

NEW HAMPSHIRE — State Laws by Topic

➤ AGE ◀

Under the New Hampshire Law Against Discrimination, employers are prohibited from failing or refusing to hire, barring from employment, terminating, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on age. **Note:** State law does not define a protected age group.

In addition, it is an unlawful employment practice for an employer to:

- print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on age; or
- require an employee, as a condition of employment, to retire upon or before reaching a specified pre-determined chronological age, or after completion of a specified number of years of service, unless the employee was elected or appointed for a specific term or required to retire pursuant to state law.

For purposes of this law, an employer is defined as a person employing six or more individuals.

➤ AIDS ◀

Testing: Informed consent must be obtained before an individual is tested for AIDS.

➤ ARRESTS/CONVICTIONS ◀

Convictions: Any individual or agency may request the conviction information of another through the Division of State Police, provided they produce a notarized Criminal Record Release Authorization Form that has been signed by the individual whose record is sought.

➤ BREAKS ◀

A 30-minute meal break must be provided to employees who work five hours, unless they can eat while working.

➤ BREAST-FEEDING ◀

Restricting the right of a woman to breast-feed her child is discriminatory.

➤ **CHILD LABOR** ◀

To access New Hampshire's Department of Labor youth employment home page, click on the following link www.nh.gov/labor/inspection/wage-hour/youth-employment.htm.

➤ **CHILD SUPPORT** ◀

Employers served with a child support order must begin withholding with the first pay period occurring after 14 days after the order is mailed. Amounts are remitted immediately. Notify the custodial parent or the Department of Health and Human Services within 15 days if the employee-obligor terminates. Lump-sum payments are subject to withholding if they're paid to employees who are in arrears, up to the amount of the arrearage. Lump-sum payments include severance pay, accumulated sick pay and vacation pay, bonuses, commissions, and similiar payments.

➤ **COURT ATTENDANCE** ◀

Under the Crime Victim Employment Leave Act, employees who are victims of a crime are permitted to leave work to attend court or other legal or investigative proceedings associated with the prosecution of the crime.

Employers may not discriminate against or discharge employees who are crime victims because they exercise their rights to leave under this Act. In addition, employees may not lose seniority while on leave for crime proceedings.

Employers are not required to compensate employees who exercise their leave rights and may also require employees to use accrued personal, vacation, or sick time. An employer may limit the amount of an employee's leave if it creates an undue hardship to the employer's business.

➤ **DISABILITIES** ◀

Under the New Hampshire Law Against Discrimination, employers are prohibited from failing or refusing to hire, barring from employment, terminating, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on a physical or mental disability.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on a physical or mental disability.

It is also an unlawful employment practice for an employer to fail to reasonably accommodate an otherwise qualified individual, unless the accommodation would result in an undue hardship.

For purposes of this law, a person who has a disability is defined as one who has a physical or mental impairment that substantially limits one or more major life activity, has a record of such an impairment, or is regarded as having such an impairment. An employer is defined as a person employing six or more individuals.

➤ DRUG TESTING ◀

New Hampshire does not have a general drug testing law, but employers may recover damages under the Drug Dealer Liability Act for employees' illegal drug use. The Act provides civil remedies for employers and others who pay for drug treatment or employee assistance programs. Employers may seek damages from a person convicted of a drug offense, or a person who knowingly distributed or participated in the chain of distribution of the illegal drug used by the employee, which caused the recoverable losses.

Economic damages include: cost of treatment and rehabilitation, medical expenses, loss of productivity, absenteeism, support expenses, and accidents or injury. Employers may also seek certain non-economic damages, reasonable attorney fees, and cost of the lawsuit including reasonable expenses for expert testimony.

➤ FAMILIAL/MARITAL STATUS ◀

Under the New Hampshire Law Against Discrimination, employers are prohibited from failing or refusing to hire, barring from employment, terminating, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on marital status.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on marital status.

For purposes of this law, an employer is defined as a person employing six or more individuals.

➤ FAMILY/MEDICAL LEAVE ◀

Coverage applies to state government employers.

