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STATE

Littler on

New Hampshire Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in New Hampshire employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

DISCLAIMER

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In New Hampshire, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).

The New Hampshire Department of Labor and Workforce Development Agency (NHDOL) has entered into a partnership with the U.S. Department of Labor (DOL), Wage and Hour Division, the Occupational Safety and Health Administration (OSHA), and the Employee Benefits Security Administration (EBSA) to work cooperatively through information sharing, joint enforcement efforts, and coordinated outreach and education efforts in order to reduce instances of misclassification of employees as independent contractors.[5]

Required Posting. The NHDOL requires that employers post "information about the criteria for classifying an employee as an employee or as an independent contractor" in a place accessible to employees.[6] The NHDOL provides a poster for employer use, which summarizes the statutory definition and criteria considered. Employers must also retain records supporting their classification conclusions and make those records available to the NHDOL.[7]

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	New Hampshire Commission for Human Rights	There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context.

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] More information about the DOL Misclassification Initiative is available at https://www.dol.gov/whd/workers/misclassification/#stateDetails. The Memorandum of Understanding with the NHDOL is available at https://www.dol.gov/whd/workers/MOU/nh.pdf.

[6] N.H. REV. STAT. ANN. § 275:49. The mandatory poster is available at http://www.nh.gov/labor/forms/mandatory-posters.htm.

[7] N.H. CODE ADMIN. R. ANN. LAB. 803.03(f)(5).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Income Taxes	New Hampshire Department of Revenue Administration	New Hampshire taxes income from dividends and interest only, and does not tax an individual's earned income.[8] Therefore, there are no applicable tax laws.
Wage & Hour Laws	NHDOL, Wage & Hour	Statutory test. An individual will be considered an independent contractor only if all of the following requirements are met: "(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter [regarding wage payment, minimum wage and overtime]. (b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer. (c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented. (d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work. (e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

[8] *See* N.H. REV. STAT. ANN. § 77:4.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work. (g) The person is not required to work exclusively for the employer."[9]
Unemployment Insurance	New Hampshire Employment Security	Statutory test, adopting a traditional ABC test. *Employment* is defined as "service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied, together with service performed within this state which constitutes 'employment' under the provisions of the Federal Unemployment Tax Act."[10] However, this presumption is overcome by evidence that: "(a) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and (b) Such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business."[11]

[9] N.H. REV. STAT. ANN. §§ 275:42, 279:1 (the test is the same under the minimum wage and overtime, and wage payment laws). To date, there has been no case law providing guidance as to the application of this test. This test is also set forth in the required NHDOL poster regarding the criteria for employee or independent contractor classification.

[10] N.H. REV. STAT. ANN. § 282-A:9. This test is also cited in the required NHDOL poster regarding the criteria for employee or independent contractor classification.

[11] N.H. REV. STAT. ANN. § 282-A:9; *see also Appeal of Aspen Contracting NE, L.L.C.*, 53 A.3d 571, 574 (N.H. 2012) ("The burden is on the party challenging an 'employment' determination to establish that all three requirements for exclusion have been satisfied; failure to establish any of them is conclusive proof of employment for purposes of RSA chapter 282-A.") (citation omitted). The New Hampshire Supreme Court has held the requirement that "service is either outside the usual course of the business for which such service is performed or . . . performed outside of all the places of business of the enterprise for which such service is performed" is "disjunctive, meaning

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Workers' Compensation	NHDOL, Workers Compensation Division	Statutory test. *Employee* is defined as "any person in the service of an employer subject to [the workers' compensation provisions] under any express or implied, oral or written contract of hire."[12] Employment is presumed unless an individual meets all of the statutory criteria, which are the same as those in the wage and hour laws, set forth above.[13] However, the workers' compensation law additionally provides that "[a] written agreement signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with each of the criteria . . . . is prima facie evidence that the criteria have been met." No such agreement is required to establish that the criteria have been met, however.[14]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. New Hampshire does not have an approved state plan under the federal Occupational Safety and Health Act.

that the employer needs to show only one of the two alternatives." *Appeal of Niadni, Inc.*, 93 A.3d 728 (N.H. 2014) (citation omitted). In determining what is "outside the usual course of the business," the court adopted the following standard: "if an enterprise undertakes an activity, not as an isolated instance but as a regular or continuous practice, the activity will constitute part of the enterprise's usual course of business irrespective of its substantiality in relation to the other activities engaged in by the enterprise." 93 A.3d 728, 732 (citation omitted).

[12] N.H. REV. STAT. ANN. § 281-A:2; *see also* New Hampshire Dep't of Labor, *Workers' Compensation FAQ, What constitutes an independent contractor?*, *available at* https://www.nh.gov/labor/faq/workers-comp.htm#contractor (citing to the statutory criteria).

[13] N.H. REV. STAT. ANN. § 281-A:2. To date, there has been no case law providing guidance as to the application of this test.

[14] N.H. REV. STAT. ANN. § 281-A:2.

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[15]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[16] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[17]

For more information on these topics, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Private Employers*

Employment of undocumented workers is prohibited in New Hampshire. No employer may employ any employee without obtaining documentation showing the employee's eligibility to work in the United States. Acceptable documentation of eligibility to work in the United States includes documents required

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[15] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

[16] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[17] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

by federal law or supporting documentation that satisfies the requirement of federal law.[18] Employers must keep documentation showing an employee's eligibility to work for the period required by federal law: three years after the hire date or one year following termination of employment, whichever is later.[19]

New Hampshire does not require employers to use E-Verify or another electronic verification method. However, any employer that receives verification of the employee's eligibility to work from the Social Security Administration, E-Verify, or any other reputable organization providing a verification service will be deemed to have exercised reasonable care and will have an affirmative defense to a cause of action.[20]

1.2(b)(ii) *State Enforcement, Remedies & Penalties*

Employers that violate the provisions regarding the employment of undocumented workers are subject to civil penalties to be imposed by the New Hampshire Labor Commissioner.[21]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[22] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

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[18] N.H. REV. STAT. ANN. § 275-A:4-a.

[19] N.H. REV. STAT. ANN. § 275-A:4-a; *see also* 8 U.S.C. § 1324a; 8 C.F.R. § 274a.2(a), (b), (e).

[20] N.H. REV. STAT. ANN. § 275-A:4-b.

[21] N.H. REV. STAT. ANN. § 275-A:5.

[22] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

New Hampshire places no statutory restrictions on a private employer's use of arrest records. In addition, New Hampshire has not implemented a state "ban-the-box" law covering private employers.

1.3(a)(iii) *State Guidelines on Employer's Use of Conviction Records*

New Hampshire places no statutory restrictions on a private employer's use of conviction records, other than restricting questions to conviction records that have not been annulled, as noted below.

1.3(a)(iv) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

Generally, a person whose record has been annulled will be treated as if the person had never been arrested, convicted, or sentenced. In any application for employment, a person may be questioned about a previous criminal record only in terms such as, "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?"[23]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[24] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[25] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

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[23] N.H. REV. STAT. ANN. § 651:5(X)(a), (f).

[24] 15 U.S.C. §§ 1681 *et seq*.

[25] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[26]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Under New Hampshire's Fair Credit Reporting Act, an employer may obtain a "consumer report" for employment purposes if certain procedures are followed.[27] If employment is denied in whole or in part because of a report, an employer must so advise the individual and supply the name and address of the consumer reporting agency that made the report.[28]

Consumer report means any written, oral, or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.[29] *Employment purposes*, when used in connection with a consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment, or retention as an employee.[30]

There are additional procedural protections if an employer plans to obtain an "investigative consumer report." *Investigative consumer report* means a consumer report in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual. However, such information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when such information was obtained directly from a creditor of the individual or from the individual.[31]

Before obtaining or causing to be prepared an *investigative consumer report* on an individual for employment, the employer must first clearly and accurately disclose the fact that an investigative consumer report including information as to character, general reputation, personal characteristics, and

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[26] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

[27] N.H. REV. STAT. ANN. §§ 359-B:1 *et seq.*

[28] N.H. REV. STAT. ANN. § 359-B:15(I).

[29] N.H. REV. STAT. ANN. § 359-B:3(IV). The Fair Credit Reporting Act lists certain information that may not be included in a consumer report, unless the individual earns more than $20,000 annually. N.H. REV. STAT. ANN. § 359-B:5.

[30] N.H. REV. STAT. ANN. § 359-B:3(VIII).

[31] N.H. REV. STAT. ANN. § 359-B:3(V).

mode of living, whichever are applicable, may be made.[32] The disclosure must be made in writing, and mailed, or otherwise delivered not later than three days after the date on which the report was first requested, and must include a statement informing the individual of their right to request additional disclosures.[33] Upon an individual's written request made within a reasonable period of time after the receipt of the above-referenced disclosure, an employer must make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure must be made in writing, and mailed or otherwise delivered not later than five days after the request for such disclosure was received or such report was first requested, whichever is later.[34]

Under the state law, the investigative credit report disclosure requirement does not apply to a consumer report to be used for employment purposes for which the individual has not specifically applied.[35]

1.3(b)(iii) *State Enforcement, Remedies & Penalties*

New Hampshire's Fair Credit Reporting Act creates a private right of action and is enforced by the attorney general. Employers can be sued for willfully or negligently failing to comply with the law's requirements. Employers that are sued can be liable for damages, punitive damages for willful violations, and attorneys' fees and costs.[36]

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

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[32] N.H. REV. STAT. ANN. § 359-B:6.

[33] N.H. REV. STAT. ANN. § 359-B:6.

[34] N.H. REV. STAT. ANN. § 359-B:6.

[35] N.H. REV. STAT. ANN. § 359-B:6.

[36] N.H. REV. STAT. ANN. §§ 359-B:16, 359-B:17, and 359-B:21.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

New Hampshire law prohibits an employer from:

- requesting or requiring current or prospective employees to disclose their login information for accessing personal accounts or services via an electronic communication device;
- compelling employees or applicants to add anyone, including the employer or its agent, to the individual's contacts lists associated with an email or personal account; and
- requiring employees or applicants to reduce their email or personal account's privacy setting so a third party can view the account's contents.[37]

In addition, an employer cannot take or threaten to take disciplinary action against an employee for the employee's refusal to comply with a request prohibited by the law.[38]

Personal account "means an account, service, or profile on a social networking website that is used by a current or prospective employee primarily for personal communications unrelated to any business purposes of the employer."[39] However, the definition specifically excludes any account, service or profile created or accessed by a current or prospective employee for "business purposes of the employer or to engage in business-related communications."[40]

Exceptions. The law does not preclude an employer from accessing information about an employee or prospective employee that is in the public domain.[41] The law also does not prevent an employer from complying with requirements of federal or state law, or rules of self-regulatory organizations.[42]

With respect to workplace investigations, the law does not affect an employer's right or obligation to conduct an investigation to ensure compliance with applicable state or federal laws, regulatory requirements, or prohibitions against work-related employee misconduct, based on receiving specific information about activity on an employee's personal account from an employee or other source.[43] Moreover, an employer may conduct an investigation of an employee's actions based on specific information received about the unauthorized transfer of the employer's proprietary or confidential information, or financial data to a personal online account or service by an employee or other source. To make a factual determination, an employer may require the employee's cooperation to share only content that has been received by the employer.[44]

Rules of Employer-Provided Devices & Online Accounts. An employer can adopt and enforce lawful workplace policies governing the use of its electronic equipment, including policies regarding the use of the internet, social networking sites, and email. An employer can also monitor use of its electronic

[37] N.H. REV. STAT. ANN. § 275:74.

[38] N.H. REV. STAT. ANN. § 275:74.

[39] N.H. REV. STAT. ANN. § 275:73.

[40] N.H. REV. STAT. ANN. § 275:73.

[41] N.H. REV. STAT. ANN. § 275:74.

[42] N.H. REV. STAT. ANN. § 275:74.

[43] N.H. REV. STAT. ANN. § 275:74.

[44] N.H. REV. STAT. ANN. § 275:74.

equipment and email.[45] Additionally, an employer can request or require an employee to disclose login information for access to: (1) an account or service provided by virtue of the individual's employment relationship with the employer; or (2) an electronic communications device or online account paid for or supplied by the employer.[46]

If, by using an electronic device or program that monitors an employer's network or use of employer-provided devices, an employer inadvertently receives an employee's password, or other authentication information, an employer is not liable for having this information, but cannot use the information to access an employee's personal account.[47]

1.3(c)(iii) *State Enforcement, Remedies & Penalties*

An employer that violates the social media law is subject to a civil penalty imposed by the New Hampshire Department of Labor.[48]

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[49] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

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[45] N.H. REV. STAT. ANN. § 275:74.

[46] N.H. REV. STAT. ANN. § 275:74.

[47] N.H. REV. STAT. ANN. § 275:74.

[48] N.H. REV. STAT. ANN. § 275:75.

[49] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

New Hampshire law contains no express provisions regulating polygraph examinations for applicants or employees.

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[50] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[51] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

New Hampshire law contains no express provisions regulating preemployment drug or alcohol screening by private employers.

1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *State Restrictions on Job Application Fees, Deductions, or Other Charges*

Employers cannot require employees or job applicants to pay the cost of employer-required medical examinations or for the furnishing medical records.[52]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

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[50] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[51] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[52] N.H. REV. STAT. ANN. § 275:3.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[53] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[54] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[55] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[56]
Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[57] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan

[53] 26 U.S.C. § 36B.

[54] 42 U.S.C. § 18071.

[55] 29 U.S.C. § 218b.

