

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Lebanon Ford LLC
Case No.: 58566

DECISION OF THE HEARING OFFICER

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

Date of Hearing: April 22, 2019

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts that he was owed \$1,500 in unpaid vacation pay due upon his separation from the employer.

The employer did not respond to the Notice of Wage Claim nor did a representative attend the scheduled hearing.

FINDINGS OF FACT

The claimant worked for the employer most recently as a service advisor from 1993 until January 12 or 13, 2019, when they terminated his employment. He earned a salary of approximately \$550 per week and an additional bonus plan.

The employer's written PTO (vacation and sick days) policy states, in relevant part, after the fifth year of employment, fifteen total [PTO] days will be awarded each January 1. It further states, "If an employee's employment terminates, voluntarily or involuntarily, the employee will be paid for accrued but unused PTO provided: (1) in the case of involuntary termination, the employee has not been terminated for cause and has returned all Company property.

The claimant did not receive a reason for his termination. He did return eleven pairs of work pants, eleven work shirts, and two work jackets to the employer.

DISCUSSION AND CONCLUSIONS

The claimant argues he is due the three weeks of vacation pay he received on January 1, 2019. He bears the burden to prove that he had three weeks of vacation accrued to his benefit and that it was payable to him upon his separation from employment.

He persuasively argues that he was awarded three weeks of PTO pay on January 1, 2019, pursuant to the employer's written policy. Further, he was not

terminated for cause and did return all company property as required by the employer's written policy to receive payment for his unused PTO pay.

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 noticed the claimant of the requirements of the policy in order to receive PTO at separation of employment. The claimant met the requirements and the employer still did not make payment.

Therefore, the Hearing Officer finds that the claimant proved by a preponderance of the evidence that he is due the claimed three weeks of PTO pay, or \$1,650 (\$550 * 3 weeks).

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 proved by a preponderance of the evidence that he is due a portion of the vacation pay claimed, it is hereby ruled that the Wage Claim is valid in the amount of \$1,650.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,650, less any applicable taxes, within 30 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: May 7, 2019

Original: Claimant
cc: Employer