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**Top 10 Wage and Hour Mistakes of Small Businesses**

Women & Money Forum – Cultivating Prosperity  
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*The US and NH Departments of Labor are charged with the responsibility to enforce the federal and state wage and hour laws through inspections, administrative hearings and court cases.*

**McLane** Top 10 NH Labor Law Violations

1. **Failure to keep accurate record of all hours worked.**

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2. **Failure to pay all wages due for hours worked, fringe benefits, breaks of less than 20 minutes, etc.**

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3. **Failure to provide written notice to employees of their wage rate, pay period, pay day and a description of fringe benefits at the time of employment and at the time of each change. Failure to have the notice signed by the employee.**

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4. **Failure to have a written safety plan, joint loss management committee and safety summary filed with Department.**

5. **Employing illegal aliens or not having adequate proof of legal right to work in the United States.**

6. **Failure to pay two hour minimum pay on days that employees report to work at the request of the employer.**

7. **Illegal employment of workers under 18 (not having proper paperwork, working more than statutory maximum hours, or working in hazardous environments).**

8. **Failure to secure and maintain worker's compensation coverage and misclassification of workers.**

9. **Failure to pay minimum wage for all hours worked.**

10. **Illegal deductions from wages.**

**McLane** Notable Wage & Hour Decisions 2013

***Mary Boucher v. Celerant Consulting Inc.***  
**(September 17, 2013)**

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**McLane** Decision

DOL ordered employer to pay former salaried employee remaining amounts owed for pay period because – despite providing 2-weeks notice at beginning of pay period – employee had worked at the start of the pay period and was thus owed full salary for entire period.

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***Jason Clark v. Pawn Stars LLC***  
**(May 15, 2013)**

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**McLane** Decision

DOL found the wage claim invalid. Hearings examiner found the claimant's testimony as credible, but not more credible than the employer. Because of this, the claimant did not meet his evidentiary burden of proving he was owed wages.

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***Kathy Burke v. Elaine Hopkins d/b/a Silver Clippers***  
**(May 21, 2013)**

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**McLane** Decision

DOL found employer-employee relationship and awarded claimant unpaid wages and reimbursement of illegally deducted or diverted wages.

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***Ellen O'Shea v. Southern New Hampshire Medical Center***  
**(May 21, 2013)**

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**Decision**

Wage claim was held invalid. Though there was a valid, written policy in place, the factors triggering payment of severance were not met. The claimant was not laid off but merely transitioned to a new employing-entity and kept the same job responsibilities and rate of pay.

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**Some Observations**

1. Employers continue to fail to put notice of wages and benefits in writing
2. Clearly communicate, both in writing and verbally, your vacation, personal time, and other benefits policies
3. Put your commission plans in writing and require employees to sign

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**Changes to State Wage and Hour Laws**

- Changes to Independent Contractor statute - new legislation replaced prior 12-factor test with a new 7-factor test. See RSA 275:4, II.
- Non-Competition Agreements (must present non-comp. agreements to employees at time of hiring or offer of new job and have them sign agreements at those times)
- Safety Plans and Committees (increased to 15 employees)

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**Your Turn: Test Your Knowledge**

What is the NH law regarding meal breaks?

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An employee clocks out to take a smoke break outside for 10 minutes each 3 times a day. Must you pay the employee for these break times?

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An employee shows up for work but the power goes out so you send the worker home. Must you pay the employee? If so, how much is owed?

Can you require direct deposit for wages?

An employee loses a company owned cell phone. Can you deduct the cost from the employee's paycheck?

You require employees to wear khaki pants and a black golf shirt. Can you require the employees to pay for their uniform?

Your employee asks you if her daughter can work for you this summer as an intern so she can get experience. No wages are expected. Can you do this?

You tell your employee that you are giving her a raise from \$15.00 to \$16.25 per hour. Is there anything else that you should do?

## Personnel Files

If requested by a present or former employee, is the employer required to provide the employee with access to their personnel file?

Must the employer provide a copy of the file?

Must the employer provide a copy of notes kept by the employee's supervisor?

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## Reasons for Termination

Can an employee be fired without being given a reason or a notice?

What if the employee asks for a reason; must you give one? Should you give one?

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An employee quits. You advise the employee that his final paycheck will be withheld until he returns his company provided laptop. Can you do so?

An employee quits. You advise the employee that you will deduct the cost of his company provided laptop unless the employee returns it to you within the week. Can you do so?

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You hire someone with a CPA degree to perform some bookkeeping services for the company. The employee will be paid on a salaried basis with no entitlement to overtime. Is this acceptable?

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An employee has filed a wage claim against the company for unpaid vacation, unpaid overtime and unpaid wages for the final pay period.

What is the company's potential exposure for this claim?

Can punitive damages be assessed?

Can the company's owner be personally liable for any damages?

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How can an employer protect itself from wage and hour claims?

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- A. Attend periodic updates such as this one, as well as the NH DOL wage and hour workshops.
- B. Sign up for NH DOL email alerts.
- C. Periodically visit the NH DOL website and review forms, posters and news.
- D. Conduct an audit of your wage and hour practices.

Time for Q & A?

**Thank You**

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