

New Hampshire

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

No new laws or regulations enacted in 2015 or 2016.

II. Pre-Employment Inquiry Guidelines

New Hampshire has enacted a law that creates a voluntary veterans' preference to be applied in hiring and promotion decisions. A private employer may adopt an employment policy that gives preference to a military veteran. The policy must be in writing and applied consistently to all decisions regarding hiring and promotion. The law defines "veteran" as a person who served on active duty in the armed forces and was discharged or released with an honorable discharge. An employer may require that a veteran submit a Department of Defense DD Form 214, also known as a report of separation, in order to be eligible to receive the preference.

RSA 275-G (07/01/2015).

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

A. Flexible Working Arrangements Retaliation

The new law prohibits an employer from retaliating against an employee solely because the employee requests a flexible work schedule. However, the new law does not require employers to accommodate a request for a flexible work schedule, nor does it create a private cause of action against an employer that has not provided a requested flexible work schedule.

RSA 275:37-b (Effective Date 09/01/2016).

B. Final Rule Governing Wage Payments

New Hampshire enacted rules readopting many of its wage and hour rules without change. The amended rules repeal those creating a process by which an employer could seek authorization to pay a sub-minimum wage rate to disabled employees. New Hampshire made the practice unlawful in 2015. However, persons with disabilities (along with students) may receive sub-minimum wages when they are working for practical experience.

The amendments clarify that tipped employees may be paid a sub-minimum wage rate only when they are engaged in duties that regularly and customarily generate tips directly from a customer. When tipped employees are performing such duties, they must be paid minimum wage.

Additionally, the amendments clarify that employees must acknowledge in writing that they have received notice of the following:

- rate of pay or salary, day and place of payment;
- description of employment practices and policies related to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payments of employee expenses, pension, and all other fringe benefits; and
- any changes in rates of pay, salary, or employment practices or policies prior to the effective date of such change.

N.H. Admin. Rules, Lab 803.01 (Effective Date 4/11/2016).

C. Subminimum Wage Prohibited

The state's generally applicable subminimum wage law has been repealed and reenacted. As amended, the law prohibits employing an individual with a disability at a rate below the minimum wage. Before the amendment, employers could petition the state labor department for permission to pay a subminimum wage to an individual impaired by age or by physical or mental deficiency.

Additionally, a separate statute allowing, with labor department authorization, nonprofit organizations or institutions to operate a sheltered workshop program and pay a subminimum wage has been repealed.

RSA 279:22; the repealed nonprofit law was codified at RSA 279:22a (Effective Date 07/06/2015).

D. Youth Employment Certificates

New Hampshire law prohibits the employment of workers under the age of 16 without a youth employment certificate. The new amendments to current law allow a parent or legal guardian of a youth under the age of 16 to issue a certificate for employment. Under prior law, the certificate had to be issued by the youth's school principal or persons authorized by the school principal.

The amendment also allows a parent or legal guardian to revoke a certificate. In the event of revocation, the parent or legal guardian must notify the student's employer and the Department of Labor within 48 hours.

The amendment removes the requirement that certificates be issued solely during vacations. In addition, the amendment removes the requirement that certificates must not be issued if the student's parents submit a written protest regarding the youth's employment, and if the employment is deemed to interfere seriously with school work.

RSA 276-A:5 (Effective Date 08/23/2016).

V. Drug Testing

No new laws or regulations enacted in 2015 or 2016.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

A. Safety Data Sheet Requirements

New Hampshire has changed the term “material safety data sheet” to “safety data sheet” and has revised what information must be included in the sheet. Because of the amendments, a safety data sheet is defined as a written document prepared on a toxic substance containing all of the following information (except when a toxic substance or product mixture containing 2 or more toxic substances is registered by a manufacturer, producer or formulator as a component of a trade secret or otherwise protected as a proprietary process):

- Identification including product identifier; manufacturer or distributor name, address, phone number; emergency phone number; recommended use; restrictions on use.
- The hazards of the substance.
- Composition and information on ingredients, including information on chemical ingredients and trade secret claims.
- First aid measures including important symptoms or effects, if acute or delayed, and required treatment.
- Firefighting measures including suitable extinguishing techniques and equipment and any chemical hazards from fire.
- Accidental release measures including emergency procedures, protective equipment, and proper methods of containment and cleanup.
- Handling and storage precautions, including incompatibilities.
- Exposure controls and personal protection, including Occupational Safety and Health Administration Permissible Exposure Limits, Threshold Limit Values, appropriate engineering controls, and personal protective equipment.
- Physical and chemical properties and characteristics.
- Stability, reactivity, and the possibility of hazardous reactions.
- Toxicological information including routes of exposure, related symptoms, acute and chronic effects, and numerical measures of toxicity.
- The date such information was compiled and the name and address of the manufacturer, producer, or formulator responsible for compiling it.

RSA 277-A:3 (Effective Date 01/01/2016).

B. Use of Navigation Device

New Hampshire law prohibits the use of any hand-held mobile electronic device capable of providing voice or data communication while driving a moving motor vehicle or while temporarily stopped in traffic. The law allows the use of a hands-free electronic device that is physical or electronically integrated into a motor vehicle, provided the use does not cause the driver to divert his or her attention from the road. In addition, the law prohibits drivers under 18 years of age from using a cellular or mobile telephone, including hands-free devices, while

driving or temporarily stopped in traffic. However, the law allows anyone, regardless of age, to use any device to report an emergency.

The new law provides additional exceptions to the prohibition against certain navigation devices. The law allows a driver, regardless of age, to receive aural routing information from a hands-free global positioning device or navigation service through a mobile electronic device. In addition, a driver, regardless of age, may receive turn-by-turn routing information from the screen of a global positioning device or navigation service through a mobile electronic device that is integrated into the vehicle or mounted on the dashboard, windshield, or visor of the vehicle.

RSA 265:79-c (Effective Date 05/27/2016).

VIII. Workers' Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous