

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Family Dollar
Case No.: 58495

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-a unpaid required pay
RSA 275:43 V unpaid employee expenses
RSA 275:43 V unpaid vacation pay/paid time off (PTO)

Date of Hearing: April 1, 2019

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$858.26 in unpaid employee expenses for mileage, food and gas, \$20.60 in unpaid wages as the employer failed to pay her the two-hour minimum the day she was terminated, and \$181.90 in unpaid PTO pay for her unused balance of 17.66 hours at \$10.30 per hour.

The Department erred in not placing RSA 275:43-a unpaid required pay and 275:43 V unpaid vacation pay/PTO on the Notice of Hearing.

At the hearing, the employer agreed to waive the fourteen-day notice period in Lab 204.02 to hear these issues at this scheduled hearing.

The employer denies the claimant is due any further expenses as the documentation shows the claimant received expense checks during the time periods she is claiming and the spreadsheet showing "approval" means the claimant "would have been paid for those expenses."

Further, they argue the claimant did not have any PTO balance left to receive a payment.

The employer agreed to pay the \$20.60 for the date on which she was terminated. The hearing was left open for the employer to send the check by April 10, 2019, which was received April 8, 2019, and mailed to the claimant.

FINDINGS OF FACT

The claimant worked for the employer as an Assistant/Traveling Manager from February 23, 2016, through December 2, 2018, when her employment was terminated. She was an hourly employee earning a rate of \$10.30.

The claimant received reimbursements for food, gas and mileage for her traveling assignments.

She regularly traveled from Hillsborough, NH to stores in Vermont and New York.

The claimant contemporaneously submitted reimbursements for food, gas and mileage in 2017. She had to resubmit this reimbursement four times to the employer, and still did not receive reimbursement.

The employer offered the claimant a settlement of \$1,100 at the end of 2017 to for the unpaid expenses she was attempting to receive. She believes her manager [REDACTED] received the offered \$1,100 in error.

The claimant agrees she sporadically received some reimbursements from the employer during this time, but not for the full amounts submitted, which are the claimed amounts.

The employer changed the policy regarding PTO on February 26, 2017. The prior accrued PTO remained separate from time accrued under the new policy. On the claimant's final paystub of December 21, 2018, there are two line items, PREV VAC with a zero balance and PTO with a balance of 17.66.

The new policy effective February 26, 2017, states, in relevant part, "All PTO is an award, not a vested benefit, and it must be used in the fiscal year in which it is granted. Unused PTO expires at the end of every year, and it will not be paid out at the end of the fiscal year or upon employment termination unless required by law."

DISCUSSION AND CONCLUSIONS

The claimant seeks a reimbursement for employee expenses. She seeks \$239.40 at \$0.38 per mile for 630 miles between September 6, 2017, and November 22, 2017; \$496.23 in food and gas reimbursement for 2017; and \$122.63 in food reimbursement for 2018, documentation submitted with the Wage Claim.

The claimant submitted her checking account records to show she has not received payment for the claimed reimbursements.

The employer does not argue that the expenses claimed are not allowable or inaccurate. She argues that their expense report documentation shows "approved" for all the expenses submitted, which she states means [the expenses] "would have been paid."

The employer agrees that they do not have documentation to show payments to the claimant for the claimed reimbursements.

Because the employer agrees the expenses "would have been paid" and the claimant provided proof she has not received payments, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed employee expenses in the amount of \$858.26 (\$239.40 + \$496.23 + \$122.63).

The claimant seeks payment for the 17.66 hours of PTO pay which shows on her final December 21, 2018, paycheck. She argues that she earned this PTO pay and never missed a day of work, therefore she should receive payment.

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. 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 new policy regarding PTO beginning February 26, 2017.

The employer persuasively argues the claimant is not due any PTO pursuant to their written policy effective for new time after February 26, 2017. The claimant did not have any remaining balance of the PTO earned prior to February 26, 2017.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is owed 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 the payment of employee expenses 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 employee expenses due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$858.26 (\$239.40 + \$496.23 + \$122.63).

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 PTO pay, it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$858.26, less any applicable taxes, within 30 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: April 29, 2019

Original: Claimant
cc: Employer