

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Crescent Group LLC
Case No.: 58580

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 \$2,304 in unpaid vacation pay due upon his separation from the employer.

The employer argues the written policy is clear that vacation time is accrued and the claimant did not have any time accrued to his benefit.

FINDINGS OF FACT

The claimant originally began working for EK Management Co LLC on May 9, 2016. That company was sold to this employer as of February 1, 2017. All of the benefits transferred seamlessly to the new employer.

The claimant continued to work for the current employer until January 28, 2019, when they terminated his employment. He most recently earned a rate of \$24.00 per hour. His regular workday consisted of eight hours.

EK Management Co LLC documented the claimant's personnel file on May 9, 2016, to read, "vacation – 3 [weeks] annually (1 [week] each 4 months – ex. One around Aug 2016 & one in Dec area. January 2017 will have 3 weeks."

The claimant contemporaneously signed an acknowledgement for this notification.

The current employer documented the claimant's personnel file on February 1, 2017, to read, "Transfer to Crescent Grp" and "3 wks vac annually, (1 [week] each 4 mos." This policy did not make any changes to the existing May 9, 2016, policy.

The employer outlined "expectations" in a document on January 7, 2019, in response to performance issues. This list reiterated portions of the vacation policy, but did not change any of the terms of the May 9, 2016, or February 1, 2017, policies. The claimant signed an acknowledgement of this "expectations" list.

The parties agree the vacation policy was verbally discussed in addition to written notifications indicated prior.

By the claimant's testimony, he used three days of vacation time in 2019.

DISCUSSION AND CONCLUSIONS

The claimant argues he is due the balance of twelve days of vacation time upon his separation from employment. He bears the burden to prove that he had twelve days of vacation accrued to his benefit and that it was payable to him upon his separation from employment.

He argues that he was given three weeks of vacation pay each year on January 1. As he only used three days of vacation as of his termination in January 2019, he is due the balance of the twelve days of vacation.

The employer argues the claimant earns vacation at a rate of one week every four months. They contend the claimant had not yet earned his one week upon his termination and therefore is not owed any vacation time.

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 did provide the proper notice and signed acknowledgement as required.

The policy clearly states that the claimant will receive one week of vacation pay per each four months, not the three weeks per year on January 1 that he argues. However, the policy is somewhat ambiguous in the area of whether vacation pay is accrued or granted, and when.

The New Hampshire Supreme Court opined in Caswell v. BCI Geonetics, Inc. 121 N.H. 1048, that RSA ch. 275 is entitled "Protective Legislation," and we should construe it with that purpose in mind.

Using this standard, and because the employer did not clearly specify whether the one week of vacation was accrued or granted and when, it is most protective to the claimant that the vacation pay was granted, not accrued, at the beginning of the four month period. Using the employer's calendar example on May 9, 2016, the claimant would have then been granted one week of vacation in December 2018. He used three vacation days by his own testimony. Therefore, he would be due the balance of the week, or two days of vacation pay.

Therefore, the Hearing Officer finds that the claimant proved by a preponderance of the evidence that he is due two days of vacation pay, or \$384 (\$24 per hour * 8 hours * 2 days).

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 \$384.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$384, less any applicable taxes, within 30 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: May 3, 2019

Original: Claimant
cc: Employer