

# Women & Money Forum

## *Cultivating Prosperity*

Thursday, January 9, 2014  
Robert Frost Hall at Southern New Hampshire University

Sponsored by the Center for Women's Business Advancement of  
Southern New Hampshire University

### Session on: **Top Ten Wage and Hour Mistakes of Small Businesses**

2:45 P.M. to 4:00 P.M.

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# Fact Sheet

## Top 10 New Hampshire Labor Law Violations

1. Failure to keep accurate record of all hours worked.  
*\*RSA 279: 27 and Lab 803.03*
2. Failure to pay all wages due for hours worked, fringe benefits, breaks less than 20 minutes, etc.  
*\*RSA 275:43 and Lab 803.01*
3. Failure to provide written notice to employees of their wage rate, pay period, pay day and a description of fringe benefits, including any changes.  
*\*RSA 275: 49 and Lab 803.03*
4. Failure to have a written safety plan, joint loss management committee and safety summary form filed biennially, as required.  
*\*RSA 281-A:64 and Lab 602.01, 602.02, 603.02, and 603.03*
5. Employing Illegal Aliens (not having proper documentation).  
*\*RSA 275-A: 4-a*
6. Failure to pay 2 hours minimum pay at their regular rate of pay on a given day that an employee reports to work at the request of the employer.  
*\*RSA 275:43-a and LAB 803.03 (h), (i), (j)*
7. Illegal employment of workers under 18 (not having proper paperwork, hours violations, or working in a hazardous environment).  
*\*RSA 276-A: and Lab 1000*
8. Failure to secure and maintain workers compensation coverage and misclassification of employees.  
*\*RSA 275:42 I & II and RSA 281-A*
9. Failure to pay minimum wage for all hours worked.  
*\* RSA 279:21*
10. Illegal deductions from wages.  
*\*RSA 275: 48 and Lab 803.02(b), (e), (f)*

This list is provided as a service to employers in order to assist with education and compliance in the future. It is a quick reference to the most common violations reported on the New Hampshire Department of Labor Inspector's reports.

*\*References to each applicable law and rule may be reviewed on line where all the New Hampshire labor laws can be found on our website at [www.nh.gov/labor](http://www.nh.gov/labor)*

## Notable Decisions By NH Wage & Hour Division Hearings Examiners

### 1. *Mary Boucher v. Celerant Consulting Inc.*, Decided: Sept. 17, 2013

- a. **Issues:** claim for unpaid wages and salary under RSA 275:43 I & 43-B
- b. **Key Facts:** claimant sought \$1,319.44 in unpaid salary accrued during the 2-week period after she gave her notice of resignation. The notice came at the beginning of a bi-weekly pay period and the claimant worked at the start of the period. When the employer learned that the claimant was leaving to work for a competitor, it terminated her before the bi-weekly period ended and did not pay her for the full period. The employer argued that it did not have to pay the employee based on its internal policy manual, which provides that the employer can let an employee go at any time.
- c. **Decision:** DOL found that the policy could not trump the language of RSA 275-43-B, which provides that employers have to pay salaried employees for full pay period, unless the employee "terminates on his own accord before the end of the pay period" or "is terminated for cause by the employer." Because neither of these situations occurred, the employee was entitled to pay for the full bi-weekly pay period because she worked at the start of the period.
- d. **Takeaways:**
  - i. The statute is clear that if a salaried employee works any part of a pay period, they are entitled to the full pay for that period
  - ii. Even though the employee in this case had given her notice of resignation, she still worked for part of the pay period
  - iii. While the employer was seemingly upset that she was leaving to work for a competitor – and terminated her for that reason – the termination was found not to be "for cause."

