSA 275:43 V — Weekly, Unpaid (Vacation Pay/Sick Pay/Personal Day) PTO

**DATE OF HEARING:** August 22, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a wage claim on June 30, 2022, alleging that she was owed \$1,120.00 in unpaid vacation time. Notice of the claim was sent to the employer on July 1, 2022. The employer responded July 6, 2022. The claimant requested the hearing July 14, 2022. The hearing notice was issued July 22, 2022.

**FINDINGS OF FACT**

The following findings are based on testimony and matters of record in the Department file.

The claimant is a woman who resides in Ossipee, New Hampshire. The employer is a social service agency based in Ossipee, New Hampshire. The claimant testified that she was employed for almost 3 years by the employer as an associate day care teacher and was paid \$16.00 per hour. The claimant's wage claim documentation and testimony indicate that the claimant believes she is owed 80 hours in vacation time for a total of \$1,120.00. The arithmetic is incorrect. Multiplying \$16.00 by 80 equals \$1,280.00.

The claimant testified that she gave her two week notice on September 16, 2021. The claimant was terminated for cause on September 20, 2021. The claimant and employer testified that the employer had a paid time off (PTO) policy whereby 2 weeks' vacation was awarded to the employee on January 1 of each year. The claimant and the employer testified that the policy provided that any unused vacation time would be paid

to the employee upon separation regardless of the reason. Documentation of the policy was provided.

The claimant testified that she was owed 80 hours vacation time. The claimant submitted payroll documentation that showed she had 80 hours vacation time in May 2021 and had 40 hours vacation time as of September 20, 2021. The claimant testified that the payroll records were wrong. The claimant's wage claim and testimony were that she had never taken a vacation in three years. The claimant offered no evidence for this assertion.

The employer testified and offered evidence that the claimant had taken 40 hours vacation time in 2021. The employer testified that the payroll records were accurate and that the employer would pay the 40 hours vacation time to the claimant.

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...

In this matter the claimant credibly testified that she was owed PTO by the employer. However, her testimony that she was owed 80 hours PTO is not credible. The claimant's assertion that she is owed 80 hours vacation time is not supported by documentation and cannot be verified.

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).

It is found that the claimant is owed 40 hours vacation time.

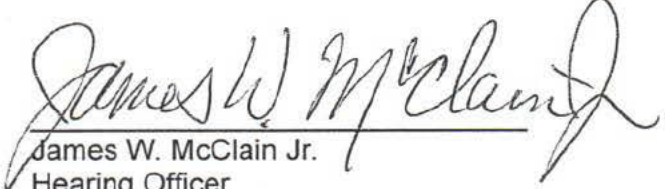
**DECISION**

Based on the testimony and evidence presented, this Department finds the claimant has met her burden to prove by a preponderance of evidence that she is owed additional wages for 40 hours of unused vacation time or \$640.00 before taxes.

It is hereby ruled that this Wage Claim is **valid in part**.

The employer is directed to send a check payable to ██████████ in the amount of \$640.00, less all applicable taxes, within 30 days of the date of this decision.

September 7, 2022  
Date of Decision

  
James W. McClain Jr.  
Hearing Officer

JWM/nd