



NEW HAMPSHIRE QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

At-Will Employment

New Hampshire is an at-will employment state. This means that either party may terminate the employment relationship at any time, with or without cause, and with or without notice. The only exception to the at-will employment policy is a contract stating otherwise. *J M Lumber Constr. Co. v. Smyjunas*, 20 A.3d 947 (N.H. 2011).

Immigration Verification

New Hampshire places no additional employment verification procedures on employers beyond federal I-9 compliance. There is no requirement to use E-Verify under New Hampshire state laws, although employers may use E-Verify voluntarily.

Drug Testing

New Hampshire does not have laws restricting the right of employers to drug test job applicants or employees. Employers are therefore free to implement any such policy if it does not violate another law (such as discrimination or retaliation laws).

Court and Jury Duty Leave

Employers must allow employees to attend court for required jury service. Furthermore, employers cannot penalize, threaten, or coerce employees because they are required to attend court for jury service. N.H. RSA § 500-A:14. New Hampshire does not require employers to pay employees wages while serving on a jury.

Voting Leave

New Hampshire does not require an employer to provide employees with time off to vote. If an employer decides to grant employees time off to vote, any payment for such time is at the employer's discretion. Although New Hampshire does not have a law requiring time off to vote, New Hampshire law does provide that an employee who is unable to vote on Election Day due to employment obligations be considered absent and entitled to absentee voting. N.H. RSA § 657.1.

Parental Leave

New Hampshire's Pregnancy Disability Leave law is applicable to private employers employing six or more employees. Employers must provide temporary leaves of absence for the period of physical disability resulting from pregnancy, childbirth, or related medical conditions. Employees affected by pregnancy, childbirth, or related medical conditions must be treated in the same way as other employees with temporary disabilities.

The federal Pregnant Workers Fairness Act (PWFA) became effective in June 2023 and expands protections for pregnant workers. Under the PWFA, employers with 15 or more employees must accommodate applicants and employees with known physical or mental limitations due to pregnancy, childbirth, and related conditions, unless the accommodation would cause the employer undue hardship. Reasonable accommodations under the PWFA can include taking leave or time off work when doing so is medically necessary.

Employers with 50 or more employees must also provide up to 12 weeks of unpaid leave for the birth of a child under the federal Family and Medical Leave Act (FMLA).

Sick Leave

New Hampshire law does not require employers to provide employees with sick leave benefits. If an employer chooses to provide sick leave benefits, it must comply with the terms of its established policy or employment contract. NH Admin. Rules, Lab 803.03.

Smoking Laws

Smoking indoors (including in places of work) is generally prohibited under the New Hampshire Indoor Smoking Act, with limited exceptions.

Break Time to Express Milk

New Hampshire does not have its own law to protect the right of women to express milk at work, but the federal Fair Labor Standards Act (FLSA) requires employers to generally provide a place other than a restroom for such a purpose, and a reasonable time to express milk as needed until the child is one year old.

Meal and Rest Breaks

New Hampshire requires employers to provide employees with at least a 30-minute break if the employee works more than five consecutive hours, except if it is feasible for the employee to eat during the performance of his work, and the employer permits him to do so. The break does not have to be paid if the employee does not perform work during the break.

New Hampshire does not require rest breaks.

Minimum Wage, Overtime, and Wage Recordkeeping

New Hampshire does not have a minimum wage in excess of the federal rate of \$7.25 per hour. There have been proposals in the legislature to increase the minimum wage as recently as 2024, but those proposals have failed thus far.

New Hampshire generally follows the Fair Labor Standards Act (FLSA) for purposes of overtime. N.H. RSA § 279:21. Unless exempt by the FLSA, overtime is paid to hourly employees at the rate of time and one-half of the employee's regular rate of pay for all hours actually worked over forty, in any one workweek.

At the time of hire, employers must notify each employee of their rate of pay and the day and place of payment. N.H. RSA § 275:49. Employers must likewise notify employees before any changes are made to this information. Employees must further receive notification (either written or posted) regarding employment practices and policies as these pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employee's expenses, pension, and all other fringe benefits. N.H. Code Admin. Rules, Lab 803.03.

Finally, employers must:

1. Record payroll information, including start and stop times, and meal periods;
2. Require an employee to sign or initial their timesheet if it must be altered;
3. Not make use of automated time-keeping devices or software programs that can be altered by an employer without the knowledge of the employee, or that do not clearly indicate that a change was made to the record;
4. Keep records that show the computation of an employee's compensation;
5. Make any such records available if requested, to show other than an employer-employee relationship; and
6. Maintain on file a signed copy of the written notifications outlined above.

Id.

Final Payments

Whenever an employer discharges an employee, the employer must pay the employee's last paycheck to them in full within 72 hours of termination. Whenever an employee quits or resigns, the employer must pay the employee's wages no later than the next regular payday, except if the employee gives at least one pay period's notice of intention to quit, then the employer must pay all wages earned by the employee within 72 hours. N.H. RSA § 275:44.