2. *Jason Clark v. Pawn Stars LLC*, Decided: May 15, 2013

- a. **Issues:** unpaid wages under RSA 275:43 I – failure to pay minimum wage
- b. **Key Facts:** claimant was a high school student that liked to hang around a pawn shop after school. He argued that he worked for the pawn shop and was not compensated for hours worked. The pawn shop owners argued that the claimant merely hung around the store and that the owners sometimes gave him money because they felt bad for him. At a later point, the claimant and store owners entered into an agreement whereby the claimant would be paid minimum wage to work at the store. Under that agreement, the claimant agreed that he was not due any wages from prior to the date of the agreement. Despite the agreement, the claimant argued that he was owed wages for work completed prior to the agreement.
- c. **Decision:** DOL found the wage claim invalid. Ultimately, the decision came down to credibility, and the hearings examiner found the claimant as credible, but not more credible, than the employer. Because of this, the hearings examiner found that the claimant had not met his burden of proof.
- d. **Takeaways:**
  - i. The evidentiary burden of proving unpaid wages is high – preponderance of the evidence
  - ii. If employer is able to testify as credibly as the claimant/employee, the employee’s claim will likely be denied
  - iii. Despite written agreement outlining wage structure and acknowledging no past wages due, it was incumbent on employer to ensure that employee understood the terms of the agreement he was entering into.
  - iv. If employer had done so initially, it would not have had to deal with the inconvenience and expense of defending the wage claim

3. *Kathy Burke v. Elaine Hopkins d/b/a Silver Clippers*, Decided: May 21, 2013

- a. **Issues:** unpaid wages and illegal deduction/diversion of wages
- b. **Key Facts:** claimant paid the employer \$1800 to teach her how to groom dogs. It turned out that the employer used this “training” to actually have the claimant perform over 162 hours of work for the employer’s customers. After claimant completed the “training” program, the employer informed her that she was not qualified for a full-time position and instructed her not to contact the DOL(!). The employer argued that claimant was a bona fide volunteer and thus not owed any wages for the 162 hours.
- c. **Decision:** DOL found the wage claim valid and awarded the claimant \$1,174.50 for unpaid wages and ordered the employer to reimburse the claimant for the \$1800 she paid for the “training.” DOL found that claimant met criteria for employee, and did not meet any of the exemptions for voluntary work or work for learning purposes. During her alleged training, the claimant performed dog grooming services for the employer’s clients, and the employer received payment from clients for the dogs groomed by the claimant. The DOL also found that because the employer was not authorized by the NH Dept. of Education to have apprentices in dog grooming, the \$1800 payment was considered an illegal diversion or deduction of wages.
- d. **Takeaways:**
  - i. The claimant’s work for the employer clearly benefitted the employer – she was paid by her clients for grooming claimant performed
  - ii. As a result, this was not a typical trainee situation
  - iii. The employer’s behavior and statements to the claimant following the “training” certainly did not help – a good example of how not to handle departing employees

4. *Ellen O'Shea v. Southern New Hampshire Medical Center*, Decided: May 21, 2013

- a. **Issues:** unpaid severance pay under RSA 275:43 V
- b. **Key Facts:** claimant brought a wage claim for unpaid severance pay following her termination from the employer. Claimant argued she was entitled to severance pay pursuant to a reduction in workforce/reallocation policy which entitled laid off employees to two week's severance pay. Employer argued that claimant was not entitled to severance pay under the policy because she was not laid off, but merely had her position transferred to a new entity. Following the transition to the new entity, the claimant was paid the same rate of pay as her previous position. The claimant did not receive a layoff notice and did not miss a shift during the transition to the new employer.
- c. **Decision:** DOL found the wage claim invalid. Though there was a valid policy for severance pay, the conditions entitling workers severance pay were not met. There was no layoff or period of inactivity between the claimant's work for the prior employer and the new entity. Additionally, the employer took all steps to ensure that the employees were notified of the transition, and received their full pay during and after the transition.
- d. **Takeaways:**
  - i. Good example of a properly-worded reduction in workforce policy
  - ii. Though there was some confusion surrounding the transition in workforce to a new entity, ultimately, the policy language prevailed

## **New Hampshire Wage and Hour Forms, Publications and Posters**

The following wage and hour forms and guidance documents are available on the New Hampshire Department of Labor website found at:  
<http://www.nh.gov/labor/inspection/forms.htm#wagehour>.