[56] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

[57] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	administrators must send separate COBRA rights notices to each address.[58]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[59] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[60] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[61]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[62] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.

[58] 29 C.F.R. § 2590.606-1.

[59] 29 C.F.R. § 825.300(a).

[60] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[61] 29 C.F.R. § 825.300(a).

[62] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[63]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[64]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[65]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.
Fair Employment Practices Documents: Lactation Accommodation Policy	**Effective July 1, 2025**, employers with six or more employees in the state must adopt a policy addressing the provision of sufficient space and reasonable break periods for employees that need to express milk, during working hours, for up to one year after their child's birth. Employers must make their policy available to employees at the time of hire.[66]
Noncompetition Agreements	If an employer requires a new employee, not previously employed by it, to sign a noncompete agreement as a condition of employment, it must

[63] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[64] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[65] 29 C.F.R. § 531.59.

[66] N.H. REV. STAT. ANN. § § 275:78 – 275:83.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
	provide a copy of the agreement to the prospective employee *before an offer is accepted.* A noncompete that is not disclosed in this manner is not enforceable against the employee, although other related provisions (*i.e.*, confidentiality, trade secret, invention assignment, etc.) will remain in full force.[67]
Tax Documents	No notice requirement located. New Hampshire does not have an income tax.[68]
Wage & Hour Documents: General	At the time of hiring, employers must notify employees, in writing, of: • rate of pay or salary, whether by day, week, biweekly, semi-monthly, or year, or commissions; • day and place of payment; and • specific methods used to determine wages. Employers must maintain on file a signed copy of the written notification that is signed by the employee.[69]
Wage & Hour Documents: Reporting Time Pay	In New Hampshire, employees who report to work at the employer's request must be paid for at least two hours of work at their regular rate of pay. This reporting time pay requirement does not apply, however, to employees whose duties consistently require them to work less than two hours per day and who report to work with that understanding—as long as they are notified in writing of their exception to the reporting time requirement upon hire.[70]
Workplace Safety: Smoking Policies	New Hampshire's Indoor Smoking Act prohibits smoking in workplaces with four or more individuals. "No Smoking" signs must be placed in the workplace.[71] Smoking areas may be established if the area is effectively segregated. Employers must develop written policies addressing smoking restrictions and must provide the policy and an orientation about the policy to employees.[72]

[67] N.H. REV. STAT. ANN. § 275:70.

[68] New Hampshire Dep't of Revenue Admin., *Frequently Asked Questions*, *available at* http://www.revenue.nh.gov/faq/index.htm ("New Hampshire does not have a general sales tax or an income tax on an individual's reported W-2 wages.").

[69] N.H. CODE ADMIN. R. ANN. LAB. 803.03; N.H. REV. STAT. ANN. § 275:49.

[70] N.H. CODE ADMIN. R. ANN. LAB. 803.03(i).

[71] N.H. REV. STAT. ANN. § 155:70.

[72] N.H. REV. STAT. ANN. § 155:68.

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[73] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[74]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;

[73] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[74] 42 U.S.C. § 653a.

- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[75] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of New Hampshire's new hire reporting law.

Who Must Be Reported. New Hampshire employers must report employees who are newly hired or rehired. A rehired employee refers to an individual who was: (1) permanently laid off; (2) terminated from employment; (3) had a break in service of more than 26 consecutive weeks; (4) had a break in service due to a seasonal layoff of more than 10 consecutive weeks if, as of the start of the break in service, the employer was under an order to withhold child support from the individual's wages; or (5) required to complete a federal Form W-4 due to a previous work separation.[76]

Report Timeframe. An employer must submit a report within 20 days of an employee's hiring date. If submitted magnetically or electronically, reporting must be done twice monthly, not less than 12 days nor more than 16 days apart.[77]

Information Required. The employee's name, address (not a P.O. Box), Social Security number, and date of remuneration, as well as the employer's name, address, and federal and state identification numbers must be included in the report.[78]

[75] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[76] N.H. REV. STAT. ANN. § 282-A:117-a(I).

[77] N.H. REV. STAT. ANN. § 282-A:117-a(IV).

[78] N.H. REV. STAT. ANN. § 282-A:117-a(IV).

Form & Submission of Report. Acceptable reporting forms include the Form W-4 or an equivalent form approved or provided by the New Hampshire Employment Security. The report may be submitted by fax, magnetic media, electronically, or by any other means mutually agreed upon.[79]

Location to Send Information.

New Hampshire Employment Security
P.O. Box 2092
Concord, NH 03302-2092
(800) 803-4485
(603) 229-4371
(603) 229-4324 (fax)
(888) 783-3598 (fax)
http://www.nhes.nh.gov/services/employers/compliance.htm

Multistate Employers. An employing unit with employees in two or more states, which transmits reports magnetically or electronically, may comply by designating one of the states as the state to which the reports will be transmitted. The employing unit must notify the U.S. Secretary of HHS in writing as to which state is so designated.[80]

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[81] As such, the DTSA provides trade secret owners a uniform federal law

[79] N.H. REV. STAT. ANN. § 282-A:117-a(III).

[80] N.H. REV. STAT. ANN. § 282-A:117-a(II).

[81] 18 U.S.C. §§ 1832 *et seq.*

under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

Under New Hampshire law, an employer that requires an employee who has not previously been employed by the employer to sign a noncompete agreement as a condition of employment must provide a copy of the agreement to the potential employee *before* the employee accepts an employment offer. A noncompete agreement that has not been disclosed to an employee is not enforceable against the employee, but all other provisions of any employment, confidentiality, nondisclosure, trade secret, intellectual property assignment, or any other type of employment agreement or provision will remain in full force and effect.[82]

Employers are prohibited from requiring low-wage employees from entering into a noncompete agreement. Such an agreement is void and unenforceable. The law applies to all employers. A *low-wage employee* is an employee who earns an hourly rate less than or equal to 200% of the federal minimum wage. A *noncompete agreement* is an agreement between an employer and a low-wage employee that restricts the low-wage employee from performing:

- work for another employer for a specific period;
- work in a specific geographic area; or
- work for another employer similar to the work the employee performs for the covered employer.[83]

In New Hampshire, courts carefully scrutinize noncompete agreements as restraints in trade and competition; as a result, these contracts will be narrowly construed.[84] Restrictive covenants are valid, however, if the restraint is reasonable. To determine reasonableness the courts will look at three issues:

- whether the restriction is greater than necessary to protect the legitimate interest of the employer;
- whether the restriction imposes an undue hardship on the employee; and
- whether the restriction is injurious to public interest.[85]

[82] N.H. REV. STAT. ANN. § 275:70.

[83] N.H. REV. STAT. ANN. § 275:70-a.

[84] *ACAS Acquisitions, Inc. v. Hobert*, 923 A.2d 1076, 1084 (N.H. 2007).

[85] 923 A.2d at 1084.

If any of these questions are answered in the affirmative, the restriction in question is unreasonable and unenforceable.[86] In determining whether a restrictive covenant is reasonable, New Hampshire courts will look to the time when the contract was made.[87]

Legitimate interests of an employer that may be protected from competition include: the employer's trade secrets; confidential information other than trade secrets, such as information regarding a unique business method; an employee's special influence over the employer's customers, obtained during the course of employment; contacts developed during the employment; and the employer's development of goodwill and a positive image.[88]

Another factor in determining reasonableness is the duration of the covenant. When evaluating duration, the court must consider the time necessary to obliterate in the minds of the public the association between the identity of the employee with their employer's business.[89]

Enforceability Following Employee Discharge. In New Hampshire, although courts have not directly decided whether noncompete agreements are enforceable following discharge, it is likely the contracts remain enforceable.[90]

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

Although the New Hampshire courts have not specifically addressed the sufficiency of consideration for noncompetes entered into at the inception of employment, or whether a change in the terms and conditions of employment constitute sufficient consideration, courts have upheld such agreements.[91] The courts have, however, determined that continued employment is sufficient consideration.[92]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the

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[86] *Merrimack Valley Wood Products, Inc. v. Near*, 876 A.2d 757, 762 (N.H. 2005).

[87] *ACAS Acquisitions, Inc.*, 923 A.2d at 1084.

[88] *National Emp't Serv. Corp. v. Olsten*, 761 A.2d 401, 403 (N.H. 2000).

[89] *Concord Orthopaedics Prof'l Ass'n v. Forbes*, 702 A.2d 1273 (N.H. 1997).

[90] *See Powers v. Northern Lights Landscape Contractor, L.L.C.*, 2014 WL 2815776 (D.N.H. June 23, 2014); *ACAS Acquisitions, Inc.*, 923 A.2d at 1084.

[91] *Moore v. Dover Veterinary Hosp.*, 367 A.2d 1044 (N.H. 1976); *Dunfey Realty Co. v. Enwright*, 138 A.2d 80 (N.H. 1957).

[92] *Smith, Batchelder & Rugg v. Foster*, 406 A.2d 1310 (N.H. 1979).

other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

In New Hampshire, courts have the power to reform overly broad covenants if the employer shows that it acted in good faith in the execution of the employment contract.[93] The circumstances surrounding the presentation and execution of the noncompete may demonstrate a lack of "good faith" thereby making reformation inappropriate.[94]

2.3(b)(iv) *State Trade Secret Law*

When an employee leaves a business, the employee will sometimes take valuable information of the business to use for competitive purposes. In addition to noncompetition agreements, New Hampshire law provides other means for employers to protect themselves from a recently departed employee's misuse of proprietary information acquired from the employer. Trade secrets, which are partially defined by statute, can be protected in a variety of ways. New Hampshire has adopted the Uniform Trade Secrets Act.[95]

Definition of a Trade Secret. As a starting point, the employer must determine whether the information that may be taken by the employee is a protected trade secret. Under the Uniform Trade Secrets Act, a *trade secret* is defined as a complication of information, including a formula, pattern, compilation, program, decide, method, technique, or process that:

1. derives independent economic value, present or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[96]

Misappropriation of a Trade Secret. Liability attaches if the trade secret is misappropriated. *Misappropriation* is defined as:

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of a trade secret of another without express or implied consent by a person who:
    a. used improper means to acquire knowledge of the trade secret; or
    b. at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
        i. derived from or through a person who had utilized improper means to acquire it;

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[93] *Merrimack Valley Wood Products, Inc. v. Near*, 876 A.2d 757 (N.H. 2005); *Foster*, 406 A.2d 1310.

[94] *Near*, 876 A.2d 757.

[95] N.H. REV. STAT. ANN. §§ 350-B:1 *et seq*.

[96] N.H. REV. STAT. ANN. § 350-B:1(IV).

ii. acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

iii. derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

c. before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[97]

To state a claim for misappropriation under the Act, a plaintiff must show sufficient facts to establish that it had a trade secret, that defendant used the trade secret, and that the defendant knew or had reason to know that they obtained knowledge of the secret through a breach of confidence.[98]

Actual or threatened misappropriation may be enjoined.[99] Damages for trade secret misappropriation are also available, including actual damages and the unjust enrichment caused by the misappropriation.[100]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

New Hampshire has no statutory guidelines addressing ownership of employee inventions and ideas.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements

Poster or Notice	Notes
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[101]

[97] N.H. REV. STAT. ANN. § 350-B:1(II).

[98] *Wilcox Industries Corp. v. Hansen*, 870 F. Supp. 2d 296 (D.N.H. 2012).

[99] N.H. REV. STAT. ANN. § 350-B:2.

[100] N.H. REV. STAT. ANN. § 350-B:3.

[101] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[102]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[103]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[104]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[105]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[106]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[107]

[102] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[103] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[104] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

[105] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[106] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[107] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[108]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[109] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[110]
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[111]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[112]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is

[108] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[109] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[110] 41 C.F.R. §§ 60-300.44, 60-741.44.

[111] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[112] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	visible to prospective employees and all employees who are verified through the system.[113]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[114]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[115]
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[116]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[117] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing

[113] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[114] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[115] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[116] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[117] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[118]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[119]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[120]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

[118] 29 C.F.R. § 13.5.

[119] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[120] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Child Labor	Employers that employ minors must post conspicuous notice, in every room where minors are employed, stating the hours of work, time allowed for meals, and the maximum number of hours any youth is permitted to work each day.[121]
Fair Employment Practices: Employment Discrimination	Generally speaking, employers with six or more employees must post conspicuous notice informing employees of the prohibition against discrimination in employment.[122]
Fair Employment Practices: Equal Pay	Employers must post conspicuous notice informing employees about the equal pay law and how to file a wage claim.[123]
Unemployment Compensation: General	All employers must post and maintain conspicuous notice informing employees about unemployment benefits and how to file claims.[124]
Unemployment Compensation: Vacation Shutdown (Recommended)	Employers that will be implementing a vacation shutdown of operations are encouraged to post conspicuous notice, informing employees about how to file unemployment claims.[125]
Veterans' Benefits and Services	Effective September 17, 2024, employers must post notice created by the state labor commissioner describing veterans' benefits and services. The poster contains several requirements, such as information about tax benefits and legal services.[126]
Wages, Hours & Payroll: Criteria to Establish an Employee or Independent Contractor	Employers must post conspicuous notice, in an accessible place addressing the statutory definition of *employee* and the criteria considered when classifying workers as employees or independent contractors.[127]

[121] N.H. REV. STAT. ANN. § 276-A:20. Employers must create their own forms to satisfy this posting requirement.

[122] N.H. REV. STAT. ANN. § 354-A:23. This requirement does not apply to social clubs and fraternal or religious organizations if organized as nonprofits. This poster is available at https://www.nh.gov/hrc/documents/employment_poster.pdf.

