



Karen Aframe
Attorney
Bernstein Shur

BERNSTEIN SHUR

COUNSELORS AT LAW

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

Complying with New Hampshire's wage and hour laws: It's an employer's job

By Karen Aframe

New Hampshire has unique wage laws. Any company doing business in New Hampshire, even if headquartered in another state, needs to understand and follow applicable state laws. This article highlights some of New Hampshire's most often violated wage and hour laws and provides suggestions on how to comply.

Two-Hour Minimum Pay for Hourly Employees

New Hampshire generally requires that an employer must pay an employee for at least two hours of work at his or her regular rate whenever the employee reports to work at the employer's request. There are two exceptions: (a) an employer may pay an employee for less than two hours of work if the employee requests to leave work prior to completing two hours because he or she is sick or for other personal circumstances, provided that the time card reflects the reason for leaving early and such entry is signed or initialed by the employee; and (b) when the employer notifies the employee in writing, prior to his reporting to work, that he will work less than two hours. If the employee works longer than expected, but less than two hours, the employer must pay the employee for a minimum of two hours of work.

Lunch Periods

Employers may not require an employee to work more than five consecutive hours without receiving at least a half-hour lunch or eating period, unless it is feasible for the employee to eat while working and the employee requests to do so. This meal period may be unpaid, unless the employee performs work during the meal period. Employers are required to keep time records that reflect the beginning and ending of the meal period to demonstrate compliance with the law. Employers who permit employees to waive the lunch period should maintain a waiver signed by the employee.

Employers Cannot Require Employees to Purchase Uniforms

The New Hampshire Department of Labor broadly defines a uniform as a garment with the company's logo that is worn by one or more employees as a means of identification or distinction. An employer may not charge employees or withhold from wages the cost of any required uniform.

Payment of Wages at Termination

When an employer releases an employee, it must pay all wages owed within 72 hours of separation. This includes payment of accrued, unused paid time off, bonuses and other compensation, unless the employer's written policies make it clear that the payment is not due under the circumstances. An employer that fails to comply with this law should expect that in addition to having to pay for unpaid wages, it will also be ordered to pay liquidated damages in an amount equal to the amount of unpaid wages. When an employer involuntarily releases a salaried employee (exempt or non-exempt) prior to the end of the pay period, the employer must pay the employee for the entire pay period.

Ignorance of Law is Not a Defense

In a recent wage claim for unpaid vacation before the NH DOL, an employer tried to avoid liquidated damages (an amount equal to and in addition to the actual unpaid wages) by arguing that it had not been aware of the particular New Hampshire wage law. Once the employer received the wage claim and researched the issue, it realized the error and immediately paid the outstanding wages to the former employee. The NH DOL rejected this defense, and explained that while the employer's delay in this instance was not "willful," the employer did not have good cause for failing to timely pay the wages due. The NH DOL noted that the burden is on the employer to be aware of and comply with the laws without having to be reminded by the claimant.

Training and Legal Counsel

These are just a few of the unique New Hampshire wage and hour laws with which any New Hampshire employer must comply. To avoid the liability for failing to comply with NH DOL's wage payment and record-keeping requirements, employers are encouraged to attend the NH DOL's trainings on wage and hour laws and consult with legal counsel familiar with New Hampshire employment laws.

Karen Aframe is a member of Bernstein Shur's Labor and Employment Practice Group. She advises employers in the administration of personnel policies and strategies for handling difficult workplace-related issues. She can be reached in the Manchester office at 603 623-8700 or kaframe@bernsteinshur.com.