

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]
v.

Universal Protection Service, LLC

Case No. # 63349

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] the claimant, appeared pro-se

Nature of Dispute: RSA 275: 43 I - Weekly, Unpaid Wages
RSA 275: 43 V- Unpaid Vacation Pay
RSA 275: 43-b- Payment of Salaried Employees- Unpaid Salary

Employer: Universal Protection Service. --- Failed to Appear

Date of Hearing: October 25, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all wages due. Specifically, the claimant asserts that he is owed \$517.92 in salary and \$2,168.79 in accrued vacation time.

The claimant filed a Wage Claim with the Department on August 28, 2021. A Notice of Wage Claim was forwarded to the employer on August 31, 2021. The employer did not file an objection to the claim. This matter was scheduled for a formal hearing at the Department of Labor and accordingly a Hearing was held at the Department on October 25, 2021. The employer failed to appear for the scheduled hearing. After waiting 15 minutes as required by administrative rule for the employer to appear, the matter proceeded in the employer's absence.

FINDINGS OF FACT

The claimant was employed as an account manager for the employer. In this position, the claimant oversaw a security unit assigned to the Liberty Mutual campus in Dover, New Hampshire. On May 11, 2021, the claimant e-mailed his notice of resignation to his supervisor, Rich Oliveri. The resignation gives 2 weeks' notice that the claimant would be resigning his job duties.

The employer requested that the claimant remain in the position until it found a replacement. A text message exchange between the claimant and Mr. Oliveri was submitted into evidence. See page 3. The exchange indicates that the claimant agreed to remain in the employ of Universal Protection Services

LLC; however, because of a move, he needed flexibility in his work schedule between in person work in Dover NH or remote work.

The claimant remained working in this capacity until August 2021. The claimant's replacement was hired and he agreed that during his final week, beginning August 16, 2021, he would be on site in Dover NH to assist with the transition on Monday and Tuesday.

The claimant worked in Dover on August 16th and 17th. He asserts that he worked remotely the remainder of the pay period. There are emails sent from the claimant to other employees at Liberty Mutual on 19th. See page 4 & 5. During this time period, the claimant was also in contact with his replacement, Mike. See page 10&11.

The claimant submitted his final pay stub earning statement into evidence. The earning statement reflects that it was for pay period August 6, 2021 to August 19, 2021. The gross pay for this paystub was \$2,071.68. The claimant testified that his normal bi-weekly salary was \$2,589.60. The claimant explained that Mr. Oliveri was upset that he was not onsite in Dover for his entire last week. Therefore, he "docked" his pay two days.

With regard to vacation pay, the claimant testified that at the time of his resignation he had 67 hours of accrued vacation time. In his capacity managing other employees, the claimant asserts that the employer's practice was to pay out earned time. The claimant's earned time was not paid out in his final paycheck.

The claimant attempted to obtain the two days salary and the vacation pay directly from the employer. There is an October 13, 2021 email from the claimant to the employer's regional manager, Edward Callahan, requesting the payout.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

RSA 275:43 I requires that an employer pay all wages due an employee, on time, on paydays designated in advance.

RSA 275:42, VI defines salaried employees. Specifically, the term "salaried employee" means any employee who under an employment agreement or as a matter of policy or practice, regularly receives each pay period a predetermined or fixed amount of money constituting compensation, based on a predetermined amount of wages to be paid as determined by a daily rate, weekly rate, bi-weekly rate, semi-monthly rate or monthly rate, and which amount is not subject to reduction because of variations in the quality or quantity of the work performed and regardless of the hours or days worked except as otherwise provided in RSA 275:43-b.

In this case, there is no question that the claimant is a salaried employee. The claimant was paid biweekly and grossed \$2,589.60 each pay period. In exchange for this money, the claimant was not required to "clock in" or "clock out" at any certain time. It appears that the claimant and his direct manager, Rich, had a disagreement during his final days with the employer. However, there is ample evidence that the claimant was working for the employer through the end of the pay period. The claimant has forwarded emails and text messages during this time period. The employer had no right to prorate the claimant's salary during his final pay period. The claimant is entitled to the remaining \$517.92 for the workweek that began on August 16, 2021.

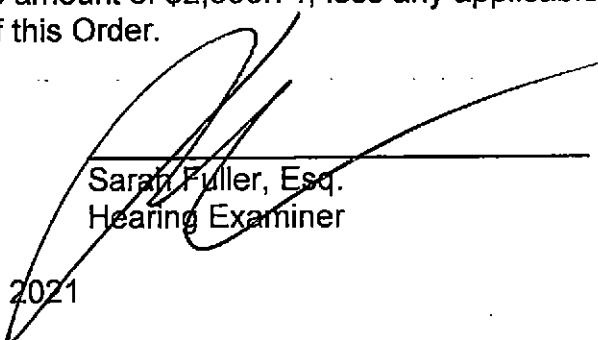
Regarding Vacation pay, the State of New Hampshire does not require employers to offer benefits to their employees and, if they do, does not require employers to implement specific terms or guidelines. However, if the employer offers benefits to employees, a thorough description of how employees earn 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, personal time off (PTO) pay and other fringe benefits.

In this case, the claimant does not have access to the employment policies of the employer. However, he was in a managerial role with the employer. The claimant provided persuasive testimony that the employer routinely paid out accrued and unused vacation time upon employment separation. This testimony is found persuasive. The claimant testified that at the time of his separation he had 67 accrued hours of vacation. This equated to \$2,168.79. The claimant is entitled to receive payment for his vacation time pursuant to the practices of the employer.

DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee and at no cost to the employee and as the Department finds the employee was able to prove by a preponderance of evidence he is owed wages in the amount of \$2,686.71, it is hereby ruled that this Wage Claim is valid.

The employer is hereby ordered to send a check to this Department, payable to ██████████ in the amount of \$2,686.71, less any applicable taxes, within 30 days of the date of this Order.



Sarah Fuller, Esq.
Hearing Examiner

Date of Decision: November 10, 2021

SF/cb