[123] N.H. REV. STAT. ANN. § 275:49. This requirement does not apply to employers employing domestic labor or farm labor if less than five persons are employed. This poster is available at http://www.nh.gov/labor/documents/equal-pay-poster.pdf.

[124] N.H. CODE ADMIN. R. ANN. EMP. 305.01; N.H. REV. STAT. ANN. § 281-A:4. This poster is available at https://www.nhes.nh.gov/forms/documents/unemployment-notice.pdf.

[125] This poster is available at https://www.nhes.nh.gov/forms/documents/vacation-notice.pdf.

[126] N.H. REV. STAT. ANN. § 275:49-a.

[127] N.H. REV. STAT. ANN. § 275:49. This requirement does not apply to employers employing domestic labor or farm labor if less than five persons are employed. This poster is available at http://www.nh.gov/labor/documents/employee-contractor-poster.pdf.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Wages, Hours & Payroll: Holiday & Vacation Policy Notification	Employers must inform employees—either individually in writing or by posted notice at the workplace—of all practices and policies concerning vacation pay, sick leave, and other fringe benefits.[128]
Wages, Hours & Payroll: Minimum Wage Law	All employers subject to the minimum wage law must post conspicuous notice, informing employees about various wage laws, including minimum wage, overtime, child labor, and payroll record requirements.[129]
Wages, Hours & Payroll: Wage Payment Notification	Employers must post conspicuous notice of the Protective Legislation Law, in an accessible place, informing employees of their payday and summarizing other laws, including meal periods, access to personnel files, and withholding of wages.[130]
Whistleblowers Protection Act Notice	All employers must post conspicuous notice informing employees of their protections and duties under the whistleblowers protection law.[131]
Workers' Compensation	All employers subject to the workers' compensation law must post conspicuous notice informing employees of the employer's coverage.[132]
Workplace Safety: Emergency Numbers	All employers must post notice, throughout their facilities, displaying the emergency telephone numbers for ambulance services, hospitals, or physicians.[133]
Workplace Safety: Smoking Policy and No Smoking Signs	New Hampshire's Indoor Smoking Act prohibits smoking in workplaces with four or more individuals. "No Smoking" signs must be placed in the workplace.[134] Smoking areas may be established. Employers must develop written policies addressing smoking restrictions and must

[128] N.H. REV. STAT. ANN. § 275:49. This requirement does not apply to employers employing domestic labor or farm labor if less than five persons are employed. Employers must create their own forms to satisfy this posting requirement.

[129] N.H. REV. STAT. ANN. § 279:27. This poster is available at http://www.nh.gov/labor/documents/minimum-wage-poster.pdf.

[130] N.H. REV. STAT. ANN. § 275:49; N.H. CODE ADMIN. R. ANN. LAB. 803.03. This requirement does not apply to employers employing domestic labor or farm labor if less than five persons are employed. This poster is available at http://www.nh.gov/labor/documents/protective-legislation-poster.pdf.

[131] N.H. REV. STAT. ANN. § 275-E:7; N.H. CODE ADMIN. R. ANN. LAB. 903.01. This poster is available at http://www.nh.gov/labor/documents/whistleblower-poster.pdf.

[132] N.H. REV. STAT. ANN. § 281-A:4; N.H. CODE ADMIN. R. ANN. LAB. 504.01, 304.01, and 308.04. This notice is obtained from the employer's insurance carrier.

[133] N.H. CODE ADMIN. R. ANN. LAB. 1403.39.

[134] N.H. REV. STAT. ANN. § 155:70.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	provide the policy to employees—either by posting or individual written notice.[135]
Workplace Safety: Workers' Right to Know—Toxic Substances	All employers whose employees handle, use, or are otherwise exposed to any toxic substance during the course of their employment must post conspicuous notice near the workspace, in clearly understandable and nontechnical language, informing employees about any such substances. The notice must state "Warning" in large letters and include certain details about the hazardous substance as set forth in the statute. One notice must be displayed for each hazardous substance to which employees are exposed. Notice must be posted that material safety data sheets are available for employees review upon request for all such substances. The poster prepared by the Department of Labor further requires the employer to identify an appropriate employer representative for more information.[136]

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[137]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:*	At least 1 year from the date of the personnel action to which any records relate.

[135] N.H. REV. STAT. ANN. § 155:68. Employers must identify their own notices and create their own policies to satisfy these posting requirements.

[136] N.H. REV. STAT. ANN. § 277-A:5. This poster is available at http://www.nh.gov/labor/documents/right-to-know-poster.pdf.

[137] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[138]	
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[139]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[140]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA):	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including	Until final disposition of the charge or action (*i.e.*, until the statutory

[138] 29 C.F.R. § 1627.3(b).

[139] 29 C.F.R. § 1627.3(b).

[140] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Complaints of Discrimination	personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[141]	period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[142]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[143]	At least 3 years following the date on which the polygraph examination was conducted.
Employee Retirement	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the	At least 6 years after documents

[141] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[142] 29 C.F.R. § 1602.7.

[143] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Income Security Act (ERISA)	information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[144]	are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[145]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[146]	At least 2 years.
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek;	3 years from the last day of entry.

[144] 29 U.S.C. § 1027.

[145] 29 C.F.R. § 1620.32(a).

[146] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[147] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and	

[147] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[148]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[149]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[150]	At least 3 years from the last effective date.
Fair Labor Standards Act	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets;	At least 2 years from the date of last entry.

[148] 29 C.F.R. § 516.28.

[149] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[150] 29 C.F.R. § 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(FLSA): Other Records	• wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[151]	
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and	At least 3 years.

[151] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[152]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax;	At least 4 years after the date the tax is due or

[152] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[153]	paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[154]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax*	Required to be maintained for "so long as the

[153] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[154] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	returns correctly stating taxable income each year, including: • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[155]	contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[156]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[157]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed;	At least 4 years after the later of the date the tax is due or paid for the period

[155] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[156] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[157] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[158]	covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years;	At least 30 years.

[158] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[159]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[160]	Duration of employment plus 30 years.
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided	At least 30 years.

[159] 29 C.F.R. § 1910.1020(d).

[160] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	that the analysis has been provided to the employer or no further work is being done on the analysis.[161]	
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[162]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[163]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position,	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not have a contract of at least

[161] 29 C.F.R. § 1910.1020(d).

[162] 29 C.F.R. §§ 1904.33, 1904.44.

[163] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[164]	$150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[165]	Until final disposition of the complaint, compliance review or action.

[164] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[165] 41 C.F.R. §§ 60-1.12, 60-741.80.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[166]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee	During the course of the covered contract as well as after the end of the contract.

[166] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[167]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[168]	At least 3 years after the work.
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage;	At least 3 years from the completion of the work records

[167] 29 C.F.R. § 13.25.

[168] 29 C.F.R. § 5.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[169]	containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[170]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Employment Verification	Employers must maintain all documentation of employee eligibility to work in the United States.[171]	3 years after the hire date or 1 year following termination,

[169] 29 C.F.R. § 4.6.

[170] 41 C.F.R. § 50-201.501.

[171] N.H. REV. STAT. ANN. § 275-A:4-a.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		whichever is later.
Unemployment Insurance	*Each employing unit will keep and maintain records, for each worker, including:* • name and Social Security number; • date of hire, rehire or return to work after layoff; • date of separation; • number of hours worker was employed for each calendar week in which the worker performed any service in employment; • the worker's wages earned each pay period, showing separately: ▪ money wages; ▪ cash value of all other remuneration; ▪ any special payments for services other than those rendered exclusively in a given pay period (*e.g.*, bonuses, gifts, prizes, accrued leave, etc.), showing separately money payments, other remuneration, the nature of such payments and the period during which such payments were paid; and • amount and date of each wage payment. *For each worker engaged in both "included service" and "excluded service," records must also include the number of hours in each pay period working in each type of service. For each place of employment, records must also include the number of workers covered in employment.* *Records must be maintained in such a form that commissioner will be able to ascertain with respect to each employee that may be eligible for partial benefits:* • wages earned, by weeks; • whether any week was in fact a week of less than full-time work; and • time lost, if any, by each such worker, due to reasons other than lack of work.[172]	Not less than 6 years after the calendar year in which the remuneration was paid or, if not paid, was due.

[172] N.H. REV. STAT. ANN. §§ 282-A:8(VII), 282-A:117; N.H. ADMIN. R. EMP. 303.05.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Wages, Hours & Payroll: Criteria to Establish an Employee or Independent Contractor	Employers must retain records supporting their classifications of workers as either employees or independent contractors and must make those records available to the NHDOL upon request.[173]	None specified.
Wages, Hours & Payroll: General	*All employers must keep accurate payroll records, including, for each nonexempt employee:* • hours worked (showing time work began and ended, as well as meal periods); • wages paid; • records showing exact basis of remuneration; • classification of employment when necessary; and • copies of signed written notifications provided to employees concerning: rate of pay or salary, day and place of payment, wage determination methodology; employer's practices and policies concerning paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of employee expenses, pension and other fringe benefits; changes to rate of pay, salary or employment practices or policies.[174] If the employer has received a permit to pay sub-minimum wage where earning capacity is impaired by age or disability, copies of the permit must be kept.[175]	At least 4 years.
Workers' Compensation	Employers must make and keep records of all work-connected injuries and diseases. Employers may use Forms 8aWCA and 8WC to meet this requirement.[176]	5 years from date of injury.
Workplace Safety	*Every employer that handles, uses, or otherwise exposes workers to toxic substances at the workplace must keep and retain materials safety data sheets. Such sheets must include:* • identification including product identifier; manufacturer or distributor name, address, phone number;	At least 30 years after discontinuation of the use of the toxic substance.

[173] N.H. CODE ADMIN. R. ANN. LAB. 803.03(f)(5).

[174] N.H. REV. STAT. ANN. §§ 275.49, 279.27; N.H. CODE ADMIN. R. ANN. LAB. 803.03.

[175] N.H. REV. STAT. ANN. § 279.22; N.H. CODE ADMIN. R. ANN. LAB. 805.05.

[176] N.H. CODE ADMIN. R. ANN. LAB. 504.02; *see also* N.H. REV. STAT. ANN. § 281-A:53.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	emergency phone number; recommended use; restrictions on use; • 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; and • the date such information was compiled and the name and address of the manufacturer, producer, or formulator responsible for compiling it.[177]	

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

3.1(c)(ii) *State Guidelines on Personnel Files*

In New Hampshire, a *personnel file* includes any records created and maintained by an employer and pertaining to an employee such as employment applications, internal evaluations, disciplinary documentation, payroll records, injury reports, and performance assessments. A personnel file does not

[177] N.H. REV. STAT. ANN. §§ 277-A:3, 277-A:5.

include recommendations, peer evaluations, or notes not generated or created by the employer.[178] Further, health, fitness, lifestyle, and other information obtained from employees by their employer or the employer's agents for purposes of providing employees with a health risk assessment or other wellness program must not be considered personnel records, must not be retained in an employee personnel file.[179]

Who May Access. Employees and former employees may inspect their personnel file and/or obtain a copy. An employer, however, is not required to disclose:

- information in the file of a requesting employee who is the subject of an investigation if disclosure would prejudice law enforcement; or
- information relating to a government security investigation.[180]

Viewing a Personnel File. An employer must provide a reasonable opportunity for an employee or former employee to inspect their personnel file or obtain a copy of the file. Employers may charge the employee a reasonable fee related to the cost of supplying the documents.[181]

Disputes. If an employee disagrees with the information in the personnel file, the employee and employer may agree to remove or correct any information. If the employee and employer cannot agree, the employee may submit a written statement explaining the employee's position along with any supporting evidence. The statement must remain in the personnel file and be included in any disclosure of the contested information to a third party.[182]

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on state law related to background screening of current employees, see **1.3**.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

New Hampshire law contains no express provisions regulating drug or alcohol testing of current employees by private employers.

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[178] N.H. CODE ADMIN. R. ANN. LAB. 802.09.

[179] N.H. REV. STAT. ANN. § 275:56.

[180] N.H. REV. STAT. ANN. § 275:56.

[181] N.H. REV. STAT. ANN. § 275:56.

[182] N.H. REV. STAT. ANN. § 275:56(II).

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[183]

3.2(c)(ii) *State Guidelines on Marijuana*

New Hampshire allows the use of marijuana for therapeutic and medical purposes. A qualifying patient can only use cannabis on privately-owned real property with the property owner's written permission.[184]

Under the medical marijuana law, an employer is not required to accommodate the therapeutic use of cannabis on the property or premises of any place of employment, and an employer can discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.[185] However, the Supreme Court of New Hampshire reversed and remanded the trial court's granting judgment on the pleadings to defendant, holding "the trial court erred in determining that the use of therapeutic cannabis prescribed in accordance with RSA chapter 126-X [New Hampshire's medical marijuana law] cannot, as a matter of law, be a reasonable accommodation for an employee's disability under RSA chapter 354-A [New Hampshire's Law Against Discrimination (NH LAD)]."[186] Addressing defendant's argument that marijuana was illegal under the federal Controlled Substances Act, the court observed that NH LAD:

> [D]oes not contain any language categorically excluding the use of therapeutic cannabis as an accommodation. . . . The plain language [] precludes an illegal drug user or addict from asserting that his or her drug use or addiction is itself the basis for claiming a disability under the statute. In the case before us, however, the plaintiff's disability is PTSD, not the illegal use of or addiction to a controlled substance.[187]

The medical marijuana laws do not permit the following activities, if performed by an individual under the influence of cannabis:

- operating a motor vehicle, commercial vehicle, boat, vessel, or any other vehicle propelled or drawn by power other than muscular power; or
- operating heavy machinery or handling a dangerous instrumentality.[188]

Although the law says health insurance providers, health care plans, or medical assistance programs are not liable for a claim for reimbursement for the therapeutic use of cannabis, the state supreme court held that a workers' compensation carrier must reimburse a claimant for medical marijuana expenses that are

[183] 21 U.S.C. §§ 811-12, 841 *et seq*.