- [A Guide to the Whistleblowers' and Wage Claim Process](#)
- [A Guide to the Wage Adjustment and Civil Penalty Hearing Processes](#)
- [Wage Claim Form](#)
- [Whistleblowers Complaint Form](#)
- [Request for Payment of Wages Other Than Weekly](#) (RSA 275:43II and LAB 803.01)
  
- [Voluntary Waiver to the Day of Rest](#) (RSA 275:33 and RSA 275:33-b)
- [Voluntary Waiver to the Lunch or Eating Period](#) (RSA 275:30-a)
- [Voluntary Waiver to the prohibition against mandatory overtime for nurses and assistance under RSA 326-B](#) (RSA 275:67 and RSA 275:68)
- [Authorization for Accidental Overpayment Deduction](#)
- [Sample Authorization for Voluntary Payroll Deduction Form](#) (RSA 275:48)
- [Sample Form for New Hire Checklist](#)
- [Sample Form for Rate of Pay Notification](#)
- [Employers' Request for Child Labor](#) (RSA276-A:5 and LAB 1001.04)
- [Parental Permission Form](#) (RSA 276-A:VIII and LAB 1002.02)
- [Application for Employment of Disabled Person](#) (RSA 279:22-a)

### **Youth Employment**

- [Employer's Request for Child Labor Form](#) (RSA 276-A:5 and LAB 1001.04)
- [Parental Permission Form](#) (RSA 276-A:VIII and LAB 1002.02)
- [Approval Form for Non-Paid Work-Based Activities](#)
- [Pre-Screening Form](#)
- [State & Federal Child Labor Information Guide](#)
- [Application for Approval for Out-of-School Building Construction Projects](#)
- [Guideline for Approval of Building Trade Activities](#)
- [Verification of Adequate Health of Child](#)

For your convenience, the following pages contain some of the most used forms.

**Required Posters:** A review of the NH DOL website reveals that many of the New Hampshire required posters were revised in August of 2013. For your convenience, the following pages contain a copy of the revised posters. You should check to ensure that you have the most recent posters posted in your workplace.



State of New Hampshire  
Department of Labor

Request for Payment of Wages Other Than Weekly

RSA 275:43,1

Please print or type. Complete all sections.

Company Name: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

Physical Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

<b>Method(s) of Payment:</b> <input type="checkbox"/> Cash <input type="checkbox"/> Check <input type="checkbox"/> Direct Deposit* <input type="checkbox"/> Electronic Funds Transfer (EFT)* <input type="checkbox"/> Payroll Card*	<b>Requested Frequency of Payment:</b> <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Semi-monthly <input type="checkbox"/> Monthly
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\*If the employer elects to pay employees by direct deposit, EFT, or payroll card, the employer shall offer employees the option of being paid with checks drawn on a financial institution convenient to the place of employment at no cost to the employee.

Number of Employees Paid Salary \_\_\_\_\_ Number of Employees Paid Hourly \_\_\_\_\_

Annual Salary Range: Lowest \_\_\_\_\_ to Highest \_\_\_\_\_

Hourly Rate Range: Lowest \_\_\_\_\_ to Highest \_\_\_\_\_

Pay Period begins on: Day or date \_\_\_\_\_ Pay Period Ends on: Day or date \_\_\_\_\_

Designated Payday: Day or date \_\_\_\_\_

Detailed Reason for Request: \_\_\_\_\_

Please Send to: Wage & Hour Administrator  
NH Department of Labor  
PO Box 2076  
Concord NH 03302-2076

or FAX to: 603-271-8310

QUESTIONS? Call 603-271-0127

Office Use Only

_____ Approved	Date	By
_____ Denied		

Reason for Denial: \_\_\_\_\_



**EMPLOYEE 'S) REQUEST FOR WAIVER TO A "DAY OF REST"**

I / we the undersigned, hereby request that the NH Department of Labor allow me/us to waive my/our right to a "day of rest" as required by RSA 275:32 and RSA 275:33. We understand that should we work on a Sunday, we are entitled to a day of rest within the next six consecutive days. We have not been forced or coerced by our employer or any representative of the employer to submit this request. It is completely voluntary on my/our part. We understand that we are free to revoke this request and be granted the required days off at any time.

We are employed at the following business:

**Employer**  
**Name** \_\_\_\_\_  
**Street address** \_\_\_\_\_  
**City/ Town** \_\_\_\_\_, NH

**Employee's name**

_____	_____
Print	Signature
_____	_____
Print	Signature
_____	_____
Print	Signature
_____	_____
Print	Signature
_____	_____
Print	Signature
_____	_____
Print	Signature
_____	_____
Print	Signature

# **SAMPLE**

## **REQUEST TO WAIVE THE LUNCH OR EATING PERIOD**

**RSA 275:30-a Lunch or Eating Period.** – An employer may not require an employee to work more than 5 consecutive hours without granting him a 1/2 hour lunch or eating period, except if it is feasible for the employee to eat during the performance of his work, and the employer permits him to do so.

