STATE OF NEW HAMPSHIRE DEPARTMENT OF LABOR CONCORD, NEW HAMPSHIRE

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Genesis Healthcare LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

RSA 275:43 V unpaid sick pay, vacation pay, and personal day

pay

Date of Hearing: February 6, 2019

Case No.: 57886

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed the following accrued benefit wages:

- \$39.06 for 2.79 hours of unpaid sick pay
- \$701.40 for 50.1 hours of unpaid vacation pay
- \$112.40 for 8 hours of unpaid personal day pay

She alleges these benefit hours should have been applied to the dates for which she called out sick prior to her voluntary separation from employment.

The employer denies the claimant is due any wages as pursuant to their written policy, benefit time is not paid to an employee after notice of resignation has been given.

FINDINGS OF FACT

The claimant worked for the employer as an LNA/Social Services representative. She received an hourly rate of \$14.00 per hour for the time period relevant for this claim.

On July 10, 2018, the claimant verbally provided a notice of resignation to the employer, with an effective date of July 24, 2018. She reduced this notice to writing on July 11, 2018.

The claimant worked her scheduled shifts on July 11 and 12, 2018. She called out sick on July 13 and 16, 2018. On July 16, 2018, she emailed the employer to notice she would not be returning to work to fulfill her notice for personal reasons.

The employer paid the claimant for hours worked only on her final pay check. No payments for accrued but unused sick pay, vacation pay or personal day pay were included. Her final pay stub showed accrued balances of:

- 2.79 hours of sick;
- 50.1 hours of vacation; and
- 8 hours of personal day pay.

The claimant submitted a copy of a portion of the employer's written policy regarding vacation pay. The written policy states only, in relevant part, "Accrued, unused vacation pay is not paid at termination." The claimant provided a copy of her signed acknowledgement for this policy signed and dated June 14, 2017. Nothing in the written policy states that accrued time cannot be used for missed shifts after a notice of resignation has been provided.

Neither party submitted a written policy regarding sick pay or personal day pay. It is unknown if a written policy exists for either of these types of benefit pay.

The claimant did not submit any requests to the employer to have any of her accrued benefit time applied to any of the shifts for which she called out sick.

DISCUSSION

The claimant now seeks payment for the accrued but unused benefit time she had on the books prior to her separation from employment.

The employer argues that their practice does not allow for the payment of benefit time once an employee had provided a notice of resignation.

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 sick pay, vacation pay and personal day 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 properly noticed the claimant of the written policy regarding vacation pay. Pursuant to the policy, no vacation pay is paid out at termination.

The claimant takes issue with the word "termination" stating she resigned and therefore the policy is not applicable to her situation.

Black's Law Dictionary defines "termination" as end in time or existence; close; cessation; conclusion. The Hearing Officer finds the word termination refers to the cessation of employment, not whether or not the claimant was asked to leave by the employer or she resigned. Therefore, the Hearing Officer does not find the claimant's argument that the employer did not terminate her employment as persuasive that the employer is now required to pay her accrued but unused vacation time.

Because the employer noticed the claimant that vacation pay was forfeited upon separation from employment, the claimant is unable to prove by a preponderance of the evidence she is due the claimed vacation pay.

Conversely, the employer did not notify the claimant of the written policy regarding sick pay and personal day pay.

Because the claimant proved she had accrued the sick and personal day hours as of her final pay stub, previously submitted, and the employer did not have a written policy notifying her that these hours were forfeited upon separation from employment, the Hearing Officer finds the balances for these hours are due and owing to the claimant.

CONCLUSIONS

Because the employer properly noticed the claimant that vacation pay is forfeited upon termination, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed vacation pay.

As the claimant provided credible evidence that she had accrued the sick and personal day pay hours and the employer did not notice her that these benefits are forfeited upon termination, the Hearing Officer finds that the claimant proved by a preponderance of the evidence she is owed the claimed sick pay and personal day pay.

DECISION AND ORDER

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 she is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers sick pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she is due the claimed sick pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$39.06 (\$14.00 per hour x 2.79 hours).

As RSA 275:43 V considers personal day pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she is due the claimed personal day pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$112.00 (\$14.00 per hour x 8.0 hours).

The employer is hereby ordered to send a check to this Department, payable to in the total of \$151.06 (\$39.06 + \$112.00), less any applicable taxes, within 20 days of the date of this Order.

Hearing Officer

Date of Decision: February 20, 2019

Original: Claimant cc: Employer