Relatedly, when the work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the employer must pay in full to such employee not later than the next regular payday all wages earned at the time of suspension or layoff. *Id.*

Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by New Hampshire Employment Security and additional information regarding the benefits may be accessed at www.nhes.nh.gov/.

Workers' Compensation

The New Hampshire Workers' Compensation Act, N.H. RSA §§ 281-A:1 *et seq.*, applies to all private and public employers in New Hampshire, with very limited exceptions. Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Act. Under the Act, a workplace injury must be immediately reported to the employer; failing to report an injury in a timely manner may result in a denial of benefits.

The Act is administered by the New Hampshire Department of Labor, Workers' Compensation Division. Additional information regarding the Act may be accessed at www.nh.gov/labor/workers-comp/index.htm.

Child Labor

Minors under the age of 18 generally can't be employed or permitted to work at manual or mechanical labor for more than 10.25 hours in a day or more than 54 hours in a week. In a manufacturing establishment, this labor is restricted to ten hours daily and 48 hours weekly. If a minor under the age of 18 is employed on the same day or in the same week by more than one employer to perform manual or mechanical labor in any employment not included under N.H. Rev. Stat. Ann. § 276-A:11, the minor's total work hours can't exceed the daily or weekly limits for employment with one employer. Further, minors under the age of 18 cannot be employed or permitted to work in hazardous occupations, except in approved apprenticeship, vocational rehabilitation, or training programs, and their hours of work are restricted.

Minors under the age of 16 can't be employed or permitted to work without a New Hampshire youth employment certificate unless the work is for their parent, grandparent, or guardian or is casual work. Employers must obtain the certificate for these workers within three business days after their first day of employment. No youth under the age of 16 may be employed or permitted to work in a dangerous area in manufacturing, construction, mining, and quarrying occupations, or in woods, and logging.

Minors aged 16 to 17, who are enrolled in school, can't work as follows: more than 35 hours during any employer's predetermined, designated workweek if school is in session for five days of the workweek; and, more than six consecutive days or more than 48 hours in any week during summer vacation (June 1 through Labor Day) or other school vacations (excluding any week where school is in session for one or more days).

Minors aged 14 to 15 can't be employed or permitted to work earlier than 7:00 a.m. or later than 9:00 p.m. They also can't be employed or permitted to work more than three hours per day on school days or more than 23 hours per week during school weeks. On non-school days, they can work up to eight hours per day. During vacation, they can work up to 48 hours per week. N.H. Rev. Stat. Ann. §§ 276-A:3 to 276-A:4.

Minors under the age of 12 cannot be employed or permitted to work, unless the work is for their parent, grandparent, or guardian, or is casual work. Casual work is employment that is infrequent, doesn't exceed three calendar days for any one employer, produces little or sporadic income, or isn't commonly held to establish an employer-employee relationship.

There are also restrictions on hours of work for minors, which vary based on age and whether the minor is in school. The specific requirements to employ a minor in New Hampshire are set forth in the Youth Employment Law, N.H. RSA §§ 276-A:1 *et seq.*; N.H. RSA § 276-A:11.

Gun Laws

Although New Hampshire is a constitutional carry state, meaning individuals can generally carry firearms without the need for an additional permit, employers are free to establish restrictions and regulations related to firearms possession at work, including banning firearms in cars on company premises.

Medical Marijuana

New Hampshire permits medical marijuana or therapeutic cannabis. New Hampshire employers are not required to accommodate the use of marijuana in the workplace. New Hampshire employers are also not prohibited from disciplining employees for consuming marijuana in the workplace or for working while under the influence of marijuana. N.H. RSA § 126-X:3(III)(c).

Whether an accommodation is required for an employee's off-duty use of therapeutic cannabis "should be decided on a case-by-case basis depending on the specific facts of the case." *Paine v. Ride-Away, Inc.*, 274 A.3d 554, 558 (N.H. 2022).

Access to Personnel Files

Employers must permit any employee who requests to inspect their personnel file to do so. The statute likewise "guarantees former employees access to their personnel files." *Rix v. Kinderworks Corp.*, 618 A.2d 833, 835 (N.H. 1992).

Upon request, an employer must provide the employee with a copy of all or part of the file, but the employer may charge the employee costs reasonably related to making copies.

If the employee disagrees with anything in their file and the employee and employer cannot agree on the removal or correction of the information, the employee may submit a written statement explaining their version of events for inclusion in the file. N.H. RSA § 275:56.

Mini-WARN

The New Hampshire Worker Adjustment and Retraining Notification Act (NH WARN Act) requires 60 days' written notice of a mass layoff or plant closing to affected employees and representatives of affected employees, as well as the Commissioner of Labor, New Hampshire Attorney General, and chief elected official of each municipality in New Hampshire within which the plant closing or mass layoff occurs. N.H. RSA § 275-F:3. The content of the notice must follow federal WARN Act requirements.

Covid-19 Vaccines

In June 2022, Governor Sununu signed House Bill 1495 prohibiting the state from requiring businesses to require vaccines or documentation related to vaccination or immunity status.