

MANCHESTER AREA HUMAN RESOURCES ASSOCIATION

SEPTEMBER 11, 2018

LEGAL AND LEGISLATIVE UPDATE

by

Attorney Jim Reidy

SHEEHAN PHINNEY

Sheehan Phinney Bass & Green PA
1000 Elm Street
Manchester, NH 03105-3701
(603) 627-8217
jreidy@sheehan.com
www.sheehan.com

Recent Updates to New Hampshire Workplace Laws

Welcome back! Once school was out in June, some started enjoying the short season we call summer but the New Hampshire Legislature was still in session and wrapping up their work on a few workplace bills. Here are the highlights.

On June 25, 2018, New Hampshire Governor Sununu signed a bill (“June 2018 amendments”) which modifies workplace laws about Department of Labor inspections, poster and notice requirements, youth employment restrictions, and the retention of wage and hour records. Specifically, the changes affect NH RSA 273 (Labor Commissioner), RSA 275 (Protective Legislation), RSA 276-A:4 (Youth Employment) and RSA 279:27 (Minimum wage). Most of these are welcomed changes for employers

1. Workplace Inspections

The June 2018 amendments describe the circumstances in which the Commissioner of the New Hampshire Department of Labor (“DOL”) may conduct a workplace inspection. Chapter 273 of New Hampshire’s Revised Statutes Annotated (RSA) governs the department of the Labor Commissioner. According to RSA 273:9, “The commissioner shall, at such times as he shall deem it necessary, and without notice, visit the manufacturing, mechanical and mercantile establishments in the state, so far as practicable, for the purpose of ascertaining whether the laws with reference to employment are complied with, and for the further purpose of ascertaining if

reasonable sanitary and hygienic conditions are maintained, calculated to promote the health and welfare of the working people.”

The June 2018 amendment now appears as RSA 273:9-a, and will clarify that “All inspections performed by the commissioner shall be proportional and relative to the potential violations being inspected.” Proportionality is determined by evaluating “the importance of the issues at stake in the inspection, the degree to which the alleged violation involves risk of physical injury, the potential for lost wages, the amount in controversy, the parties’ relative access to relevant information, and the parties’ resources.” A different bill (SB 465-FN) had proposed more strict limitations: that the DOL could only visit a “specific location” of a business at a “reasonable time,” and “after a pattern of documented complaints to the department or known problems for that specific location ... has been identified within the prior 12 months.” Although the definition of “proportional” in the June 2018 amendment provides some help, it remains to be seen how this guideline will be implemented.

2. Sunday Work

The Legislature changed certain poster and notice requirements relating to work on Sundays. According to RSA 275:32, an employer cannot make an employee do “the usual work of his occupation” on Sunday unless the employee is allowed to have 24 hours free from work in the following six days. Prior to the June 2018 amendment, the employer had to post a schedule “in a conspicuous place on the premises” containing a list of employees who are required or allowed to work on Sunday and designating the day of rest for each.” RSA 275:33. Additionally, each employer was required to “promptly file a copy of each such schedule and every change therein with the labor commissioner.” The statute imposed a \$50 fine for each violation.

The June 2018 amendment removed the requirement that the list be posted “in a conspicuous place” and instead requires that it be “made available to employees.” The amendment also eliminates the requirement that the employer file the list (and any changes to that list) with the Labor Commissioner. The change also removes the \$50 per violation fine. Finally, with the June 2018 amendment employees are now allowed to work on their day of rest, though they cannot be required to do so. The law does not change other provisions of New Hampshire law allowing certain types of employees to work on Sundays without following these requirements (such as employees in hospitals, the newspaper business, employees who sell or deliver food or who work in certain retail stores, and “employees engaged in any labor called for by an emergency which could not reasonably have been anticipated.”)

