

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Douglas Cuddle Toys

Case No.102187

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, pro se
Attorney Margaret O'Brien for the Employer
Scott Clarke, Employer
Chanelle Alix, Employer HR

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

DATE OF HEARING: September 12, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage complaint on July 26, 2022, alleging unpaid accrued paid time off (PTO) due on separation. Specifically, the claimant seeks \$1,818.75 in unused accrued vacation and personal time pay and the equivalent amount in liquidated damages. Notice of the claim was sent to the employer on July 27, 2022. The employer filed a response with exhibits August 4, 2022. The claimant requested a hearing August 5, 2022. The hearing notice was issued August 15, 2022.

The claimant was terminated June 28, 2022. The employer's August 4, 2022 response to the hearing notice indicated the claimant had been paid her remaining regular wages for 14 hours and 26 hours of PTO on June 29, 2022, 40 hours severance pay on July 6, 2022 and 81.75 hours PTO on July 13, 2022.

At hearing the parties agreed the claimant had been paid as described above. RSA 275:43 V was removed as an issue with the parties' consent.

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 a full time customer service representative for the employer from February 2, 2022 to June 28, 2022, when she was terminated. The employer testified that the claimant was terminated because she had 24 incidents of missed work or unexcused absences during her employment.

The claimant's offer of employment letter indicates her salary was initially \$17.50 per hour and was \$18.75 per hour at the date of termination. The vacation and personal days policy attached to the offer indicates that 2 weeks of vacation and 5 personal days (120 hours) are provided from the date of hire. The policy explicitly states that PTO is prorated from date of hire based on the number of months remaining in the current fiscal year.

The employer's fiscal year begins May 1 and ends April 30. The claimant began work February 2, 2022, which coincides with the start of the last fiscal quarter. Accordingly, the claimant's PTO was prorated to 30 hours. She used 6.5 hours through April 30, 2022. On May 1, 2022 the claimant was given 120 hours PTO plus 23.5 hours rolled over from the previous fiscal year for a total of 143.5 hours.

The claimant and employer submitted the claimant's pay stubs for her entire period of employment showing the claimant's PTO usage. The records indicate the claimant used 35.75 PTO hours between May 1, 2022 and June 28, 2022, the date of the claimant's termination. That usage left the claimant with a balance of 107.75 PTO hours.

The claimant did receive a cash payout for the accrued PTO. The parties agreed the claimant was paid 26 hours PTO on June 29, 2022, the day after her termination. The parties agreed the claimant was paid 40 hours severance pay in the amount of \$750.00 on July 6, 2022 and 81.75 hours PTO in the amount of \$1,532.81 on July 13, 2022.

The claimant argued that the employer failed to pay her the PTO within 72 hours of her termination. Therefore, the claimant seeks liquidated damages.

The employer argued that the July 6, 2022 severance pay was not a policy but was something the employer did for departing employees to transition to a new job. The employer argued that the July 13, 2022 PTO payment was made as soon as the employer realized their good faith error in calculating the claimant's PTO accrual. Therefore, the claimant is not owed liquidated damages.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that she was owed unpaid accrued 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).

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

The employer paid the claimant her 81.75 hours of accrued PTO on July 13, 2022. The claimant was terminated on Tuesday June 28, 2022. The \$1,532.81 PTO pay should have been paid by July 1, 2022. July 13, 2022 was 10 business days after the claimant should have been paid. Therefore, the claimant is entitled to an equivalent amount of liquidated damages on the PTO pay or \$1,532.81.

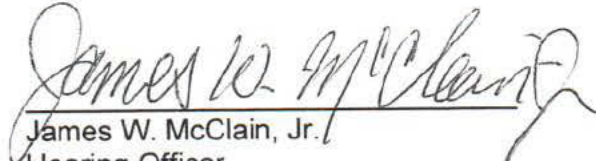
The employer violated its own policy regarding payment of PTO to terminated employees. Therefore, the employer did willfully and without good cause fail to pay the claimant within 72 hours as required under RSA 275:44 IV. The claimant is entitled to compensation for liquidated damages.

DECISION

The employer had a policy of paying out unused PTO upon termination and failed to pay it to the claimant in a timely fashion. Under these circumstances, it is ruled that the claimant is entitled to liquidated damages.

The employer is hereby ordered to send a check to the Department of Labor payable to ██████████ in the amount of \$1,532.81 for liquidated damages within 30 days of the date of this Order.

October 3, 2022
Date of Decision


James W. McClain, Jr.
Hearing Officer

JWM/js