[184] N.H. REV. STAT. ANN. § 126-X:3(I).

[185] N.H. REV. STAT. ANN. § 126-X:3(II).

[186] *Paine v. Ride-Away, Inc.*, 274 A.3d 554 (N.H. 2022).

[187] *Paine v. Ride-Away, Inc.*, 274 A.3d 554 (N.H. 2022).

[188] N.H. REV. STAT. ANN. § 126-X:3.

reasonable, medically necessary, and causally related to a work injury, and that the federal Controlled Substances Act does not preempt carriers from reimbursing medical marijuana costs.[189]

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[190]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[191]

3.2(d)(ii) *State Data Security Breach Guidelines*

Under New Hampshire's data security breach statute, a *security breach* occurs when there is an unauthorized acquisition of computerized data that compromises the security or confidentiality of personal information maintained by any person doing business in New Hampshire.[192] When a covered entity becomes aware of a breach, it must promptly determine the likelihood that the information has been or will be misused. Notice is required if the determination is that misuse of the information has occurred or is reasonably likely to occur, or if a determination cannot be made.[193]

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[189] *Compare* N.H. REV. STAT. ANN. § 126-X:3(III)(a) *with Appeal of Panaggio*, 205 A.3d 1099 (N.H. 2019), and *Appeal of Panaggio*, 260 A.3d 825 (N.H. 2021).

[190] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[191] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

[192] N.H. REV. STAT. ANN. §§ 359-C:19 *et seq*.

[193] N.H. REV. STAT. ANN. § 359-C:20.

Covered Entities & Information. The statute covers any person doing business in New Hampshire who owns or licenses computerized data containing personal information. *Personal information* includes an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number;
- driver's license number or other government identification number; or
- any account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account.[194]

Exceptions include:

- data that is encrypted. Data is not encrypted if it is acquired with any required key, security code, access code, or password that would permit access to the encrypted data; and
- information which is lawfully available publicly through federal, local or state government records.[195]

Content & Form of Notice. Notice must include at the minimum all of the following:

- a description of the incident in general terms;
- the approximate date of the breach of the security system;
- the type of personal information obtained as a result of the security breach; and
- the telephonic contact information of the person subject to this section.[196]

Notice may be in one of the following formats:

- written notice;
- electronic notice, if the agency or business' primary means of communication with affected individual is by electronic means;
- telephonic notice, provided that a log of each such notification is kept by the person or business that notifies affected persons; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $5,000;
  - the affected class of persons to be notified exceeds 1,000; or
  - the covered entity does not have sufficient contact information.

Substitute notice must consist of all of the following:

- email notice when the covered entity has an electronic mail address for members of the individuals;

[194] N.H. REV. STAT. ANN. § 359-C:19(IV).

[195] N.H. REV. STAT. ANN. §§ 359-C:19(IV)(b).

[196] N.H. REV. STAT. ANN. § 359-C:20(IV).

- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media.[197]

The following are exceptions to the notification requirement:

- a covered entity that maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information is considered compliant with New Hampshire's data security breach statute. The policy must afford the same or greater protection to the affected individuals as the statute; and
- any person that complies with the notification requirements or security breach procedures of their primary or functional federal or state regulator.[198]

Timing of Notice. Notice must be given as soon as possible. However, notification may be delayed if a law enforcement agency or national or homeland security agency determines that the notification will impede a criminal investigation or jeopardize national or homeland security.[199]

Additional Provisions. If more than 1,000 consumers will be notified of a security breach, then the covered entity must also notify all nationwide consumer reporting agencies of the anticipated date of the notification to the consumers, the approximate number of consumers who will be notified, and the content of the notice. This provision does not require that the covered entity disclose names of the consumers or any personal information relating to them. In addition, this requirement does not apply to any person that is subject to and complies with the notification requirements of the Gramm-Leach-Bliley Act.[200]

Covered entities must also notify the regulator with primary regulatory authority over the covered entity. The Attorney General's Office must also be notified. Such notice must include the anticipated date of the notice to the individuals and the approximate number of individuals in New Hampshire who will be notified. The notice is not required to contain the names of the individuals who will receive notice or any personal information relating to them.[201]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

197 N.H. REV. STAT. ANN. § 359-C:20(III).

198 N.H. REV. STAT. ANN. § 359-C:20(V).

199 N.H. REV. STAT. ANN. § 359-C:20(II).

200 N.H. REV. STAT. ANN. § 359-C:20(VI).

201 N.H. REV. STAT. ANN. § 359-C:20(I)(b).

As a general rule, federal wage and hour laws do not preempt state laws.[202] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[203]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[204]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[205]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[206] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

3.3(b)(i) *State Minimum Wage*

In New Hampshire, most nonexempt employees must be paid the federal minimum wage, which is currently $7.25 per hour.[207]

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently. For an employee of a restaurant, hotel, motel, inn or cabin, or ballroom who customarily and regularly receives more than $30 a month in tips directly from the customers, an employer may take a maximum tip credit of up to $3.98 per hour (55% of the minimum wage) because the minimum cash wage that a tipped employee needs to be paid is $3.27 per hour (45% of the minimum wage).[208] Note that if an employee does not make $3.98 in tips per hour, the employer must make up the difference between the wage actually made, and the minimum wage, which is currently

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[202] 29 U.S.C. § 218(a).

[203] 29 U.S.C. § 206.

[204] 29 U.S.C. §§ 203, 206.

[205] 29 U.S.C. § 3(m)(2)(B).

[206] 29 U.S.C. § 207.

[207] N.H. REV. STAT. ANN. § 279.21.

[208] Note, however, that S.B. 137 (N.H. 2021), a "trigger law" that amends N.H. Rev. Stat. Ann. § 279:21, but only if the federal minimum wage increases, would expand the list of "tipped employees" to include cigar bar employees and change the minimum cash wage standard to $3.27 or the federal minimum cash wage, whichever is greater.

$7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[209] New Hampshire law allows an employee to voluntarily and without coercion from the individual's employer agree to participate in a tip-pooling or tip-sharing agreement. An employee participant may, voluntarily and without coercion, agree to provide a portion of the common pool to other employees, regardless of job category, who participated in providing service to customers.[210]

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

New Hampshire excludes the following categories of workers from its definition of *employee* for purposes of the state minimum wage provisions:

- a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities;
- independent contractors;
- direct sellers;
- qualified real estate brokers or agents or real estate appraisers;[211]
- *bona fide* volunteers;
- inmates of a county or state correctional facility who are required to work and perform services for which no significant remuneration is provided;
- an individual performing community service work under a court order or the provisions of a court diversion program;
- an applicant for employment who is filling out paperwork, participating in pre-screening examinations or interviews;
- a student participating in an unpaid work based activity approved by the New Hampshire Department of Labor;
- an operator of a booth located within a salon or barbershop who operates independently of the salon or barbershop and who possesses a shop license; and
- elected public officials of counties or municipalities.[212]

3.3(c) *State Guidelines on Overtime Obligations*

Nonexempt employees must be paid one-and-one-half times their regular rate for all hours worked over 40 in a workweek. New Hampshire's overtime provisions do not apply to employees of employers covered by the federal FLSA (however, there are special provisions for delivery drivers and sales merchandisers).[213]

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[209] N.H. REV. STAT. ANN. § 279.21.

[210] N.H. REV. STAT. ANN. § 279:26-b.

[211] N.H. REV. STAT. ANN. §§ 279-1, 281-A:2.

[212] N.H. CODE ADMIN. R. LAB. 803.05.

[213] N.H. REV. STAT. ANN. § 279.21.

3.3(d) *State Guidelines on Overtime Exemptions*

New Hampshire's overtime provisions do not apply to employees of employers covered by the FLSA. However, there are special provisions for delivery drivers and sales merchandisers.[214]

Further, unlike the FLSA, there is no specific exemption under state law for an individual employed in a "*bona fide* executive, administrative, or professional capacity," nor is there an express exemption for commissioned sales employees. However, like federal law, state overtime provisions do not apply to *outside sales people*, who are employees "who make sales or obtain orders or contracts for services, are customarily and regularly engaged away from his or her place of business, and whose time is not scheduled by the employer."[215]

Notably, a state's wage payment statute – *i.e.*, a law outside the minimum wage and overtime law statutes – contain restrictions on employers' ability to reduce a salaried employee's wages.[216]

A salaried employee must receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

- Any pay period in which such employee performs no work.
- When an employee receives a disciplinary suspension without pay in accordance with the FLSA for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.
- If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.
- Any portion of a work day or pay period for leave taken under, and in accordance with the FMLA if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.
- If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of the employee's own accord before the end of a pay period, or is terminated for cause by the employer. Employers may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

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[214] N.H. REV. STAT. ANN. § 279.21.

[215] N.H. REV. STAT. ANN. § 279:21; N.H. CODE R. LAB. 802.07.

[216] N.H. REV. STAT. ANN. § 275:43-b(I)-(III).

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[217] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[218]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[219] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[220] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[221] Exemptions apply for smaller employers and air carriers.[222]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related

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[217] 29 C.F.R. § 785.19.

[218] 29 C.F.R. § 785.18.

[219] 29 U.S.C. § 218d.

[220] 29 U.S.C. § 218d(b)(2).

[221] 29 U.S.C. § 218d(a).

[222] 29 U.S.C. § 218d(c), (d).

medical conditions.[223] Lactation is considered a related medical condition.[224] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[225] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

Meal Periods. Employers cannot require employees to work more than five consecutive hours without granting a 30-minute meal period.[226] If it is feasible for the employee to eat during the performance of work and the employer permits the worker to do so, an on-duty meal period is permitted. On-duty meal periods must be paid.

The state labor department provides online a sample request to waive meal period form.[227]

Exempt Employees. The meal period requirements apply to exempt employees. The meal period statute does not define the term employee. Moreover, there is no general definitions statute. Due to the absence of an express definition and/or administrative guidance on the issue, it is assumed the statute applies to both nonexempt and exempt employees.[228]

Rest Periods. There are no generally applicable rest period requirements for adults in New Hampshire.

3.4(b)(ii) *State Meal & Rest Periods for Minors*

There are no independent meal or rest period requirements for minor employees in New Hampshire—the adult standards apply. However, an employer must post in a conspicuous place in every room where minors are employed a notice stating the hours of work, the time allowed for dinner or other meals, and the maximum number of hours any youth is permitted to work in any one day.[229]

3.4(b)(iii) *State Enforcement, Remedies & Penalties*

The meal period statute contains no express penalty provisions. However, a catchall penalty provision provides that the Labor Commissioner may, after a hearing, impose a civil penalty up to $2,500 for any violation of laws it enforces.[230]

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[223] 42 U.S.C. § 2000gg–1.

[224] 29 C.F.R. § 1636.3.

[225] 29 C.F.R. § 1636.3.

[226] N.H. REV. STAT. ANN. § 275:30-a.

[227] N.H. REV. STAT. ANN. § 275:30-a; *see* https://www.milford.nh.gov/sites/g/files/vyhlif4701/f/pages/request_to_waive_lunch_-_with_reg_and_handbook_ref_2.22.23.pdf.

[228] *See* N.H. REV. STAT. ANN. § 275:30-a.

[229] N.H. REV. STAT. ANN. § 276-A:20.

[230] N.H. REV. STAT. ANN. § 273:11-a.

3.4(b)(iv) *Lactation Accommodation Under State Law*

In New Hampshire, restricting or limiting the right of an individual to breast feed their child is discriminatory.[231] Although the statute does not specifically mention employers, it can be construed to include during the hours of employment.[232] In addition, beginning in July 2025, the state will specifically require employers to provide lactation accommodations to nursing employees.[233]

The lactation accommodation provisions require an employer of six or more employees provide access to reasonable, sufficient space, either temporary or permanent in nature, for the use of an employee to express milk for a nursing child for a period of one year from the date of birth of the child. The space provided for expressing milk:

- must be within a reasonable walk from the employee's worksite, unless the employer and the employee mutually agree to a different location;
- cannot be a bathroom;
- must be a clean space shielded from view and free from intrusion from coworkers and the public; and
- at a minimum, must contain an electrical outlet and a chair if feasible.[234]

If the space is not solely for the use of employees expressing milk, the employer must make the space available when requested to comply with the above requirements.

Covered employers must also provide reasonable break periods to employees who need to express milk for a child for a period of one year from the date of the child's birth. *Reasonable break period* means an unpaid break of approximately 30 minutes for every three hours of work performed by a nursing employee for the purpose of expressing milk. The statute does not preclude the employer and employee from negotiating reasonable break periods to express milk that are different from these requirements. An employee may choose to take a reasonable break period to express milk contemporaneously with meal or rest break periods already provided to the employee by the employer. The employer is prohibited from requiring an employee to make up time related to use of unpaid reasonable break periods for expressing milk.[235]

Covered employers must adopt a policy to address the provision of sufficient space and reasonable break periods for nursing employees that need to express milk during working hours. An employer must provide the policy related to expression of milk during working hours to new employees at the time of hire. A nursing employee must notify the employer at least 2 weeks prior to needing reasonable break periods and sufficient space for expression of milk during work hours, so long as providing the notice complies with the employer's policies.[236]

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[231] N.H. REV. STAT. ANN. § 132:10-d.

