

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.
A+M DONUTS, INC.

Case No. 62850

DECISION OF THE HEARING OFFICER

Appearances: ██████████ claimant, on his own behalf, Pro Se
Mr. David Bates, on behalf of A+M Donuts, Inc.

Nature of Dispute: RSA 275:43 I – Weekly, Unpaid Wages
RSA 275:43 V – Weekly, Unpaid Paid Time Off (PTO)

Date of Hearing: August 2, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

On the basis of the claimant's assertion that he is owed \$4,910.00 in unpaid Paid Time Off, he filed a Wage Claim with the New Hampshire Department of Labor (DOL) on December 9, 2021; a Notice of Wage Claim was forwarded to the employer on June 10, 2021. The employer objected to the Wage claim in writing, and the claimant requested a formal hearing on June 22, 2021. Notices of Hearing were sent to all parties on June 30, 2021, and a formal hearing was scheduled accordingly.

A formal hearing was held at the Department of Labor Headquarters in Concord, New Hampshire on August 2, 2021 at 1:00pm. The claimant appeared in person. Mr. Bates appeared telephonically.

FINDINGS OF FACT

The claimant began his employment with A+M Donuts in 2005 as a full-time crew member. He was eventually promoted to store manager in 2008. He remained in this position until he resigned his employment on May 29, 2021. The claimant testified that at the time of his separation from employment, he was a salaried employee and earned \$925.00 per week.

The claimant testified that as a full-time employee, he accrued paid time off. At the time of hire, the employer did not have a policy that paid time off and would not be paid upon separation from employment. However, the claimant testified that the policy changed in 2013. As of 2013, paid time off was no longer paid upon separation from employment. The claimant has no knowledge of the company's practice as to whether other managers who were hired prior to the change in policy were paid PTO upon separation.

Mr. Bates testified that they have had six iterations of the Shop Policy since 2007; it's a fluid documents that changes over time as needed. Each time there is a change, the changes are sent to the Managers who then share the changes with their employees. The claimant, as a

manager, would be expected to share the policy changes with employees who worked for him. The company's policy at the time of the claimant's separation from employment is that unused PTO is not paid upon separation.

Mr. Sabens requested a determination that he is owed and due \$4,910.00 in unpaid wages in the form of unpaid paid time off.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he is owed and due \$4,910.00 in unpaid wages in the form of unpaid paid time off. Proof by a preponderance of the evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

In this matter it is uncontested that the claimant had PTO available to him during the course of his employment. The sole issue is whether he is owed and due PTO he had accrued at the time of his separation from his employment.

The State of New Hampshire does not require employers to offer benefits to their employees and, if they do, does not require employers to implement specific terms or guidelines. However, if the employer offers benefits to employees, a thorough description of how employees earn them, how employees are able to use them, what happens to any accrual at separation, as well as any other stipulations the employer decides to include, are required pursuant to RSA 275:49. RSA 275:49 requires employers, in part, to inform employees in writing, as to their employment practices and policies with regard to vacation pay and other fringe benefits.

Here, the testimony supports not only that the employer advised employees of updates to the Shop Policy in writing, but also that the claimant] was aware of the policy change that took place in 2013 that articulated accrued PTO would not be paid upon separation from employment. The claimant has failed to meet his burden of showing that wages are owed.

DECISION

Based on the evidence and testimony presented, and as RSA 275:43 I requires that an employer pay all wages due an employee, it is found that the employer acted consistent with New Hampshire statute. The claimant did not meet his burden to prove by a preponderance of the evidence that he is owed unpaid wages, it is hereby ruled that **this Wage Claim is invalid.**

Date of Decision: August 16, 2021


Tahira White, Hearing Officer

Original: Claimant
cc: Employer

TW/cb