3. Uniforms

The law also amended RSA 275:48, which lists the types of deductions an employer can make from an employee’s wages. The DOL’s regulations prohibit an employer from charging for a required uniform, but RSA 275:48 does allow an employer (with the employee’s consent) to charge an employee for “voluntary cleaning of uniforms and non-required clothing” and for “required clothing not covered by the definition of uniform.” Chapter 275:48 defines “uniform” as “a garment with a company logo or fashion of distinctive design, worn by one or more employees, and serving as a means of identification or distinction.”

The June 2018 amendment clarified that any uniform provided by an employer must be “reasonably suited for the conditions in which the employee would be required to wear one, at no cost to the employee.” The amendment also discusses optional company gear, stating “An employee may purchase any other company garments or items if the employee chooses.”

4. Notice and Poster Requirements

As we all know, New Hampshire law requires employers to notify all employees their rate of pay and the day and place of payment, both at the time of hire and if there are any changes afterwards. RSA 275:49. The June 2018 amendment clarified that there is no penalty for failing to notify employees about any change to the minimum hourly rate.

New Hampshire law also requires employers to post an Equal Pay poster (<https://www.nh.gov/labor/documents/equal-pay-poster.pdf>) which states: “It is illegal in New Hampshire under both state and federal law to pay employees different wages for the same work based solely on sex. If you think that your employer has violated this provision, please contact the New Hampshire Department of Labor.” The poster states at the bottom that it must be posted “in a conspicuous place.” The June 2018 amendment changed the posting requirement by removing the reference to a “conspicuous place” and instead requires employers to “post and make [the poster] available” to its employees. Apparently, circulating the Equal Pay poster via email or on an intranet would comply.

Likewise, the 2018 amendment removed the requirement that employers post the statutory Minimum Wage poster (<https://www.nh.gov/labor/documents/minimum-wage-poster.pdf>) “in a conspicuous location,” and instead requires them to “post and make [it] available” to their workers.

5. Record Retention

New Hampshire law requires an employer to keep “a true and accurate record of the hours worked by each [employee], wages paid to each, and classification of employment when necessary.” The employer must keep those records for the length of time “as the commissioner shall prescribe by regulation.” The June 2018 amendment set a specific timeframe of three (3) years. It is important to note that if a longer retention period applies to a certain type of document due to another law or regulation, the longer period will apply. For example, the New Hampshire Department of Employment Security requires that payroll records be kept for “a period of not less than 6 years after the calendar year in which the remuneration for the services was paid, or, if not paid, was due.”

For municipal employers there can now be more room in file cabinets as HB 1450 changed the requirement to retain job applications and personnel files from 50 years to 20 years.

6. Youth Employment

The bill was originally introduced as an effort to update the law governing youth employment. New Hampshire law protects youth workers based on their age from working in certain occupations, before and after certain hours of the day, more than a certain number of hours per week, and subject to specific work certificates.

The June 2018 amendment focused on youth workers who are 16 or 17 years of age. The amendment clarifies the number of consecutive days or total hours per week the child may work while school is in session, which varies depending on how many days of school happen during that work week. The amendment confirms that the DOL has the responsibility for enforcing this chapter, but removes a prior provision that had allowed investigators and truant officers to “visit and inspect” all workplaces. The amendment confirms that each employer must “post and make available to all employed youths” a notice about the hours of work, the time allowed for dinner or other meals, and the maximum number of hours that a youth may work in a day. The amendment removes a provision that could be used to hold employers automatically liable for certain violations.

Conclusion

The Legislature is already seeing LSRs for the new session and several workplace bills already have placeholders including the latest version of Paid Family Leave and a new attempt at Ban the Box. There will be more. Stay tuned!

Acknowledgment: Thanks to Attorney Karen Whitley for her work on this update.

Attorney Jim Reidy is a partner at Sheehan Phinney where he is the Chair of the Firm’s Labor and Employment law practice group. Jim is also MAHRA’s VP of Legal and Legislative Affairs.

Disclaimer

Please note: This outline is intended as general guidance and not specific legal advice. Your legal counsel should be consulted with specific questions or for advice on how to proceed with these matters.