[232] *See* N.H. REV. STAT. ANN. § 132:10-d.

[233] H.B. 358 (N.H. 2023).

[234] N.H. REV. STAT. ANN. § 275:80.

[235] N.H. REV. STAT. ANN. §§ 275:78, 275:81.

[236] N.H. REV. STAT. ANN. § 275:79.

An employer is not required to provide break periods and/or a lactation space if the employer can demonstrate that providing these accommodations would impose an undue hardship on the employer's operations. *Undue hardship* means any action that requires significant difficulty or expense when considered in relation to factors such as the size of the business, its financial resources and the nature and structure of its operations.[237]

An employer that fails to comply with the lactation accommodation requirements will incur a one-time civil penalty.[238] However, enforcement of the lactation accommodation requirements does not begin until July 2026.

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[239] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[240]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time. New Hampshire law addresses the compensability of all three.

Reporting Time. Employees who report to work at the employer's request must be paid for at least two hours of work at their regular rate of pay. However, if an employer makes a good faith effort to notify employees not to report, it is not required to pay the two-hour minimum.

The reporting time requirement does not apply in either of the following situations:

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[237] N.H. REV. STAT. ANN. §§ 275:78, 275:83.

[238] N.H. REV. STAT. ANN. §§ 273:11-a, 275:82.

[239] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[240] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

- an employee reports to work and requests to leave on the basis of illness, personal emergency, or family emergency, provided that a written explanation initialed by the employee is entered on the employee's time slip or card; or
- an employee who reports to work with the expectation that the employee will work less than two hours and is notified in writing in advance of the employee's schedule.[241]

On-Call Time. New Hampshire follows federal law to determine when an employee is entitled to compensation for being on call.[242] Accordingly, employers should follow the FLSA.

Travel Time. New Hampshire follows federal law to determine whether travel time is compensable.[243] Accordingly, employers should follow the FLSA.

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks *minors*, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[244] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[245] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. New Hampshire law closely tracks federal law with respect to occupations prohibited to minors, as described in Table 9.

Table 9. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under Age 18	In New Hampshire, minors under age 18 cannot work in any hazardous occupation, except in an apprenticeship, vocational rehabilitation, or training

[241] N.H. REV. STAT. ANN. § 275:43-a; N.H. CODE ADMIN. R. ANN. LAB. 803.03; *Nashua Young Women's Christian Assoc. v. State of N.H.*, 597 A.2d 535 (N.H. 1991) (section 275:43-a was not intended to apply to persons hired to work less than two hours a day).

[242] N.H. CODE ADMIN. R. ANN. LAB. 803.04.

[243] N.H. CODE ADMIN. R. ANN. LAB. 803.04.

[244] 29 C.F.R. §§ 570.36, 570.50.

[245] 29 C.F.R. § 570.6.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	program approved by the state labor department. Hazardous occupations are those set forth in federal child labor laws.[246] Accordingly, employers should consult and follow the FLSA.
Under Age 16	In addition to the general prohibition of hazardous occupations, a minor under age 16 specifically may not be employed or permitted to work in a "dangerous area in manufacturing, construction, and mining and quarrying occupations, or in woods and logging."[247]
Under Age 12	In New Hampshire, minors under age 12 cannot be employed, except by their parents, grandparents, or guardian, or in connection with newspaper delivery.[248]

Restrictions on Selling or Serving Alcohol. An establishment licensed under the alcoholic beverages control law that sells alcohol for off-premises consumption may employ as cashiers minors who are age 16 if they are supervised by an employee who is age 18. Minors age 15 and older may handle beverages or wines that are sold in their original containers.[249]

An establishment licensed under the alcoholic beverages control law that sells alcohol for on-premises consumption may employ any person who is at least 18 to serve or otherwise handle liquor and beverages while employed as a waiter, waitress, bartender, or hostess. minors age 14 and older can clean tables, remove empty containers and glasses, and stock. A person at least 18 years of age must be in attendance and in charge of the employees and business.[250]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

In New Hampshire, minors under age 18 cannot work:

- more than 10 hours per day in manual or mechanical labor at manufacturing establishments;
- more than 48 hours per week in manual or mechanical labor at manufacturing establishments;
- more than 10¼ hours per day in manual or mechanical labor in other employment (does not include certain types of labor, *e.g.*, household labor, canning perishable fruit); or
- more than 54 hours per week in manual or mechanical labor in other employment.[251]

Special licenses concerning the hours of employment may be granted to manufacturing establishments, manufacturing establishments working on government orders for national defense, laundry

[246] N.H. REV. STAT. ANN. § 276-A:4; N.H. CODE ADMIN. R. ANN. LAB. 1003.01.

[247] N.H. REV. STAT. ANN. § 276-A:4.

[248] N.H. REV. STAT. ANN. § 276-A:4.

[249] N.H. REV. STAT. ANN. § 179:23.

[250] N.H. REV. STAT. ANN. § 179:23.

[251] N.H. REV. STAT. ANN. § 276-A:11.

establishments, manufacturing of munitions or supplies for the U.S. government while the country is at war with another nation.[252]

Minors age 16 or 17 enrolled in school cannot work:

- more than 35 hours during a school calendar week (Sunday through Saturday); or
- more than 48 hours during school vacation weeks or summer vacation (June 1 to Labor Day).[253]

Minors under 16 cannot work:

- during school hours (with limited exceptions);
- more than three hours on school days;
- more than 23 hours a week during school weeks;
- more than eight hours per day on nonschool days;
- more than 48 hours per week in nonschool weeks; or
- between 9:00 P.M. and 7:00 A.M.[254]

However, the state labor department may, upon application by an employer, order that the restriction on hours be suspended concerning a minor under age 16 employed in agricultural work.[255]

In New Hampshire, minors under age 12 cannot work, subject to limited exceptions (*e.g.*, work for parents or grandparents, door to door delivery of newspapers).[256]

3.6(b)(iii) *State Child Labor Exceptions*

The time and hour restrictions do not apply to regular employees of mercantile establishments during the seven-day period preceding Christmas day; however, the total number of hours a minor can work in this situation cannot exceed 54 hours per week for the full year.[257]

The work permit requirements for minors aged 16 and under do not apply to:

- a minor working for their parents, grandparents, or guardian;
- a minor performing *casual work* (*i.e.*, employment which is infrequent or of brief duration or that produces little or sporadic income); or
- minors performing farm labor.[258]

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[252] N.H. REV. STAT. ANN. §§ 276-A:16 to 276-A:19.

[253] N.H. REV. STAT. ANN. § 276-A:4.

[254] N.H. REV. STAT. ANN. § 276-A:4.

[255] N.H. REV. STAT. ANN. § 276-A:4.

[256] N.H. REV. STAT. ANN. § 276-A:4.

[257] N.H. REV. STAT. ANN. §§ 276-A:11, 276-A:15 to 276-A:19.

[258] N.H. REV. STAT. ANN. § 276-A:4.

3.6(b)(iv) *State Work Permit or Waiver Requirements*

In New Hampshire, employers of minors age 16 or 17 must maintain on file written permission from their parent or guardian permitting employment.[259] Youth employment certificates are issued to minors by a school principal or other authorized person, or parent or legal guardian, upon the receipt of an Employer's Request for Child Labor Form and proof of age. A certificate is required for minors under age 16, unless employed by their parents, grandparents, or guardian. Employers must keep copies of certificates on file.[260]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

The New Hampshire Department of Labor enforces the state's child labor laws. Department investigators and truant officers have the authority to visit and inspect all places of employment.[261] Employers that violate the child labor laws are guilty of a felony.[262] The state labor commissioner may assess a civil penalty on an employer not to exceed $2,500 for each violation.[263]

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[264]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[265]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited

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[259] N.H. REV. STAT. ANN. § 276-A:4.

[260] N.H. REV. STAT. ANN. §§ 276-A:4, 276-A:5; N.H. CODE ADMIN. R. ANN. LAB. 1001.04.

[261] N.H. REV. STAT. ANN. § 276-A:6.

[262] N.H. REV. STAT. ANN. § 276-A:7.

[263] N.H. REV. STAT. ANN. § 276-A:7-a.

[264] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[265] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[266]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[267] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[268]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[269] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[270]

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[266] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[267] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[268] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[269] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[270] 12 C.F.R. § 1005.18.

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[271]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[272]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[273] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[274] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work

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[271] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

[272] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[273] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[274] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

uniforms,[275] tools and equipment,[276] and business transportation and travel.[277] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[278]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[279]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[280]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[281]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[282]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[283] or

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[275] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[276] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[277] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[278] 29 C.F.R. § 778.217.

[279] 29 C.F.R. § 531.38.

[280] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[281] 29 C.F.R. § 531.40.

[282] 29 C.F.R. § 531.40.

[283] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[284]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[285]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[286] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[287]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[288]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or

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[284] 29 C.F.R. § 825.213.

[285] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[286] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[287] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[288] 29 C.F.R. § 531.36.

increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[289]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[290]

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

Authorized Instruments. Wages may be paid by cash, checks, electronic fund transfer, direct deposit, or payroll debit card. However, payment by electronic fund transfer, direct deposit, or payroll debit card must be optional. It is recommended that employees be offered the option of receiving a paper paycheck. Paychecks must be from financial institutions convenient to the place of employment where arrangements have been made for the cashing of checks for the full amount of wages due.[291]

Direct Deposit. Mandatory direct deposit is not permitted in New Hampshire. However, with an employee's written authorization, direct deposit into a bank of the employee's choice is permitted. If an employer elects to pay employees by electronic funds transfer or direct deposit, it must offer employees the option of being paid by check from a financial institution convenient to the place of employment where suitable arrangements are made for cashing checks for their full amount.[292]

Payroll Debit Card. An employer can pay, at no cost to the employee, by a payroll card if the employer provides the employee at least one free means to withdraw up to and including the full amount of the employee balance in the payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account can be passed on to the employee.

If an employer elects to pay employees by pay card, it must offer employees the option of being paid by check from a financial institution convenient to the place of employment where suitable arrangements are made for cashing checks for their full amount.

If an employer offers its employees the option of receiving wages by a payroll card, the employer must:

- Provide to the employee written disclosure in plain language of all the employee's wage payment options. The written disclosure must state the terms and conditions of the payroll card account option, including, but not limited to, the requirements set forth in the statute and a complete itemized list of all known fees that may be deducted from the employee's payroll card account by the employer or card issuer. The disclosure must also state whether third parties may assess transaction fees in addition to the fees assessed by the employee's payroll card issuer or issuers. In no event can the employer provide payment of wages to a payroll card that has an expiration date, unless the employer agrees to provide a replacement payroll card before the expiration date at no cost to the employee.

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289 29 C.F.R. § 531.37.

290 U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

291 N.H. REV. STAT. ANN. § 275:43.

292 N.H. REV. STAT. ANN. § 275:43.

- Initiate payment of wages to an employee by electronic fund transfer to a payroll card account only after the employee has voluntarily consented in writing to that method of payment. Consent to payment of wages by electronic fund transfer to a payroll card account cannot be a condition of hire or of continued employment. The written consent signed by the employee must include the terms and conditions of the payroll card account option.
- Provide written notice of any change to any of the terms and conditions of the payroll card or payroll card account, including but not limited to an itemized list of all fees that may have changed, and obtain written assent from the employee that the employee voluntarily consents to receive wages to a payroll card or payroll card account subject to the changes. An employer is responsible for any increase in fees charged to the employee before the employer provides written notice of such changes to the employee.
- Provide the employee the option to discontinue receiving wages by a payroll card or payroll card account at any time, without penalty to the employee.[293]

3.7(b)(ii) *Frequency of Payment Under State Law*

In New Hampshire, employees must be paid once a week or every two weeks. However, the state labor department, upon written petition showing good and sufficient reason, may permit payment of wages less frequently than weekly **or** biweekly. Wages must be paid within eight days after the workweeks ends if wages are paid on a weekly basis, and wages must be paid within 15 days after the workweek ends if wages are paid on a bi-weekly basis.[294]

3.7(b)(iii) *Final Payment Under State Law*

If an employee is fired, final wages are due 72 hours from the time of termination. If an employee is laid off or suspended due to a labor dispute, final wages must be paid by the next regularly scheduled payday.[295]

If an employee quits or resigns, final wages are due by the next regular payday. If the employee gives at least one pay period's notice of the employee's intention to quit, and the employer will not allow the employee to work during the notice period, all wages must be paid within 72 hours.[296]

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

Employees must receive a statement of deductions made from their wages for each pay period.[297]

The law requires that an employer furnish each employee with a wage statement each pay period, and make available to employees, in a written statement, information regarding deductions. The state labor department has informally advised that wage statements can be electronic if "the employer provides a means to view and print a copy of the wage statement if the employee so desires."[298]

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[293] N.H. REV. STAT. ANN. § 275:43.

[294] N.H. REV. STAT. ANN. § 275:43.

[295] N.H. REV. STAT. ANN. § 275:44.

[296] N.H. REV. STAT. ANN. § 275:44; N.H. CODE ADMIN. R. ANN. LAB. 803.02.

[297] N.H. REV. STAT. ANN. § 275:49.

[298] N.H. REV. STAT. ANN. § 275:49; N.H. CODE ADMIN. R. ANN. LAB. 803.03; Email response, Kristopher Health, Inspector, Inspection Div., New Hampshire Dep't of Labor (June 11, 2014).

