

LEGAL EXPERTISE

NH Department of Labor - Top 10 Violations

By **Andréa K. Johnstone, Esq**

For those looking to conduct a wage and hour “self-audit,” the New Hampshire Department of Labor’s “Fact Sheet – Top 10 NH Labor Law Violations” is a good starting point. Don’t wait until an inspector is knocking at your company’s door – review the DOL fact sheet and the corresponding discussion below, identify areas of possible noncompliance and address concerns. You’ll either have renewed confidence in your company’s compliance or the chance to fix problems before they turn into litigation or costly wage adjustments and fines. The fact sheet is available online at labor.state.nh.us/default.asp.

Failure to keep accurate records of hours worked

Maintain accurate records of the hours each non-exempt employee works. New Hampshire law requires that there be a record kept showing when the workday began and ended and the start and end time of the worker’s meal period. Make sure employees understand how to record time and that they are not permitted to work “off-the-clock.”

Failure to pay all wages due for hours worked, breaks of less than 20 min., etc.

Do you have non-exempt workers who use smartphones or remote network access after hours? If yes, are they recording this time and getting paid for it? They should be. Avoid the trap of incorrectly assuming that because extra work was not “approved in advance” that you don’t have to pay for it. Some companies prohibit the use of mobile communication devices and remote access to systems and email by non-exempt staff when “off-duty” to reduce exposure to overtime claims.

Failure to provide written notice of rate of pay, pay period, payday

Every worker must receive written notification of her rate of pay, the company’s pay period and payday and place of payment. The employee must sign to confirm receipt. When there are changes, another written notice must be issued and signed by the employee.

Failure to pay minimum wage for all hours worked

With limited exceptions (See NH RSA 279:21), workers in New Hampshire must be paid the federally set minimum wage for all hours worked. Draw against commission arrangements and other compensation arrangements must satisfy minimum wage requirements.

Illegal deductions from wages

Deductions from an employee’s paycheck are allowed only in specifically enumerated circumstances (see NH RSA 275:48 at gencourt.state.nh.us/rsa/html/XXIII/275/275-48.htm). There must be a signed written agreement. State law places limitations on the amounts that can be deducted from each check and requires certain criteria before a deduction for any outstanding balance can be made from a worker’s last paycheck. Deductions for lost or broken tools and equipment, failure to return uniforms or badges, and the like are not permitted.

Failure to pay 2-hour minimum

From time to time, do your employees punch out before working two hours? If so, have they been paid two hours of pay? If not, can you provide documentation that the worker was scheduled for less than 2 hours of work that day or does the employee’s time card include a notation that she left prior to working two hours that day because of illness or emergency? Absent these exceptions and records, the employee must be paid for two hours, even if she worked fewer hours.

Child labor violations

If your company employs workers under 18, be sure you have the necessary work permit (14-15) or parental permission letter (16-17) before they start working. There are hours restrictions and limitations on the kinds of work that young people can do. (gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XXIII-276-A.htm).

Illegal aliens

If audited, would you be able to provide the NH DOL with copies of the I-9 paperwork on every employee? Is the paperwork accurately and completely filled out? Were all necessary signatures obtained at the time of completion?

Misclassifying workers as independent contractors and failing to secure workers’ compensation

New Hampshire has its own 12-factor test for determining if a worker is properly classified as an independent contractor. If all 12 criteria are not satisfied, the worker is an employee for wage and hour and workers’ compensation purposes. Having a written agreement and securing proof of workers’ compensation insurance is recommended.

No joint loss management committee or safety summary form filed biennially

If your company has five or more workers, it is required to establish a joint loss management committee to receive safety concerns, address and discuss safety issues. The committee is required to meet at least quarterly and minutes must be published to the workforce. Companies with 10 or more employees must have a written safety plan, and submit a safety summary form to the NH-DOL biennially.

Visit the NH-DOL website for more useful tools and compliance information. Employers are also encouraged to consult with employment counsel for guidance in this area. To stay up to date on changes to the law, register for NH DOL e-alerts at labor.state.nh.us/email_alerts.asp.

Andrea serves as co-chair of Bernstein Shur’s Labor and Employment Law Practice Group. She is listed in Best Lawyers in America, and Chambers USA. She was named a 2011 Outstanding Women in Business. Andrea can be reached at ajohnstone@bernsteinshur.com.



Andréa K. Johnstone
Bernstein Shur

BERNSTEIN SHUR

COUNSELORS AT LAW

670 North Commercial St., Suite 108
PO Box 1120
Manchester, NH 03105-1120
603 623-8700
ajohnstone@bernsteinshur.com