Note: Same-sex spouses are entitled to the same rights, benefits, and protections as are granted to heterosexual spouses.

➤ GENETIC TESTING ◀

Employers are not permitted to directly or indirectly solicit, require, or administer genetic testing as a condition of employment. In addition, the terms, conditions, or privileges of employment may not be affected or terminated based on genetic testing.

Genetic testing is permitted, if the employee requests the testing and provides written and informed consent to the testing, in order to investigate a Workers' Compensation claim or to determine the employee's susceptibility or level of exposure to potentially toxic substances in the workplace. However, testing is still conditioned on the employer not using the results to terminate or take any other adverse employment action against the employee that would affect the terms, conditions, or privileges of his/her employment.

➤ HEALTH CARE CONTINUATION COVERAGE ◀

Continuation coverage requirements generally apply to employers that provide group health insurance coverage to employees. Eligible employees have the right to continue coverage for up to 36 months.

Click on the following link www.gencourt.state.nh.us/rsa/html/xxxvii/415/415-18.htm to access the state law.

➤ JURY DUTY ◀

Employers may not discriminate against employees who receive and respond to a summons for jury duty, serve as jurors, or attend court for prospective jury service. Although jury duty leave is unpaid leave, employers may provide paid leave. If paid leave is provided, the employer may offset amounts received by salaried employees as jury duty pay, provided employers have a written *bona fide* leave plan, practice, or policy.

➤ LIFESTYLE DISCRIMINATION ◀

Employers are prohibited from requiring, as a condition of employment, that an employee or prospective employee abstain from using tobacco products outside the course of employment, provided the individual complies with any workplace smoking policy implemented pursuant to state law.

➤ MASS LAYOFF NOTIFICATION ◀

The New Hampshire Worker Adjustment and Retraining Notification Act requires employers with 100 or more full-time workers in the state to provide 60 days' advance notice of a plant closing or mass layoff. Notice must be given to the affected employees and their representatives, the commissioner of labor, the attorney general, and the chief elected official of each municipality in which the event occurs.

A plant closing is defined as a shutdown of operations affecting 50 or more full-time employees.

A mass layoff is defined as an employment loss at a single site of employment that affects 250 or more full-time workers or that affects at least 25 full-time employees if they constitute 33% of full-time employees.

The notice must contain the same information required under the federal WARN Act. The mailing of a notice to an employee's last known address or inclusion of the notice in an employee's paycheck will be considered acceptable methods for notice to each affected employee.

Exceptions to the notification requirement include instances where:

1. the employer is a faltering company and was actively seeking capital or business that would have enabled it to avoid or postpone the mass layoff or plant closing and it reasonably and in good faith believed that giving notice of a layoff or closing would have precluded it from obtaining the needed capital or business;

2. the need for notice was not reasonably foreseeable;
3. 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;
4. the mass layoff or plant closing is necessitated by a physical calamity, natural disaster, or an act of terrorism or war; or
5. the closing or layoff constitutes a strike or lockout not intended to evade the Act.

➤ **MEDICAL DONATION LEAVE** ◀

No general provision.

➤ **MILITARY LEAVE** ◀

Private employers are encouraged to grant to their employees military leave privileges that are comparable to the military leave established for public employees. Employers may offset any amount received by a salaried employee as military pay for a particular pay period against the salary due for that pay period if the employer has a written, *bona fide* military leave plan, practice, or policy.

An individual shall not be denied hiring, retention, promotion, or other incidents or advantages of employment because of any obligation as a member of the National Guard or the state militia.

➤ **MINIMUM WAGE** ◀

Minimum hourly wage/overtime rate: \$7.25/\$10.88.

Basis for overtime: Over 40 hours/week.

Opportunity wage for under 20-year-olds: None.

Note: The state bases its minimum wage on the federal minimum wage. The state minimum may exceed federal minimum wage by a stated amount or percentage, or be adjusted to reflect cost of living increases.

➤ **NATIONAL ORIGIN** ◀

The New Hampshire Law Against Discrimination, employers are prohibited from failing or refusing to hire, barring from employment, terminating, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on national origin, including ancestry.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of

application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on national origin, including ancestry.

For purposes of this law, an employer is defined as a person employing six or more individuals.

➤ **NEW-HIRE REPORTING** ◀

Data to be reported: Employee's name, address, SSN, first day of work; employer's name, address, federal and state EINs; report independent contractors if they are expected to earn more than \$2,500; report rehires if break in service lasted longer than 60 consecutive days.

Reporting deadline/form: Within 20 days of hire or rehire after permanent layoff; on W-4s.

➤ **OVERTIME** ◀

Basis for overtime: Over 40 hours in a workweek.

Employers that pay overtime to delivery drivers or sales merchandisers cannot base those overtime payments on a fluctuating workweek.

➤ **PAY STATEMENTS** ◀

Information required: Itemized deductions.

➤ **PERSONNEL FILES** ◀

Employers must provide employees a reasonable opportunity to inspect personnel files. Employers are not required to disclose information in the personnel file of a requesting employee who is the subject of an investigation at the time of request if disclosure of such information would prejudice law enforcement, or information relating to a government security investigation. Employers are allowed to charge employees a reasonable copying fee.

➤ **POLYGRAPH TESTING** ◀

No provisions specified in the general employment context.

➤ **POSTING REQUIREMENTS** ◀

Minimum Wage — All employers

Protective Legislation Law — All employers

Whistleblowers' Protection Act — All employers

Unemployment Compensation — All employers

Fair Employment — Recommended

Right to Know — All employers

Workers' Compensation — All employers

Equal Opportunity to Housing — Required for all places associated with the sale, rental, and/or lease of properties, including: real estate agencies or brokers, property management offices, and landlords

Informational Memo: Child Labor — Strongly recommended for all employers that employ youths under the age of 18

Criteria to Establish an Employee or Independent Contractor — All employers

Equal Pay Law — All employers

➤ PREGNANCY ◀

General rule: For all employment-related purposes, including receipt of benefits under a fringe benefit program, pregnancy, childbirth, and related medical conditions are considered temporary disabilities and employees affected by pregnancy, childbirth, or related medical conditions must be treated in the same manner as any employee affected by any other temporary disability.

In addition, it is an unlawful employment practice for an employer to refuse to hire or employ, terminate, or otherwise discriminate against an employee with respect to compensation or terms, conditions, and privileges of employment based on sex, unless a *bona fide* occupational qualification exists. Based on sex includes pregnancy and medical conditions that result from pregnancy.

Reinstatement: Employers must permit female employees to take leaves of absence for the period of temporary physical disability resulting from pregnancy, childbirth, or related medical conditions. When the employee is physically able to return to work, her original job or a comparable position must be made available to her, unless business necessity makes reinstatement impossible or unreasonable.

➤ RACE ◀

Under the New Hampshire Law Against Discrimination, employers are prohibited from failing or refusing to hire, barring from employment, terminating, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on race or color.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on race or color.

For purposes of this law, an employer is defined as a person employing six or more individuals.

➤ REFERENCES ◀

References: The New Hampshire Commission for Human Rights permits employers to ask applicants for professional and character references.

Social media: Employers are prohibited from requesting or requiring employees or job applicants to disclose login information for accessing any personal account or service they use primarily for personal communications. Employers are also prohibited from compelling employees or job applicants to add anyone to their contacts list. Employers may obtain information that's in the public domain. Employers won't be liable if they inadvertently access employee's personal accounts, but they can't use the information.

Employers may adopt and enforce lawful workplace policies governing the use of electronic equipment, including policies regarding Internet use, social networking site use, and e-mail use; monitor employees' use of electronic equipment and e-mail; and request or require that employees disclose login information for employer-provided equipment or accounts or services.

Employers may require disclosure in connection with investigations to ensure compliance with federal or state laws or to prohibit workplace misconduct and to determine whether employees disclosed proprietary information, confidential information, or financial data without authorization. Employers may also require disclosure to comply with federal laws or regulatory requirements.