3.7(b)(v) *Wage Transparency*

Under New Hampshire law, an employer cannot discharge or in any other manner discriminate against any employee because the employee has inquired about, discussed, or disclosed their wages or those of another employee.[299] An employer cannot require, as a condition of employment, that an employee refrain from disclosing the amount of their wages or sign a waiver that purports to deny the employee the right to disclose the amount of the employee's compensation. Additionally, an employer cannot discharge, formally discipline, or otherwise discriminate against an employee because the employee discloses the amount of his/her compensation.[300]

The wage disclosure provisions not apply to an employee who has access to the wage information of other employees as a part of essential job functions who discloses the wages of other employees to individuals who do not otherwise have access to such information, unless the disclosure is in response to a complaint or charge or in furtherance of an investigation, proceeding, hearing, or civil action, including an investigation conducted by the employer.

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

Changing Regular Paydays. Employers must give employees written notice of changes to the day and place of payment before the change occurs. Employers must maintain on file a signed copy of the written notification that is signed by the employee.[301]

Changing Pay Rate. Employers must give employees written notice of pay rate changes before the change occurs. Employers must maintain on file a signed copy of the written notification that is signed by the employee.[302]

3.7(b)(vii) *Paying for Expenses Under State Law*

An employer must reimburse an employee for expenses incurred in connection with employment and at the employer's request, which are not paid for by wages, cash advance, or other means, within 30 days of being presented proof of payment. However, this does not apply to expenses normally borne by an employee as a precondition of employment. Employers must provide employees a written or posted detailed description of employment practices and policies pertaining to payment of employee expenses. Employers must inform employees, in writing, of changes to employment practices or policies prior to the change's effective date. Moreover, any employee expenses vested before a change occurs cannot lapse due to the change.[303]

Uniforms. A *uniform* is defined 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."[304]

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[299] N.H. REV. STAT. ANN. § 275:38-a(I)(b).

[300] N.H. REV. STAT. ANN. § 275:41-b(I)-(II).

[301] N.H. REV. STAT. ANN. § 275:49; N.H. CODE ADMIN. R. ANN. LAB. 803.03.

[302] N.H. REV. STAT. ANN. § 275:49; N.H. CODE ADMIN. R. ANN. LAB. 803.03.

[303] N.H. REV. STAT. ANN. § 275:57; N.H. CODE ADMIN. R. ANN. LAB. 803.03.

[304] N.H. REV. STAT. ANN. § 275:48(V)(b).

An employer cannot require employees to wear uniforms unless it provides each employee with uniforms at no cost whatsoever to the employee. However, with the employee's written authorization, an employer can deduct for:

- voluntary cleaning of uniforms and nonrequired clothing; and
- required clothing not covered by the definition of uniform.

Additionally, according to the state labor department, deductions for an unreturned uniform cannot be made from final wages.[305]

3.7(b)(viii) *Wage Deductions Under State Law*

Permissible Deductions. An employer cannot withhold from employee wages unless:

- required or empowered to do so by state or federal law;
- the employee provides written authorization for deductions for a lawful purpose accruing to the employee's benefit or for any of the following:
  - union dues;
  - health, welfare pension, and apprenticeship fund contributions;
  - voluntary contributions to charities;
  - housing and utilities;
  - payments into savings funds held by someone other than the employer;
  - voluntary rental fees for nonrequired clothing;
  - voluntary cleaning of uniforms and nonrequired clothing;
  - employee's use of a vehicle, if the employee is a full-time retail vehicle dealer employee and the vehicle is owned by the dealer;
  - medical, surgical, hospital, and other group insurance benefits without financial advantage to the employer, when the employee has given written authorization and deductions are duly recorded;
  - required clothing not covered by the definition of uniform;
  - legal plans and identity theft plans without financial advantage to the employer when the employee has given written authorization and deductions are duly recorded; and
  - for any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, when the employee has given written authorization and deductions are duly recorded. The withholding cannot be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business;

[305] N.H. REV. STAT. ANN. § 275:48; N.H. CODE ADMIN. R. ANN. LAB. 803.02; New Hampshire Dep't of Labor, *Wages and Work Hours FAQs*, *available at* http://www.nh.gov/labor/faq/wage-hour.htm.

- the deductions are pursuant to any rules or regulations for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books;
- the employee requests in writing that the employer deduct the following items from wages:
  - voluntary contributions into cafeteria plans or flexible benefit plans;
  - voluntary payments by the employee for the following:
    - childcare fees by a licensed childcare provider;
    - parking fees; or
    - pharmaceutical items, gift shop, and cafeteria items purchased on the site of a hospital by hospital employees.
  - voluntary installment payments of legitimate loans made by the employer to the employee;
  - voluntary payments for the recovery of accidental overpayment of wages;
  - voluntary payments for the recovery of tuition for nonrequired educational costs paid by the employer for the employee to an educational institution; or
  - voluntary payments for the employee's use of a health or fitness facility that is sponsored by the employer for the benefit of its employees;
- the employee requests in writing that deductions may be made for contributions to a political action committee from the employee's wages; or
- the employee requests in writing that the employer deduct from final wages any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy, when the payments have been requested and paid to the employee in advance of eligibility.[306]

Deductions for voluntary payments that the employee requests in writing as described above must be evidenced by a document that states the time the payments will begin and end and the amounts to be deducted. The document must also include a specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.[307]

Employers in the hotel, motel, cabin, tourist home, and restaurant industries may be able to deduct from the minimum wage for meal and lodging allowances. For detailed information about applying the cost of meals and lodging toward employee wages (*e.g.*, amount, full requirements), employers should consult the statute.[308]

Prohibited Deductions. New Hampshire law does not specify any deductions that are prohibited under any circumstances. However, if an employer does not comply with the requirement to obtain advance

[306] N.H. REV. STAT. ANN. § 275:48.

[307] N.H. REV. STAT. ANN. § 275:48.

[308] N.H. REV. STAT. ANN. § 279:21-a.

written authorization from an employee or to evidence the deduction in writing, as required for certain deductions, such deductions would be noncompliant and prohibited.

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Orders of Support. A New Hampshire employer that receives an order requiring income withholding for child or spousal support must begin withholding from the obligor-employee's wages no later than in the first pay period that occurs 14 days after the notice is mailed to the employer.[309] The amount withheld for may not exceed the limits specified in the federal Consumer Credit Protection Act. The employer may deduct a fee of $1 for each withholding for administrative costs incurred.[310] If the employee's employment terminates, the employer must notify the state within 15 days of the termination and provide the employee's last known address and the name and address of the employee's new employer, if known.[311] An employer that discharges, refuses to employ, or takes any disciplinary action against an employee because of a withholding order is guilty of a misdemeanor and may be fined up to $1,000.[312]

Debt Collection. If an employee is subject to a garnishment against the employee's wages for collection of a debt, their employer will be served with a writ of garnishment ordering withholding of the outstanding amounts. Under New Hampshire garnishment law, the employer is referred to as the *trustee*.[313] The writ includes interrogatories to the employer concerning the employee's income and any other claims that exist against the employee's wages.[314] The employer must file a response to the interrogatories within 30 days of receipt of the writ.[315] Certain types of income are exempt from garnishment.[316]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

The Commissioner of the New Hampshire Department of Labor (NHDOL) enforces the state's wage and hour laws.[317] The NHDOL is authorized to investigate violations and institute actions for penalties, and may also resolve wage claims filed by employees.[318] An employee must file a wage claim with the NHDOL no later than 36 months from the date the wages were due.[319] An employee also has a private right of action to file suit against an employer for unpaid wages.[320] A prevailing employee may recover the unpaid wages, liquidated damages, and reasonable attorneys' fees and costs.[321]

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309 N.H. REV. STAT. ANN. § 458-B:6.

310 N.H. REV. STAT. ANN. §§ 458-B:4, 458-B:6.

311 N.H. REV. STAT. ANN. § 458-B:6.

312 N.H. REV. STAT. ANN. § 458-B:6.

313 N.H. REV. STAT. ANN. § 512:3.

314 N.H. REV. STAT. ANN. § 512:9-d.

315 N.H. REV. STAT. ANN. § 512:3.

316 N.H. REV. STAT. ANN. § 512:21.

317 N.H. REV. STAT. ANN. § 275:51.

318 N.H. REV. STAT. ANN. § 275:51.

319 N.H. REV. STAT. ANN. § 275:51.

320 N.H. REV. STAT. ANN. § 275:53.

321 N.H. REV. STAT. ANN. § 275:53.

With respect to penalties, the Commissioner may, after a hearing, impose a civil penalty up to $2,500 for any violation of laws it enforces.[322] Further, an employer that willfully violates New Hampshire's wage payment provisions is guilty of a misdemeanor.[323]

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[324] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[325] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[326]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

New Hampshire law does not require an employer to offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. However, once an employer establishes a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

In New Hampshire, vacation pay, personal days, holiday pay, and sick pay, when such benefits are a matter of employment practice or policy, or both, are considered *wages* when due.[327] New Hampshire employers must provide employees with a written or posted detailed description of employment and policies concerning such benefits.[328] Additionally, an employer must inform employees in writing of any change to its policies on vacation pay and other paid time off. Employers must obtain a signed acknowledgement from the employee of the policy change notification. Any paid time off already earned, accrued, or vested cannot lapse due to the change in policy.[329]

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[322] N.H. REV. STAT. ANN. § 273:11-a.

[323] N.H. REV. STAT. ANN. § 275:52.

[324] 29 U.S.C. § 1002.

[325] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[326] 490 U.S. 107, 119 (1989).

[327] N.H. REV. STAT. ANN. § 275:43.

[328] N.H. CODE ADMIN. R. ANN. LAB. 803.03.

[329] N.H. REV. STAT. ANN. § 275:49; N.H. CODE ADMIN. R. ANN. LAB. 803.03.

There is no statutory or regulatory provision prohibiting an employer from implementing caps on accrual or a "use-it-or-lose-it" policy. At least one state labor department administrative decision upheld a policy saying the company would not pay out accrued, unused PTO when employment ends, a copy of which the employee acknowledged receiving.[330] Per the decision, whether vacation benefits become "due," according to state wage payment laws, depends on contingencies an employer's policy specifies.

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

In New Hampshire, an employee may not be required to work in a mill or factory on a legal holiday unless the work is both "absolutely necessary" and "can lawfully be performed on the Lord's Day."[331]

Veterans honorably discharged from the U.S. armed forces must be provided a preference not to work on Veterans Day. Qualifying employees must provide advance notice according to their employer's policies. Employers are not required to pay qualifying employees who choose not to work on Veterans Day.[332]

An employee may not be required or allowed to work on a Sunday unless given 24 consecutive hours off of work within the next six days. An employer that operates on a Sunday must post a schedule, and make it available to employees, of those who are required or allowed to work on Sunday and must designate the day of rest for each.[333]

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[334] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

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330 *In re: MobilityWorks*, Case No. 57091 (N.H. Dep't of Labor June 7, 2018).

331 N.H. REV. STAT. ANN. § 275:28.

332 N.H. REV. STAT. ANN. § 115-A:29.

333 N.H. REV. STAT. ANN. §§ 275:32, 275:33.

334 29 U.S.C. § 1144.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[335] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[336] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

Neither the state of New Hampshire nor any local municipalities offer domestic partner registration. Prior to 2010, New Hampshire performed civil unions. Once the state passed a law legalizing same-sex marriage in 2009, the civil union statute was repealed and all civil unions were to be merged into marriages no later than January 2011, unless otherwise annulled or dissolved.[337] Accordingly, state law does not currently address the issue of whether an employee's civil union partner would be considered an eligible dependent for purposes of employee benefits.

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[338]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[339]
- to take medical leave when the employee is unable to work because of a serious health condition;[340]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and

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335 29 U.S.C. § 1161.

336 29 U.S.C. § 1167(3).

337 N.H. REV. STAT. ANN. § 457:1-a.

338 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

339 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

340 29 C.F.R. §§ 825.112, 825.113.

- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[341] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[342] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

New Hampshire law does not require family and medical leave for private-sector employees. However, the New Hampshire Paid Family and Medical Leave Plan provides for voluntary coverage for private employers. While mandatory for state workers, private employers may choose to offer coverage under the plan at no cost to their employees, or on a contributory or partially contributory basis. Private employers receive a tax credit of 50% of the premiums paid if they use the state-sponsored plan for their employees.[343]

Reasons for Leave and Benefits. Under the law, eligible employees will receive paid benefits of 60% of their average weekly wage, subject to a cap. Employees may take leave for the following reasons:

- the birth of a child of the employee or placement of a child with the employee for adoption or fostering within the last 12 months;
- the serious health condition of a child, biological, adoptive, or foster parent, stepparent, or legal guardian of the child or the child's spouse or domestic partner, a biological, adoptive, or foster grandparent or step grandparent, or a spouse or domestic partner;
- a qualifying exigency arising from foreign deployment with the armed forces, or to care for a service member with a serious injury or illness as permitted under the federal Family and Medical Leave Act; or
- a serious health condition of the employee that is not related to employment, where the employer does not offer short-term disability insurance.[344]

Employees may take up to six weeks of leave per year for the birth or placement of a child, serious health condition of a family member, or a military-related reason, and may receive an additional six weeks for their own serious health condition.

Other Provisions. The law requires that if a private employer has 50 or more employees and voluntarily sponsors the plan, it must restore any individual who takes leave under the plan to the same or an equivalent position to the one they held before the leave. These employers must also provide health insurance to the individual during leave, though the individual is still responsible for any employee-shared costs of health insurance.

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[341] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[342] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[343] N.H. REV. STAT. ANN. §§ 21-I:101, 77-E:3-e.

