

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Brentlinger Enterprises

Case No. 22-WG-00014

DECISION OF THE HEARING OFFICER

APPEARANCES:

██████████ Claimant

Melissa Church, Karen Betsacon, for Employer,
telephonically

NATURE OF DISPUTE:

RSA 275:43 V - Weekly, Unpaid (Vacation Pay/Sick
Pay/Personal Day) PTO

RSA 275:43-b – Payment of Salaried Employees

DATE OF HEARING:

September 20, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on August 4, 2022, alleging that she was owed \$2,206.73 in unpaid vacation time and salary. Notice of the claim was sent to the employer on August 5, 2022. The employer responded August 10, 2022. The claimant requested the hearing August 14, 2022. The hearing notice was issued August 19, 2022 and updated September 2, 2022. The employer's representatives requested to appear telephonically.

FINDINGS OF FACT

The following findings are based on testimony and matters of record in the Department file.

The claimant is a ██████████ who resides in Gilmanton Iron Works, New Hampshire. The employer is a luxury automobile dealer based in Dublin, Ohio. The claimant testified that she was employed for almost 2 years by the employer as the housekeeping manager at the employer's Alton, New Hampshire mansion and was paid \$52,000.00 per year or \$25.00 per hour. The claimant submitted pay documentation that verified the claimant was a salaried employee.

The claimant's gross biweekly pay was \$2,166.67. The claimant's payroll documentation for the July 1 – 15, 2022 pay period with a pay date of July 20, 2022 indicated that the claimant's pay was prorated. Both parties agreed the claimant

terminated her employment on Tuesday July 12, 2022. Both parties agreed the claimant was paid her full wages through July 12, 2022. The claimant was paid \$1,398.46 gross pay for the July 1 – 15, 2022 pay period.

The claimant's wage claim documentation and testimony indicate that the claimant believes she is owed 64 hours in vacation time for a total of \$1,600.00. The claimant also sought \$768.21 in gross salary. The total of these amounts is \$2,368.21. The claimant seeks \$2,206.73 in unpaid vacation time and salary.

The claimant and employer testified that the employer had a vacation time policy whereby 2 weeks' vacation was awarded to the employee after completion of one year of employment. The policy and the employer's testimony were that any unused vacation time would not be paid to the employee upon separation regardless of the reason. Documentation of the policy was provided.

The claimant testified that she was owed 8 days or 64 hours vacation time because she had used 2 days' vacation. The payroll documentation submitted by the claimant does not show a vacation leave balance. The claimant testified that she was told verbally that she had 2 weeks' vacation per year by the house manager who was identified as "Brian".

The claimant testified that she had never seen the policy and had not signed an acknowledgment of the policy. The claimant testified that she assumed that resigning employees would be paid unused vacation time. The employer acknowledged that the claimant was verbally told she would receive 2 weeks' vacation time. The employer acknowledged that the claimant never signed any documentation of the policy, was not given an employee handbook detailing the policy and could not verify that the claimant was made aware of the application of the policy. The employer could not verify that the vacation time policy was posted where the claimant could see it.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that she is owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

RSA 275:43 I requires that an employer pay all wages due an employee within 8 days of the expiration of the work week.

RSA 275:43 I provides, in pertinent part:

"Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis, or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis..."

Under RSA 275:43 V,

"Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, *when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due*" (emphasis added).

Under RSA 275:49 III the employer must:

"Make available to his or her employees in writing or through a posted notice maintained in a place accessible to his or her employees employment practices and policies with regard to vacation pay, sick leave, and other fringe benefits,"

Under RSA 275:43-b,

"Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer."

In this matter the claimant credibly testified that she was owed vacation time by the employer. The employer acknowledged that the claimant had unused vacation time. Although the policy did not allow for payout of unused vacation time under any circumstance, the employer testified that they could not verify that the claimant was made aware of the application of the policy and acknowledged that the claimant was not given a copy of the vacation time policy.

It is found that the claimant is owed 64 hours vacation time.

Regarding the claim for unpaid salary, it is found that the claimant has been paid her full salary. The claimant testified she terminated her employment of her own accord. Both parties agreed the claimant terminated her employment on Tuesday July 12, 2022. Both parties agreed the claimant was paid her full wages through July 12, 2022. The employer was entitled to prorate the claimant's salary because she resigned before the end of the pay period.

It is found the claimant is not owed unpaid salary.

DECISION

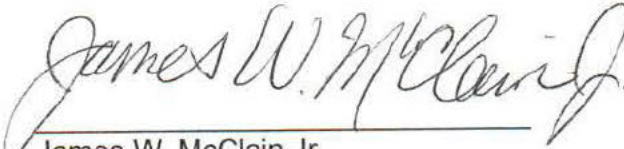
Based on the testimony and evidence presented, it is found the claimant has met her burden to prove by a preponderance of evidence that she is owed additional wages for 64 hours of unused vacation time at \$25.00 per hour or \$1,600.00 before taxes.

Based on the testimony and evidence presented, it is found the claimant has not met her burden to prove by a preponderance of evidence that she is owed additional wages for unpaid salary.

It is hereby ruled that this Wage Claim is **valid in part**.

The employer is directed to send a check payable to ██████████ in the amount of \$1,600.00, less all applicable taxes, within 30 days of the date of this decision.

October 3, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd