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Practice Areas

Labor, Employment and
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Good Company

2011 Top Ten List of Wage and Hour Violations in New Hampshire

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Introduction

Each year we review the Top Ten most common wage and hour violations in New Hampshire. The stakes for noncompliance with these wage laws are higher than ever before. Employers need to pay attention to these violations to stay in compliance with state wage laws and to avoid civil penalties and wage adjustment orders from NHDOL.

It was another busy year for NH DOL

In FY 2009 the Department of Labor Wage and Hour Division collected \$5,301,620 (\$3,479,973 in wage claims, \$368,892 in wage complaints/audits and \$1,452,755 in wage adjustments). Those numbers decreased in FY '10 to \$2,569,662 (\$1,054,375 in wage claims, \$319,316.78 in wage complaints/audits and \$1,195,970 in wage adjustments). Those numbers decreased again in FY '11 to \$1,731,359 (\$982,018 in wage claims, \$225,465.24 in wage complaints/audits and \$523,876 in wage adjustments). This is a positive trend. That is, unless you are one of those employers who is on NHDOL's Naughty List. The time spent on compliance, as you will see, is time well spent.

The following are the 2011 Top Ten worst (most common) wage and hour violations in New Hampshire:

10. Failure to have a written safety plan, joint loss management committee and safety summary form filed biennially, as required.

**RSA 281-A:64 and Lab 602.01, 602.02, 603.02, and 603.03M*

Recommendation: Employers with more than five employees need to have a joint loss safety committee to receive and correct workplace safety problems. Employers with 10 or more employees must file a written safety plan with the state (NH DOL) and then file updates every two years. Plans can be filed electronically. Covered employers should check to be sure their plans and reports are up to date.

9. Failure to secure and maintain workers compensation coverage and misclassifying employees as independent contractors.

**RSA 275:42, I & II, and RSA 281-A:5*

Recommendation: To avoid costly fines and wage adjustments and uninsured workplace injury claims, employers should be certain to properly classify employees. For wages, benefits and workers' compensation purposes, employers should follow the statute's 12 point test to confirm

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whether the individual is an employee or an independent contractor.

8. Improper deductions from wages. Not following list of approved deductions.

***RSA 275:48 and Lab 803.02(b),(e),(f)**

Recommendation: The list of approved deductions increased with the August 2011 amendment to the law but this is still an exclusive list with specific requirements. Even if the employee authorizes deductions from his/her wages, the deductions may only be for the purposes approved in the statute and following the requirements outlined in the statute and administrative rules.

7. Failure to pay minimum wage due for all hours worked.

***RSA 279:21**

Recommendation: Make certain that all employees are paid at least the correct (current) minimum wage for all hours worked and any exceptions provided for in the law are carefully reviewed and checked.

6. Failure to secure the proper youth employment paperwork or not abiding by work hours limitations or hazardous environment prohibitions for workers under age 18.

***RSA 276-A: 4 & 5 and Lab 1000**

Recommendation: Employers should not permit youth workers (ages 15 to 18) to start work before securing the required permits/certificates. Once these certificates are on file, youth workers should be restricted in the number of hours, days or work and types of work established under state (and federal) law.

5. Failure to pay 2 hours minimum pay at the employee's regular rate of pay on a given day when he/she reports to work at the request of the employer.

***RSA 275:43-a and Lab 803.03(h),(i),(j)**

Recommendation: This applies to hourly employees. Employers should notify hourly employees when they are not needed at work on a particular day. If the notice is unsuccessful and the employee reports to work, the employer must pay the employee two hours pay for reporting to work or put the employee to work. One exception is when the employee's job or task requires less than two hours of work that day. The employee, in those cases, only needs to be paid for the time worked but this arrangement needs to be in writing in advance.

4. Failure to pay all wages due for hours worked, fringe benefits and breaks less than 20 minutes in duration.

***RSA 275:43; RSA 275:42; Lab 803.01; Lab 803.03-04**

Recommendation: Watch the clock and know what is due (for all hours worked) to your employees. Pay all wages due, when they are due and watch out for fringe benefits. These may be deemed as wages too. Be certain your employees get what they were promised and you provide employees with written notices of updates/changes to fringe benefit plans. Finally, remember that hourly and non-exempt employees must be paid for work breaks less than 20 minutes in duration.

3. Employing illegal aliens (and others who don't have proper documentation on file).

***RSA 275-A: 4-a**

Recommendation: While this is commonly thought of as an issue involving federal law, many states, including New Hampshire, have laws prohibiting hiring or continuing to employ someone who is not a citizen of the United States *OR* doesn't have a valid work authorization. Be certain that all required paperwork is completed and in place *before* the employee starts work and the employee doesn't continue to work beyond a visa/authorization's expiration.



2. Failure to provide *written* notice to employees of their wage rate, pay period, pay day and a general description of fringe benefits when they are hired and in advance of any changes thereto.
***RSA 275:49 and Lab 803.03**

Recommendation: This is an easy one. When employers hire employees, they need to put in writing the employee's wage rate, pay period, pay date and a general description of fringe benefits. When those terms change, the employer needs to put the change in writing. Employees need to sign an acknowledgment of receipt of these notices. Employers should keep copies of those signed notices in the employee's personnel file.

AND

...The Number One Worst Wage and Hour (NH) Violation From 2011...

Failure to keep accurate records of all hours worked. (Not recording meal breaks taken).
***RSA 279:27 and Lab 803.03**

Recommendation: Employers must permit employees to take a 30 minute (unpaid) meal break after five consecutive hours of work in a workday. Meal breaks must be recorded on daily time sheets just like the start and end time for non-exempt (FLSA/OT) employees. Meal waivers are possible, but exceptions to those waivers must be noted on time records.

[Our thanks again this year to Cindy Flynn and Tina Farmer from NH Department of Labor as they provided useful information from the Department]

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