[344] N.H. REV. STAT. ANN. §§ 21-I:101, 21-I:102, 282-B-2.

The law prohibits these employers from discriminating or retaliating against an employee that uses the leave benefits.

An employer may require that any paid leave taken under the plan run concurrently with leave that is allowed under a collective bargaining agreement or the federal Family and Medical Leave Act.[345]

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[346] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

New Hampshire law does not address paid sick leave for private-sector employees.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[347] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning

[345] N.H. REV. STAT. ANN. § 275:37-d. Additional guidance is available at https://www.paidfamilymedicalleave.nh.gov/.

[346] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[347] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for their own serious health condition, such as severe morning sickness.[348] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[349] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

New Hampshire's Law Against Discrimination requires that an employer with six or more employees must permit an employee to take a leave of absence for the period of temporary disability resulting from pregnancy, childbirth, or related medical conditions.[350]

When the employee is physically able to return to work, the employee must be restored to their original job or a comparable position unless business necessity makes it impossible or unreasonable. For all other purposes, employees affected by pregnancy, childbirth, or related medical conditions must be treated the same as employees affected by other temporary disabilities.[351]

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

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[348] 29 C.F.R. § 825.202.

[349] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

[350] N.H. REV. STAT. ANN. § 354-A:7(VI).

[351] N.H. REV. STAT. ANN. § 354-A:7(VI).

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

New Hampshire law does not address adoptive parents leave for private-sector employees.

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

New Hampshire law does not address school activities leave for private-sector employees.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

New Hampshire law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

New Hampshire law does not address time off to vote for private-sector employees.

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

New Hampshire law does not address leave for private-sector employees to participate in political activities.

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[352] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can

[352] 28 U.S.C. § 1875.

set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[353] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. An employer may not discharge, threaten, or coerce an employee because the employee receives and responds to a jury duty summons, or attends court for prospective jury service. An employer is not required to compensate an employee for time spent on jury service. Employers may offset amounts received by salaried employees for jury duty or witness fees against the salary due for that pay period pursuant to a written *bona fide* leave plan, practice, or policy.[354]

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Victims of Crimes in General. An eligible employee may take time off from work to attend court or other legal or investigative proceedings associated with the prosecution of the crime.[355] An employee is eligible for time off if the employee:

- works for an employer that has 25 or more employees; and
- one of the following applies:
  - the employee is a victim of the crime at issue in the proceedings (suffered direct or threatened physical, emotional, psychological, or financial harm as a result of the commission or the attempted commission of a crime); or
  - the victim is a minor, incompetent, or was a homicide victim, and the employee is the father, mother, stepparent, child, stepchild, sibling, spouse, grandparent, or legal guardian of the victim, or any person involved in an intimate relationship and residing in the same household with the victim.[356]

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[353] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[354] N.H. REV. STAT. ANN. §§ 500-A:14, 275:43-b.

[355] N.H. REV. STAT. ANN. § 275:62.

[356] N.H. REV. STAT. ANN. § 275:61.

An employer may limit the amount of the employee's leave if the leave creates an undue hardship to the employer's business.[357]

Notice & Compensation. Before an employee may leave work, the employee must provide the employer with a copy of the notice of each scheduled hearing, conference, or meeting that is provided to the employee by the court or agency responsible for providing notice to the employee.[358] There is no requirement that the employee be compensated for absences taken pursuant to the statute. An employee may elect to use, or an employer may require the employee to use, the employee's accrued paid vacation time, personal leave time, or sick leave time. An employee may not lose seniority while on leave.[359] An employer must maintain the confidentiality of any written documents or records submitted by an employee related to the employee's request to leave work.[360]

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[361]

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

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[357] N.H. REV. STAT. ANN. § 275:63.

[358] N.H. REV. STAT. ANN. § 275:62.

[359] N.H. REV. STAT. ANN. § 275:62.

[360] N.H. REV. STAT. ANN. § 275:62.

[361] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[362] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.363 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Military Leave. In New Hampshire, members of the National Guard or State Guard, when called to either federal or state active service, will receive the same benefits, privileges, and protections in employment as provided under the federal USERRA, regardless of the activation authority or location of service.[364]

Other Military-Related Protections: Spousal Unemployment. While not a leave provision or restricted only to military spouses, in New Hampshire, unemployment insurance benefits must be paid where the reason for leaving employment was to allow the individual to accompany their spouse to a place from which it is impractical for the individual to commute due to a change in location of the spouse's employment.[365]

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

Emergency Responder Leave. In New Hampshire, certain emergency services personnel are eligible for unpaid leave to respond to emergencies. A member of a fire department, rescue squad, or emergency medical services agency who is called into service of the state of New Hampshire or a political subdivision due to a state of emergency designated by the governor or general court may take unpaid leave from the individual's place of employment to respond to the emergency. The employer may not require the employee to use or exhaust their vacation or other accrued leave for the period of emergency service. However, the employee may choose to take vacation or other accrued leave for the period of emergency service.[366]

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[362] 29 C.F.R. § 825.126(a).

[363] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

[364] N.H. REV. STAT. ANN. § 110-C:1.

[365] N.H. REV. STAT. ANN. § 282-A:32.

[366] N.H. REV. STAT. ANN. § 275:66.

The director of emergency services, communications, and management or by the head of a local organization for emergency management must request the employee's services in writing. The request must be directed to the chief of the member's fire department, rescue squad, or emergency medical services agency and a copy must be provided to the member's employer.[367]

An employer may certify to the director of emergency services, communications, and management or to the head of the local emergency management agency that the employee is essential to the employer's own emergency or disaster relief activities. This certification serves to exempt the employer from providing leave to the employee under this law.[368]

Though not a leave, **effective August 13, 2024**, employers are prohibited from discharging or otherwise taking disciplinary action against any employee for failing to report for work at the start of their shift if the failure is because the employee, in their capacity as a volunteer firefighter or emergency medical technician, had to respond to an emergency they witnessed or came across on their way to work. Eligible volunteer positions include a volunteer, call, reserve, or permanent-intermittent firefighter or emergency medical technician, but does not include any person who received compensation for over 975 hours of services rendered in such a role over the preceding six-month period.[369]

Veterans Day. As first noted in 3.8(b)(ii), any veteran who has received an honorable discharge from the U.S. armed forces may choose not to work on Veterans' Day, provided the employee gives the employer proper notice according to the employer's policies and procedures. The leave may be unpaid.[370]

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[371] Employers are also required to comply with all applicable occupational safety and health standards.[372] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and

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[367] N.H. REV. STAT. ANN. § 275:66.

[368] N.H. REV. STAT. ANN. § 275:66.

[369] N.H. REV. STAT. ANN. § 275:41-e.

[370] N.H. REV. STAT. ANN. § 115-A:29.

[371] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[372] 29 U.S.C. § 654(a)(2).

enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[373] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

New Hampshire does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees. Accordingly, employers must abide by the Fed-OSH Act. However, the state imposes several other requirements. For example, New Hampshire employers with 15 or more employees must prepare a written safety program and file information about the program with the Commissioner of the New Hampshire Department of Labor.[374] The program must be reviewed and updated every two years. The program must:

- specify rules and regulations regarding worker safety;
- set forth the process of warnings, job suspension, and termination for violations of the safety rules;
- designate a person who is knowledgeable of site-specific safety requirements and be accountable for their implementation;
- provide for health and safety inspections at least annually;
- perform audits at least annually;
- communicate identified hazards and recommended control measures to the person most able to implement the controls;
- provide for the commitment of adequate resources solely for safety;
- provide for medical services, emergency response, first aid, and accident reporting and investigation;
- provide for the review of the current safety program by all employees; and
- provide for review and update of the safety program at least every two years, including a signature of the employer representative including the date the program was reviewed and updated.[375]

Additionally, employers with 15 or more employees must establish a joint loss management committee. The committee must contain equal numbers of employer and employee-selected employee representatives. It must develop and administer workplace safety programs, including safety education, and develop alternative work programs that allow injured employees to return to work.[376]

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

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[373] 29 U.S.C. § 667(c)(2).

[374] N.H. REV. STAT. ANN. § 281-A:64.

[375] N.H. REV. STAT. ANN. § 281-A:64; N.H. CODE ADMIN. R. ANN. LAB. 602.01, 603.03.

[376] N.H. REV. STAT. ANN. § 281-A:64.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

Drivers in New Hampshire cannot use cell phones while driving without using hands-free equipment, nor may they text while driving. Specifically, a driver may not operate a moving motor vehicle while writing a text message or using two hands to type on or operate an electronic or telecommunications device. These restrictions apply to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, state law.

Notably, a driver may read, select, or enter a phone number or name in a wireless communications device for the purpose of making a phone call. Drivers may also use a Bluetooth-enabled or other hands-free electronic device, or a similar device that is physically or electronically integrated into a motor vehicle, to send or receive information provided the driver does not have to divert their attention from the road ahead. Exceptions also apply to report an emergency to the enhanced 911 system or directly to a law enforcement agency, fire department, or emergency medical provider; or for use of one hand to transmit or receive messages on any noncellular two-way radio.[377] Persons under age 18 may not use any cellular telephone or mobile electronic device, whether hands-free or not, except to report an emergency.[378]

In addition, drivers may receive aural routing information from a hands-free global positioning device or navigation service through a mobile electronic device; or receiving 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.[379]

New Hampshire drivers should be aware that an operator of a motor vehicle who holds a cellular telephone or other electronic device capable of voice communication in the immediate proximity of their ear while the vehicle is in motion is presumed to be engaging in a call.[380]

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

New Hampshire does not have a statute specifically addressing the possession firearms in the workplace. However, beginning in January 2025, state law regulates the storage of firearms in employee vehicles.[381] An employer or an employer's agent is prohibited from requiring an employee to disclose whether the employee is storing a firearm or ammunition in the employee's vehicle. No searches of the employee's vehicle for a firearm or ammunition may be undertaken except by a law enforcement officer pursuant to a warrant or pursuant to a recognized exception to the warrant requirement.[382]

The law also provides for civil immunity related to an incident involving a firearm that an employee kept in their vehicle. An employer or an employer's agent cannot be held liable in any civil action for damages

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377 N.H. REV. STAT. ANN. §§ 265:79-c, 265:105-a.

378 N.H. REV. STAT. ANN. § 265:79-c.

379 N.H. REV. STAT. ANN. § 265:79-c.

380 N.H. REV. STAT. ANN. § 265:79-c.

381 N.H. H.B. 1336 (2024).

382 N.H. REV. STAT. ANN. § 159:27.

for any economic loss, injury, or death resulting from or arising out of another person's actions involving a firearm or ammunition stored in an employee's vehicle, including but not limited to the theft of a firearm from the vehicle, unless the employer or the employer's agent intentionally solicited or procured the other person's injurious actions.[383]

Additionally, a private employer that receives public funds from the federal or state government, whether in the form of payment for contractual services, grants, or in any other form, and irrespective of the amount or level of the funding, or any agent of such an employer, cannot:

- prohibit an employee who may legally possess a firearm from storing a firearm or ammunition in the employee's vehicle while entering or exiting the employer's property or while the vehicle is parked on the employer's property, as long as the vehicle is locked, and the firearm or ammunition is not visible; or
- take any adverse action against any employee who stores a firearm or ammunition in accordance with this statute.[384]

This statute cannot be construed to authorize an employee to carry a firearm in any place where carrying a firearm is prohibited by law.[385]

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

New Hampshire's Indoor Smoking Act prohibits smoking in workplaces with four or more individuals. "No smoking" signs must be placed in the workplace.[386] However, smoking areas may be established if the area is effectively segregated. The area must be designed so that the smoke does not harm or intrude into nonsmoking areas and utilize ventilation systems.[387]

Employers must create a written policy, which includes a statement establishing if the workplace is completely smoke free or has a designated smoking area and if smoking areas are established, the areas must be specified. The policy must be distributed or posted for all employees. New employees must also receive orientation regarding the written policy.[388]

Antiretaliation Provisions. Employers may not discharge or retaliate against an employee due to the employee reporting a violation or otherwise exercising their rights under this law.[389]

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383 N.H. REV. STAT. ANN. § 159:27.

384 N.H. REV. STAT. ANN. § 159:27.

385 N.H. REV. STAT. ANN. § 159:27.

386 N.H. REV. STAT. ANN. § 155:70.

387 N.H. REV. STAT. ANN. §§ 155:64 *et seq.*

388 N.H. REV. STAT. ANN. § 155:68.

389 N.H. REV. STAT. ANN. § 155:72.

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

New Hampshire law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

New Hampshire law does not address employer workplace violence protection orders.

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[390] (2) the Americans with Disabilities Act (ADA);[391] (3) the Age Discrimination in Employment Act (ADEA);[392] (4) the Equal Pay Act;[393] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[394] (6) the Civil Rights Acts of 1866 and 1871;[395] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;

[390] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[391] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[392] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[393] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[394] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[395] 42 U.S.C. §§ 1981, 1983.

- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[396]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[397] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[398]

3.11(a)(ii) *State FEP Protections*

New Hampshire law prohibits discrimination in employment based on the following characteristics:

- age;
- sex (including pregnancy and pregnancy-related medical conditions);
- gender identity;
- race (**effective September 1, 2024**, race means immutable traits associated with race, including hair texture and protective hairstyles, which means hairstyles or hair type, including braids, locs, tight coils or curls, cornrows, Bantu nots, Afros, twists, and headwraps);
- religion;
- creed;
- color;
- marital status;
- disability;
- national origin (including ancestry);
- sexual orientation (actual or perceived);
- genetic information;
- National Guard membership;
- victim of domestic violence, harassment, sexual assault, or stalking;[399] or

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[396] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

[397] The EEOC's website is available at http://www.eeoc.gov/.