➤ RELIGION ◀

Under the New Hampshire Law Against Discrimination, employers are prohibited from failing or refusing to hire, barring from employment, terminating, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on religious creed.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on religious creed.

For purposes of this law, an employer is defined as a person employing six or more individuals.

➤ REPORTING PAY ◀

Employees who report to work must be paid for two hours. *Exceptions:* County or municipal employers are excluded from this provision. Employers that make a good-faith effort to notify employees not to report are also excluded from this provision. However, employees must perform whatever work is assigned if they report to work after their employers tried but couldn't notify them not to show up, or if their employers were prevented from notifying them for any reason.

Ski or snow board instructors who work at ski resorts don't qualify for reporting pay, if they receive other compensation that is at least equal to their rate of pay.

➤ **SAFETY** ◀

Click on the following link www.nh.gov/labor/inspection/safety-training.htm to access the New Hampshire Department of Labor's Safety & Training Division home page.

➤ **SCHOOL VISITATION LEAVE** ◀

No provision.

➤ **SEX DISCRIMINATION** ◀

Under the New Hampshire Law Against Discrimination, employers are prohibited from failing or refusing to hire, barring from employment, terminating, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on sex.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on sex.

An employer is defined as a person employing six or more individuals.

➤ **SEXUAL HARASSMENT** ◀

Under state law, harassment on the basis of sex constitutes unlawful sex discrimination.

In addition, New Hampshire has a policy against sexual harassment. The policy, which only applies to state employers, defines sexual harassment as unwelcome sexual advances, requests for a sexual favor, and other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

All sexual harassment complaints shall be investigated with reasonable thoroughness and as expeditiously as possible by the investigator(s).

The state's policy against sexual harassment shall be communicated in writing to all employees. Educational posters communicating the state's opposition to sexual harassment shall be conspicuously and continuously displayed in the workplace.

Each state department or agency shall conduct periodic training to inform employees of the state's policy prohibiting sexual harassment and retaliation and of required complaint and investigation procedures. Such training shall include the following.

- *For all employees:* As part of general orientation, each recently hired employee shall be provided a copy of the policy and shall attend a training session regarding the policy during his/her first year of employment.
- *For all supervisory employees:* All supervisory personnel shall annually participate in a training session on sexual harassment and other forms of discrimination that includes information about the types of conduct that will not be tolerated in the workplace.

➤ **SEXUAL ORIENTATION DISCRIMINATION** ◀

Under the New Hampshire Law Against Discrimination, employers are prohibited from failing or refusing to hire, barring from employment, terminating, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on sexual orientation or gender identity.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on sexual orientation.

For purposes of this law, sexual orientation is defined as having or being perceived as having an orientation for heterosexuality, homosexuality, or bisexuality. An employer is defined as a person employing six or more individuals.

➤ **SMOKING** ◀

The state's Indoor Smoking Act prohibits smoking in all enclosed workplaces with four or more workers, except in effectively segregated smoking-permitted areas. Designated smoking areas must be separated from non-smoking areas by a continuous physical barrier that is at least 56 inches high, and at least four feet of space must separate smoking and non-smoking areas. If smoking cannot be effectively segregated, then smoking must be totally prohibited.

Policy: Employers with four or more workers are required to have a written smoking policy that is posted or made available to all workers. Employers must provide employees with orientation about the policy.

See also lifestyle discrimination.

➤ **SOCIAL SECURITY NUMBER PRIVACY** ◀

Employers that maintain computerized data that includes personal information (e.g., Social Security numbers) must report a security breach "as soon as possible" to anyone whose personal information might have been compromised.

➤ UNEMPLOYMENT INSURANCE ◀

Click on the following link www.nhes.nh.gov/services/employers/index.htm to access the New Hampshire Department of Employment Security unemployment insurance information home page for employers.

➤ VACATION PAY UPON TERMINATION ◀

Employers must provide written descriptions of policies regarding the payment of vacation pay. Final wages include vacation pay, when vacation pay is provided under a company policy or practice. Employees advanced vacation pay and who sign an agreement at the time pay is advanced may authorize employers to deduct those amounts from final pay.