I \_\_\_\_\_ understand that my

Employer \_\_\_\_\_

offers a lunch or eating time as defined in RSA 275:30-a. I am requesting not to take this time as offered. I also understand that at any time I wish to take the lunch or eating time I will be allowed to do so.

\_\_\_\_\_  
Employees signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

# Sample Form

## AUTHORIZATION FOR ACCIDENTAL OVERPAYMENT DEDUCTION Allowed under RSA 275:48 I

I, \_\_\_\_\_ hereby authorize  
(Print employee's name)  
\_\_\_\_\_  
(Employer) to deduct from my wages  
the sum of \$ \_\_\_\_\_, beginning \_\_\_\_\_ and ending \_\_\_\_\_  
(Amount) (Date) (Date)  
until the total amount of \$ \_\_\_\_\_ has been deducted.  
(Amount)

I am authorizing this voluntary deduction as specified in RSA 275:48 I.

For deductions made for accidental overpayments employers are not allowed to deduct more than 20 percent of the employee's gross pay in any pay period. See RSA 275:48 I (d), (4), (C) (ii).

In the event my employment ends for any reason before the final deduction is made, the entire balance may \_\_\_\_\_ (X) or may not \_\_\_\_\_ (X) be deducted from my final wages.

\_\_\_\_\_  
(Employee's Signature)

\_\_\_\_\_  
(Date signed)

# Sample Form

## AUTHORIZATION FOR VOLUNTARY PAYROLL DEDUCTION Allowed under RSA 275:48 I

I, \_\_\_\_\_ hereby authorize  
(Print employee's name)

\_\_\_\_\_ to deduct from my wages  
(Employer)

for: \_\_\_\_\_  
(reason for the deduction)

the sum of \$ \_\_\_\_\_, beginning \_\_\_\_\_ and ending \_\_\_\_\_  
(Amount) (Date) (Date)

until the total amount of \$ \_\_\_\_\_ has been deducted.  
(Amount)

I am authorizing this voluntary deduction as specified in RSA 275:48 I.

In the event my employment ends for any reason before the final deduction is made, the entire balance may \_\_\_\_\_ (X) or may not \_\_\_\_\_ (X) be deducted from my final wages.

\_\_\_\_\_  
(Employee's Signature)

\_\_\_\_\_  
(Date signed)

## New Hire Checklist

- Workers Comp required when there is one or more employees (full or part-time)
- I-9's or Documents verifying Employment Eligibility
- W-4 for IRS
- Register with NH Employment Security within 30 days of first providing employment
- New Hire Reporting (NH Employment Security)
- Written Notifications signed by the employee
  - Rate of pay - Hourly / Salary, Commissions, Piece rates, Flat rates
  - Payday
  - Fringe Benefits Policy
- Youth Employment
  - (12-15) Certificates
  - (16-17) Parental Permissions
  - Allowable hours of work
  - Hazardous Orders
- Payroll information
  - Written Authorization for legal deductions under RSA 275:48
- Payment Options
  - Paper Check
  - Direct Deposit
  - Paycard
- Waivers as applicable (lunch, day of rest, hours for nurses)

**Sample form for  
New Hire Rate of Pay  
Company Name  
Address  
Address**

Employee name: \_\_\_\_\_

Date: \_\_\_\_\_

Rate of pay \$ \_\_\_\_\_

Pay period is \_\_\_\_\_

Payday is \_\_\_\_\_

Benefits offered: \_\_\_\_\_

\_\_\_\_\_  
Signature of employee

**Changes in Rate of Pay**

Date: \_\_\_\_\_

Rate of pay \_\_\_\_\_

\_\_\_\_\_  
Signature of employee

**Changes in Rate of Pay**

Date: \_\_\_\_\_

Rate of pay: \_\_\_\_\_

\_\_\_\_\_  
Signature of employee

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
PO BOX 2076  
CONCORD, NH 03302-2076