[398] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[399] N.H. REV. STAT. ANN. §§ 354-A:7, 141-H:1, 141-H:3 (genetic information), 110-B:65 (National Guard), and 275.71 (victim of domestic violence, harassment, sexual assault, or stalking).

- (**effective September 1, 2024**), protective hairstyles (defined as hairstyles or hair type, including braids, locs, tight coils or curls, cornrows, Bantu knots, Afros, twists, and headwraps).[400]

New Hampshire's fair employment practices laws cover employers with six or more employees. Exceptions apply, however, for nonprofit religious organizations or nonprofit social, fraternal, or charitable clubs and associations. Moreover, religious or denominational institutions or organizations, or any organization operated for charitable or educational purposes, may give preference to persons of the same religion to promote the religion for which it was established. Additionally, the definition of sexual orientation is framed such that it does not impose any duty on a religious organization.[401]

New Hampshire's anti-discrimination laws provide a definition of gender identity to the statutory construction provisions that apply to all New Hampshire statutes expanding the law against discrimination based on gender identity to other areas of the law prohibiting discrimination. Under the law, *gender identity* means a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care, or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person's core identity, provided, however, that gender-related identity cannot be asserted for any improper purpose.

New Hampshire law also forbids employers from limiting, specifying, or discriminating against protected classes in advertisements and applications for employment. Gender identity is included in the prohibition.[402]

State Enforcement Agency & Civil Enforcement Procedures. New Hampshire's Commission for Human Rights enforces the state's antidiscrimination laws.[403] Employees have 180 days from the date of the alleged act of discrimination to file a verified complaint with the commission.[404] The commission investigates the complaint to determine whether probable cause exists.[405] A variety of alternative dispute resolution procedures may be offered. Upon completion of the investigation, the commission investigator will issue a written report that summarizes the investigation and presents its findings.[406] The commission will then determine whether probable cause exists. If no probable cause is found, the complaint is dismissed.[407] If probable cause is found, the investigating commissioner will try to eliminate the discriminatory conduct. If it is not eliminated by conciliation, the investigating commissioner will call for

[400] N.H. REV. STAT. ANN. § 275:37-e.

[401] N.H. REV. STAT. ANN. § 354-A:2.

[402] N.H. REV. STAT. ANN. § 354-A:2.

[403] N.H. REV. STAT. ANN. § 354-A:5.

[404] N.H. REV. STAT. ANN. § 354-A:21(III).

[405] N.H. CODE ADMIN. R. ANN. HUM. 206.03.

[406] N.H. CODE ADMIN. R. ANN. HUM. 209.03.

[407] N.H. CODE ADMIN. R. ANN. HUM. 210.01.

a public hearing.[408] At the hearing, the employer may be fined or ordered to reinstate an employee, among other remedies.[409]

Exclusivity of Remedy. A complainant must first file a complaint with the commission and then may, 180 days after the complaint was filed (or sooner if the commission agrees), file an action in state court.[410]

3.11(a)(iii) *Additional Discrimination Protections*

Flexible Working Arrangements. New Hampshire employers may not retaliate against any employee because the employee requests a flexible work schedule. However, employers are not required to accommodate a flexible work schedule request.[411]

Tobacco Products. An employer in New Hampshire may not require, as a condition of employment, that an employee or applicant abstain from using tobacco products outside the course of employment. Employees may be required to comply with workplace smoking policies, however.[412] The law covers all employers, except social clubs or nonprofit fraternal, charitable, educational, religious, scientific, or literary associations.[413]

Marriage Protections. Under the Marital Freedom Act, marriage between two eligible persons regardless of race or gender is protected.[414]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[415] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of

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408 N.H. CODE ADMIN. R. ANN. HUM. 210.01.

409 N.H. REV. STAT. ANN. § 354-A:21.

410 N.H. REV. STAT. ANN. § 354-A:21-a; N.H. CODE ADMIN. R. ANN. HUM. 203.01.

411 N.H. REV. STAT. ANN. § 275:37-b.

412 N.H. REV. STAT. ANN. § 275:37-a.

413 N.H. REV. STAT. ANN. § 275:36.

414 N.H. REV. STAT. ANN. § 457:1 – a.

415 29 U.S.C. § 206(d)(1).

such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[416]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

New Hampshire employers may not pay employees of one sex at a rate less than employees of the other sex for equal work that requires equal skill, effort, and responsibility under similar working conditions.[417] Exceptions apply, however, for payments made according to:

- a seniority system;
- a merit or performance-based system;
- a system that measures earnings by quantity or quality of production;
- expertise;
- shift differentials; or
- a demonstrable factor other than sex, such as education, training, or experience.[418]

An employer paying wages in violation of the statute may not reduce the wages of any employee in order to comply with the statute.

An employee alleging a violation may file a civil action within three years of the alleged violation.[419]

As discussed in **3.7(b)(iv)**, New Hampshire law prohibits employers from barring employees from disclosing their wages.

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;

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[416] 42 U.S.C. § 2000e-5.

[417] N.H. REV. STAT. ANN. § 275:37.

[418] N.H. REV. STAT. ANN. § 275:37.

[419] N.H. REV. STAT. ANN. § 275:39, 274:41.

- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[420]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[421]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[422] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[423] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[424]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to

[420] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[421] 29 C.F.R. § 1636.3.

[422] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[423] 29 C.F.R. § 1636.3.

[424] 29 C.F.R. § 1636.4.

determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[425]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[426]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

New Hampshire's Law Against Discrimination primarily focuses on leave accommodations for pregnancy, childbirth, or related medical conditions; therefore, it is discussed in **3.9(c)(ii)**.

[425] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[426] 29 C.F.R. § 1636.3.

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[427] Multiple decisions of the U.S. Supreme Court[428] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[429] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

There are no antiharassment training and education requirements mandated for private employers in New Hampshire.

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

New Hampshire's Whistleblowers' Protection Act makes it unlawful to harass, abuse, or discriminate against an employee because the employee reports or causes to be reported what the employee has reasonable cause to believe is a violation of any federal, state, or local rule or law. Likewise, an employer may not discriminate against an employee for objecting to or refusing to participate in an activity that the

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[427] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[428] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999).

[429] EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

employee believes to be a violation of the law, or for participating in an investigation, hearing, or inquiry concerning allegations that the employer has violated the law.[430]

An aggrieved employee may bring a civil suit within three years of the alleged violation, and if successful, may be awarded back pay and reasonable attorneys' fees and costs.

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[431] and the Railway Labor Act (RLA)[432] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

New Hampshire is not a right-to-work state. It has no notable state labor laws applicable to private employers.

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the

[430] N.H. REV. STAT. ANN. § 275-E:2.

[431] 29 U.S.C. §§ 151 to 169.

[432] 45 U.S.C. §§ 151 *et seq*.

workforce they constitute).[433] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[434] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

New Hampshire employers with either 100 or more employees, excluding part-time employees, or 100 or more employees who in the aggregate work at least 3,000 hours per week, exclusive of overtime are subject to New Hampshire's Worker Adjustment and Retraining Notification Act (the state's mini-WARN law).[435] When a covered employer enacts a mass layoff or plant closing, it must file a Mass Layoff Notice, or similar notice, and provide notice to the state and the workers. Notices must follow the specific requirements of the federal WARN Act.[436]

A *mass layoff* means a reduction in force which is not the result of a plant closing; and results in an employment loss at a single site of employment in New Hampshire during any 30-day period for at least 250 employees (excluding any part-time or seasonal employees), or at least 25 employees (again, excluding any part-time or seasonal employees), if they constitute 33% of the full-time employees of the employer. A *plant closing* means the "permanent or temporary shutdown of a single site of employment in New Hampshire, or one or more facilities or operating units within a single site of employment in New Hampshire, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees, excluding any part-time workers."[437]

Amount of Notice. An employer cannot order a mass layoff or plant closing unless 60 days' written notice is provided to:

- affected employees and their representatives;
- the New Hampshire Labor Commissioner;
- the New Hampshire Attorney General; and
- the chief elected official of each municipality within which the plant closing or mass layoff occurs.[438]

Special rules apply when the business is sold.[439]

Exceptions. In a mass layoff or plant closing, employers are not required to comply if the employer is a "faltering company" and at the time that notice would have been required, it was actively seeking capital in the form of loans or other methods of generating financing through a commercially reasonable method

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[433] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[434] 20 C.F.R. §§ 639.4, 639.6.

[435] N.H. REV. STAT. ANN. § 275-F:2.

[436] N.H. REV. STAT. ANN. § 275-F:3.

[437] N.H. REV. STAT. ANN. § 275-F:2(VIII).

[438] N.H. REV. STAT. ANN. § 275-F:3.

[439] N.H. REV. STAT. ANN. § 275-F:3.

where the opportunities for achieving those goals were objectively realistic. Further, if the capital or business sought would have allowed the employer to avoid or postpone the mass layoff or plant closing and the employer reasonably and in good faith believed that if it provided the required notice, it would be precluded from obtaining the needed capital or business, the employer may be exempt from having provided notice. Additional exceptions include:

- the need for notice was not reasonably foreseeable at the time notice would have been required;
- the plant closing is of a temporary facility or the plant closing or mass layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility, project, or undertaking;
- the mass layoff or plant closing is necessitated by a physical calamity, natural disaster, or an act of terrorism; or
- the closing or layoff constitutes a strike or lockout not intended to evade the statute's requirements.[440]

4.1(c) *State Mass Layoff Notification Requirements*

A New Hampshire employer that enacts a *mass layoff*, which is defined differently than under the New Hampshire mini-WARN law discussed in **4.1(b)**, must file a Mass Layoff Notice with the New Hampshire Department of Employment Security. A *mass layoff* occurs when the employer lays off or expects to lay off 25 or more individuals: (1) in the same calendar week; (2) for an expected duration of seven days or more; and (3) for either of the following reasons: a vacation or holiday shutdown or a company closure.[441]

Amount of Notice. The employer that has a mass layoff must file the Mass Layoff Notice or other permissible format (provided it contains the required information, has a sequence of information which allows efficient data entry, and is clear and legible):

- not later than three business days following the end of the calendar week in which a reportable mass layoff occurs if the mass layoff is due to a company closure; or
- not later than seven business days following the end of the calendar week in which a reportable mass layoff occurs if the mass layoff is due to a vacation shutdown or a holiday shutdown.[442]

Contents of Notice. The following information must be reported:

- the employer's full business name, including the name it is doing business as (DBA), and the telephone number the employer wishes the department to use for additional layoff information;
- the employer's New Hampshire employer account number;
- the physical location, or if more than one, locations where: (1) each individual performs services; (2) if an individual's services are not generally performed in the same location, the

[440] N.H. REV. STAT. ANN. § 275-F:4.

[441] N.H. REV. STAT. ANN. § 282-A:45-a.

[442] N.H. CODE ADMIN. R. ANN. EMP. 303.13.

individual's base of operations; or (3) if the individual's services are not generally performed in the same location and the individual does not have a base of operations, then the place from which the individual's services are directed and controlled;

- the mailing address, or if more than one, addresses of each location provided above;
- the reason for the layoff;
- the calendar week in which the layoff has occurred or is expected to occur;
- the total number of individuals laid off or expected to be laid off; and
- for each individual laid off:
  - the individual's first and last name;
  - the individual's Social Security number;
  - the last day on which the individual performed services;
  - whether the employing unit or employer expects the layoff to be permanent or temporary;
  - if the layoff is expected to be temporary, the anticipated reemployment date; and
  - the amount of any payments made or expected to be made for wages during and after the calendar week in which the individual last performed services. The reportable wages include the gross wages for work performed and any vacation, bonus, longevity, stay, retention, attendance, holiday, or similar payments.[443]

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 10 lists the documents that must be provided when employment ends under federal law.

Table 10. Federal Documents to Provide at End of Employment

Category	Notes
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[444] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or

[443] N.H. CODE ADMIN. R. ANN. EMP. 303.13; notice is available at http://www.nhes.nh.gov/forms/employers.htm.

[444] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

Table 10. Federal Documents to Provide at End of Employment	
Category	**Notes**
	• the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[445]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under state law.

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	New Hampshire law requires employers of two or more employees to provide post-termination continued coverage for up to 18 months. However, the law does not require such employers to provide notification of continued coverage to an employee upon termination.[446]
Unemployment Notice	**Generally.** New Hampshire does not require that employees be provided notice about unemployment benefits when employment ends. Nonetheless, the employer generally must conspicuously post notice directing workers who are totally or partially unemployed to register and claim benefits with the New Hampshire department of employment security. Accordingly, it is recommended that an employer provide a copy of the unemployment notice when employment ends.[447] **Multistate Workers.** Whenever an individual covered by an election is separated from employment, an employer must again notify the individual, immediately, as to the jurisdiction under whose unemployment compensation law the individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, an employer must notify the individual as to the procedure for filing interstate claims. In addition to this notice

[445] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

[446] N.H. REV. STAT. ANN. § 415:18 XVI(f).

[447] N.H. CODE ADMIN. R. ANN. EMP. 305.01; N.H. REV. STAT. ANN. § 281-A:4. This poster is available at https://www.nhes.nh.gov/forms/documents/unemployment-notice.pdf.

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
	requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.[448]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

New Hampshire law does not specifically address providing former employees with references.

[448] N.H. CODE ADMIN. R. ANN. EMP. 306.01.