

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Greenbriar Healthcare**  
**Case No.: 58417**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay/PTO

**Date of Hearing:** April 2, 2019

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of her Wage Claim, that she was owed \$772.93 in unpaid vacation pay/paid time off (PTO) due upon her separation from employment.

At the hearing, the claimant corrected the dollar amount of the claim to \$669.77, for 25.97 hours at \$25.79 per hour.

The employer denies the claimant is due any PTO pursuant to their written policy.

**FINDINGS OF FACT**

The claimant worked for the employer from October 2001 through November 28, 2018, when she resigned. The claimant was a non-exempt hourly employee earning an hourly rate of \$25.79. The employer had changed hands, most recently in September 2017, when new written policies were put into place.

The claimant provided a written notice of resignation on November 20, 2018, with an effective date of November 28, 2018.

The claimant's final paystub of November 29, 2018, shows an available balance of 25.97 hours of PTO after a payment of forty hours of PTO for this check.

The employer has a written policy, dated September 2017, which states, in relevant part, "PTO Payout At Termination, The Company will pay 50% of accrued, but unused PTO upon termination of employment providing sufficient notice was given and the notice period was worked in accordance with Company Policy. A two-week (14 calendar day) notice is required for non-exempt employees... PTO that has not yet been earned is not paid out upon termination unless required by law."

## **DISCUSSION AND CONCLUSIONS**

The claimant argues she is due the balance of 25.97 hours of PTO which is showing on her final paystub. She argues she is unaware of the “new” PTO policy in which she is not paid all available accrued PTO.

The employer agrees the claimant did not comply with the written policy to provide and work a 14 day notice of resignation. The employer admits they do not have any knowledge of how this policy might have been disseminated to employees upon implementation.

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 vacation pay (PTO). 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 acknowledges they do not have proof they properly notified the claimant that she forfeits her PTO if she did not provide and work out a fourteen day notice.

The claimant credibly and persuasively argues the employer did not notice her of the policy that she forfeits her PTO if she did not provide and work out a fourteen day notice.

Because the employer did not specifically inform the claimant PTO time is forfeited if she did not provide and work out a fourteen day notice, as required by RSA 275:49 and Lab 803.03, the Hearing Officer finds that the claimant is due the claimed PTO.

## **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/PTO 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 was not paid all vacation pay/PTO earned and now due, it is hereby ruled that the Wage Claim is valid in the amount of \$669.77.

The employer is hereby ordered to send a check to this Department, payable to Nancy Snader in the total of \$669.77, less any applicable taxes, within 20 days of the date of this Order.

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[REDACTED]

Hearing Officer

Date of Decision: April 4, 2019