EMPLOYER'S REQUEST FOR CHILD LABOR

Please issue a NH Youth Employment Certificate to:

\_\_\_\_\_  
NAME OF MINOR SOC. SEC. NUMBER (optional)

\_\_\_\_\_  
AGE DATE OF BIRTH SEX

That he/she may be legally employed, in accordance with Revised Statutes Annotated 276-A as amended, by

\_\_\_\_\_  
(SHOW CORPORATION OR TRADE NAME, IF ANY) (FED. ID #)

\_\_\_\_\_  
STREET & NUMBER CITY, STATE, ZIP TEL. #

\_\_\_\_\_  
INDUSTRY OF EMPLOYER

\_\_\_\_\_  
NATURE OF EMPLOYMENT - BE SPECIFIC

With this application the minor must present a Birth Certificate or other evidence of date of birth, to the School Department, and the certificate will be issued there. The certificate must be kept on file for your records.

\_\_\_\_\_  
Employer's Signature/Telephone Number

**STATE OF NEW HAMPSHIRE DEPARTMENT OF LABOR  
PARENTAL PERMISSION AS DEFINED IN RSA 276-A: 4 VIII AND LAB 1002.02  
FOR THE EMPLOYMENT OF YOUTH AGE 16 OR 17**

Youth's Name: \_\_\_\_\_ Date of Birth    /   /     
(please print) (month, day, year)

Youth's Address: \_\_\_\_\_  
Street City State Zip

I, \_\_\_\_\_, grant permission for my son, daughter or legal ward  
(Name of parent or legal guardian)

to be employed with \_\_\_\_\_  
(Name of employer)

Located at \_\_\_\_\_  
Street City State Zip

Description of work \_\_\_\_\_

\_\_\_\_\_  
Date Signature of parent or legal guardian

For information regarding the requirements of RSA 276-A, the New Hampshire Youth Employment Law, please contact the New Hampshire Department of Labor at 271-6294 or 271-1492.

**RSA 276-A:4**

I. No youth shall be employed or permitted to work in any hazardous occupation, except in an apprenticeship, vocational rehabilitation, or training program approved by the commissioner.

VI. No youth 16 or 17 years of age who is duly enrolled in school shall be permitted to work more than 6 consecutive days or more than 30 hours during the school calendar week, which shall be Sunday through Saturday.

VII. No youth 16 or 17 years of age who is duly enrolled in school shall work for more than 6 consecutive days or 48 hours in any one week during school vacations, including summer vacation. For purposes of this paragraph, "summer vacation" means June 1 through Labor Day

VIII. No youth 16 or 17 years of age, except a youth 16 or 17 years of age who has graduated from high school or obtained a general equivalency diploma, shall be employed by an employer unless the employer obtains and maintains on file a signed written document from the youth's parent or legal guardian permitting the youth's employment.

**RSA 276-A:13 Night Work.** - No such youth shall be employed or permitted to work at night work more than 8 hours in any 24 hours nor more than 48 hours during the week. If any youth is employed or permitted to work more than 2 nights each week, for any time between the hours of 8 o'clock p.m. and 6 o'clock a.m. of the day following, such employment shall be considered night work.

**Lab 1002.03 Hours Limitations.**

(c) Pursuant to RSA 276-A: 13, any youth scheduled to work more than 2 nights in a week past 8 o'clock p.m. shall not be permitted to work more than an 8 hour shift during that particular week.

**Hazardous Occupations are as defined in Federal Child Labor Bulletin Requirements in Nonagricultural Occupations "Child Labor Bulletins No. 101" Order No. 1 through Order No. 17**

**This form must be on file with this employer prior to 16 or 17 year old youth performing any work.**





STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
PO BOX 2076  
CONCORD, NH 03302-2076

(603) 271-3176

**APPROVAL FORM FOR NON-PAID WORK-BASED ACTIVITIES UNDER RSA 279:22-aa**

(Please type or print all information)

School/institution/Organization \_\_\_\_\_ Secondary \_\_\_\_\_ Post-secondary \_\_\_\_\_ Other \_\_\_\_\_

Address \_\_\_\_\_  
(Street) (Town/City) (State) (Zip Code)