➤ VIOLENCE ◀

Domestic violence: New Hampshire has a zero-tolerance policy for domestic violence in the workplace in state employment.

➤ VOTING ◀

No time-off-to-vote provision.

➤ WAGE DEDUCTIONS ◀

Employers are prohibited from making deductions unless required or permitted by state or federal law or the employer has written authorization from the employee to make a deduction for a lawful purpose that benefits the employee, or the deductions are made pursuant to rules for medical, surgical, or hospital care of service as openly recorded on the employer's books.

Voluntary deductions from employees' wages may be made to repay loans, accidental overpayments of wages, and tuition for non-required education. Agreements must specify when deductions will begin and end, and the amount to be deducted.

A new category of permissible wage deductions has been added. Deductions may be made from employees' wages for any purpose, provided employers and employees mutually agree and employers don't benefit financially. Employees must consent to the deductions in writing. Deductions can't be used to offset payments for items employees need to perform their jobs.

➤ WAGE GARNISHMENT ◀

All wages earned after a garnishment is served on the employer are exempt. For wages earned prior to service of a garnishment order, the amount by which disposable weekly pay exceeds 50 times the federal minimum wage in effect during the week the garnishment is to occur, may be withheld. The state has no provisions prohibiting discharge, but federal law prohibits discharging an employee for any single indebtedness.

➤ **WAGE PAYMENT ON TERMINATION** ◀

Employee who quits: Next payday or within three days if worker gave one pay period's notice.

Employee who's fired: Within three days for employee who's fired; next payday for employee who's laid off.

➤ **WAGE PAYMENTS** ◀

Payday requirements: Within eight days (including Sundays) after a weekly pay period or within 15 days after a biweekly period in which work was performed on regular, predesignated paydays; less frequent paydays may be requested from state labor department, but not less than monthly.

Direct deposit: Employers may not require employees to be paid electronically. Employee may consent in writing, but must incur no expense.

Employer notice: Employers must disclose non-compete and non-piracy agreements to employees or potential employees prior to making an offer of employment or an offer of change in job classification.

Employers must provide new hires with a written notice that covers employees' rate of pay; the basis upon which wages are paid (i.e., whether employees receive a salary or are paid by the day, week, or by commission); the pay period; the pay date; and the methods of payment. All employees must receive notification whenever any of this information changes.

Employers must also notify all employees about paid vacations, holidays, sick leave, bonuses, severance pay, personal days, reimbursement of business-related expenses, pensions and all other fringe benefits. Employers that make changes to this information must notify employees about the changes and the effective date of the changes.

Vacation pay, holiday pay, sick pay, bonuses, personal day pay, reimbursements of business-related expenses and all other fringe benefits that employees have earned, accrued or vested prior to any changes cannot be forfeited.

Disclosure: Employees can't be required as a condition of employment to refrain from disclosing their wages. Employees also can't be required to sign waivers or other documents that are designed to deny them their rights to disclose their wages and benefits. Employers can't discipline or discharge employees who do discuss their wages and benefits. Employers must also post a notice of this provision.

➤ **WHISTLEBLOWING** ◀

Employers are prohibited from discharging, threatening, or otherwise discriminating against an employee with respect to compensation, terms, conditions, location, or privileges of employment because the employee in good faith:

- reports or causes to be reported what the employee reasonably believes is a violation of state, local, or federal law;
- participates in an investigation, hearing, or inquiry that any governmental entity conducts, including a court action that concerns allegations that the employer has violated state, local, or federal law; or
- objects to or refuses to participate in any activity that the employee believes is a violation of the law.

➤ **WORK AUTHORIZATION** ◀

No general provision.

➤ **WORKERS' COMPENSATION** ◀

Click on www.nh.gov/labor/workers-comp/index.htm to access the New Hampshire Department of Labor, Workers' Compensation Division home page. To access Workers' Compensation information for employers, click on www.nh.gov/labor/workers-comp/employer-information.htm.