FAX: \_\_\_\_\_

If disabled check one: VR \_\_\_\_\_ AA \_\_\_\_\_ CMHC \_\_\_\_\_ Provider Agency \_\_\_\_\_

Program Name: \_\_\_\_\_ FAX: \_\_\_\_\_  
Contact Person \_\_\_\_\_ Title \_\_\_\_\_ Tel. \_\_\_\_\_

Type of Placement (check one):

Job Shadow \_\_\_\_\_ Clinical \_\_\_\_\_ Work Experience \_\_\_\_\_ Internship \_\_\_\_\_ Service Learning \_\_\_\_\_  
Mentor Program \_\_\_\_\_ Situational Assessment \_\_\_\_\_ Training Program \_\_\_\_\_ Other \_\_\_\_\_

Career Interest/Objective:

Is academic credit given for this program? Yes \_\_\_\_\_ No \_\_\_\_\_  
Hours per student/learner \_\_\_\_\_ Days per week \_\_\_\_\_ Total number of days at business site \_\_\_\_\_  
Supervision: Please describe how the student(s)/learner(s) will be supervised and by whom \_\_\_\_\_

- Does each place of business have a safety program? Yes \_\_\_\_\_ No \_\_\_\_\_ Explain \_\_\_\_\_
- Is there any hazardous equipment involved? Yes \_\_\_\_\_ No \_\_\_\_\_ Type \_\_\_\_\_
- Has all Safety Training been completed (as applicable to each site)? Including specific training for equipment as noted above.  
Yes \_\_\_\_\_ No \_\_\_\_\_ Explain \_\_\_\_\_

The information above as provided is accurate and we guarantee that this placement in no way establishes an employee/employer relationship between the student(s)/learner(s) and the business site at which they are placed.

Attach list of business(es) participating in this placement. Must include: Name of business, address, phone # & contact person. Notify the DOL of any additions to this list. Also attach a sample copy of Agreement or Contract for this placement.

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

For D.O.L. use only  
Approved \_\_\_\_\_ Rejected \_\_\_\_\_ D.O.L. Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_  
Reason for Rejection: \_\_\_\_\_



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR**

**PROTECTIVE LEGISLATION LAW**

Wages In this Establishment Will Be Paid On:

SUNDAY      MONDAY      TUESDAY      WEDNESDAY      THURSDAY      FRIDAY      SATURDAY  
                                                                       

**PAYMENT OF WAGES.** All wages due an employee must be paid within eight days after the expiration of the week in which work is performed. The Labor Commissioner may, upon written petition showing good and sufficient reason, permit payment of wages less frequently, except it shall be at least once each calendar month.

**NOTICE TO EMPLOYEE.** Employer must notify employee in writing when hiring of the rate of pay, or any changes prior to change; make available in writing, or by posted notice, employment practices and policies on vacation pay, sick leave and other fringe benefits; furnish employee statement of deductions each payday.

**LUNCH OR EATING PERIOD.** An employer may not require an employee to work more than five consecutive hours without granting him a one half-hour lunch or eating period, except if it is feasible for the employee to eat during the performance of his/her work, and the employer permits him/her to do so.

**ACCESS TO PERSONNEL FILE.** Every employer shall provide a reasonable opportunity for an employee who so requests to inspect such employee's personnel file and upon request provide such employee with a copy of all or part of the file.

**WITHHOLDING WAGES.** Employer may not withhold or divert any portion of an employee's wages unless required or empowered by state or federal law; or unless by written authorization by the employee for a lawful purpose accruing to the benefit of the employee, per regulation promulgated by the Commissioner.

**EMPLOYEES SEPARATED.** When an employee quits, resigns, or is suspended because of labor dispute wages must be paid not later than the next regular payday or by mail if the employee so requests. Employees discharged must be paid in full within seventy-two hours. Willful failure to pay as above subjects employer to liquidated damages of ten percent of the unpaid wages for each day except Sunday and legal holidays. In case of dispute over amount due, employer shall pay amount conceded by him to be due, leaving employee remedies of law for balance.

The acceptance of payment by employee shall not constitute a release to the balance of a claim and any release required by an employer as a condition of payment shall be null and void and in violation of the law.

**REQUIRED PAY**

On any day an employee reports to work at an employer's request, the employee shall be paid not less than 2 hours pay at their regular rate of pay. This does not apply to employees of counties or municipalities.

**CIVIL PENALTY**

There may be a minimum civil penalty of \$100.00 per violation of any section of the New Hampshire Labor Laws.

INSPECTION DIVISION  
P.O. BOX 2076  
CONCORD, NH 03302-2076  
TELEPHONE - (603) 271-1492 & 271-3176

David M. Wihby  
Deputy Labor Commissioner

James W. Craig  
Commissioner of Labor

**THIS NOTICE MUST BE POSTED IN A CONSPICUOUS PLACE**

Rev. 08/27/13



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
NEW HAMPSHIRE MINIMUM WAGE LAW**

Revised Statutes Annotated Chapter 279, as amended

Unless otherwise provided by statute, no person, firm, or corporation shall employ any employee at an hourly rate lower than that set forth in the federal minimum wage law, as amended.

**\$7.25 PER HOUR EFFECTIVE SEPTEMBER 1, 2008**

**Exempt from RSA 279 are:**

Employees engaged in Household Labor, Domestic Labor, Farm Labor, Outside Sales Representatives, Summer Camps for Minors, Newspaper Carriers, Non-Professional Ski Patrol and Golf Caddies.

**OVERTIME PAY.** Those employees covered by RSA 279, with the following exceptions, shall in addition to their regular compensation, be paid at the rate of time and one-half for all time worked in excess of 40 hours in any one week:

- (a) Any employee employed by an amusement, seasonal, or recreational establishment if:
  - (1) it does not operate for more than 7 months in any calendar year; or
  - (2) during the preceding calendar year, its average receipts for any 6 months of such year were not more than 33 1/3 percent of its average receipts for the other 6 months of such year.
- (b) Any employee of employers covered under the provisions of the Federal Fair Labor Standards Act.

Tipped employees of a restaurant, hotel, motel, inn or cabin, who customarily and regularly receive more than \$30 a month in tips directly from the customers will receive a base rate from the employer of not less than 45 percent of the applicable minimum wage. Restaurant shall include an establishment in a temporary or permanent building, kept, used, maintained, advertised, and held out to the public to be a place where meals are regularly prepared or served for which a charge is made and where seating and table service is available for customers or where delivery services are available. The term does not include establishments which do not primarily prepare and serve food. Tipped employees shall also include employees who deliver meals prepared in a restaurant to the customer's home, office, or other location. If an employee shows to the satisfaction of the commissioner that the actual amount of wages received at the end of each pay period did not equal the minimum wage for all hours worked, the employer shall pay the employee the difference to guarantee the applicable minimum wage.

**RECORDS.** Every employer of employees shall keep a true and accurate record of the hours worked by each, wages paid to each, and classification of employment when necessary.

**NEW HAMPSHIRE YOUTH EMPLOYMENT LAW**

No youth under the age of 16 shall be employed or permitted to work without first obtaining a New Hampshire Youth Employment Certificate except for his/her parents, grandparents, guardian, or at work defined as casual or farm labor. **Certificates shall be obtained by an employer within 3 business days of the first day of employment.** Copies of certificates shall be kept on file by all employers of youths. An employer shall not employ a youth 16 or 17 years of age, unless the employer obtains and maintains on file a signed written document from the youth's parent or legal guardian permitting the youth's employment. The parental permission shall be on file at the establishment's worksite prior to the first day of employment. Written parental permission is not required for a 16 or 17 year old youth who has graduated from high school or obtained a general equivalency diploma.

**INSPECTION DIVISION  
P.O. BOX 2076  
CONCORD, NH 03302-2076  
(603) 271-1492 & 271-3176**

**David M. Wihby  
Deputy Labor Commissioner**

**James W. Craig  
Commissioner of Labor**

**THIS NOTICE MUST BE POSTED IN A CONSPICUOUS PLACE**

Rev. 08/27/13



## State of New Hampshire Department of Labor

### Criteria to Establish an Employee or Independent Contractor

**“Employee”** means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

- (a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.
- (b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.
- (c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.
- (d) The person hires and pays the person’s assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants’ work.
- (e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.
- (f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.
- (g) The person is not required to work exclusively for the employer.

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