

## PAYING YOUR EMPLOYEES - A REVIEW OF NEW HAMPSHIRE'S WAGE AND HOUR LAWS ON NOTICE REQUIREMENTS, PAY PERIODS, AND PAYDAYS

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Few areas of law or business are as heavily regulated as those governing the payment of wages to employees. From the initial setting of wages, to calculating and distributing wages, employers will likely find a specific statute and/or labor regulation governing the transaction. Failure to follow these detailed wage and hour laws can result in significant fines being imposed by the New Hampshire Department of Labor ("DOL") following an audit. Fortunately, however, this area of employment law is relatively easy to master, once you are familiar with the basics. Most of the pertinent statutes can be found at [New Hampshire Revised Statute Annotated 275](#) and the regulations at New Hampshire's Administrative Rule, [Lab. Chapter 800](#). This article will briefly address some of the more frequent problem areas that are highlighted each year in the DOL's "[Top 10 New Hampshire Labor Law Violations](#)."

**Written Notice of Wages:** At the time of hire, employers must notify employees in writing of their rate of pay and the day and place of payment. This notice is traditionally delivered to employees by way of an offer letter or some sort of "New Hire Rate of Pay" form (a [sample form](#) is available from the DOL). In addition, and what surprises most employers, is that pursuant to Lab. 803.03(f)(6), employers must also request and obtain their employees' signatures on this written notification of wages, and employers must keep a copy of the signed written notification of wages on file. Further, employers must also notify employees in writing during the course of employment of any changes to wages or day of pay prior to such changes taking effect, and the employer must obtain the employee's signature on this subsequent notification as well. See RSA 275:49; Lab. 803.03.

Employers are further required to notify employees in writing, or through a posted notice maintained in a place accessible to employees: (a) of employment practices and policies with regard to vacation pay, sick leave and other fringe benefits; (b) of deductions made from the employee's payroll check, for each period such deductions are made; and (c) of information

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regarding the deductions allowed from wage payments under state law. RSA 275:49; Lab. 803.03. Policies regarding vacation and sick leave should inform employees whether or not the employer will “cash out” unused time at year end or at the end of employment, and if so, under what terms. Again, if any changes are made to vacation pay, sick leave and other fringe benefits during the course of employment (all of which are considered “wages” under New Hampshire law), employers must request and obtain their employees’ signatures on the written notification of the change, and must keep a copy of the signed form on file. See Lab. 803.03.

**Pay Periods:** The general rule is that all employers must pay all wages due to employees within eight (8) days after the expiration of the week in which the work is performed. These wages must be paid on regular paydays designated in advance. For example, if your current pay period runs from Sunday, June 6, 2010 at 12:00am through Saturday, June 12, 2010 at 11:59pm; your payday may fall on any of the days from Sunday, June 13 through the following Sunday, June 20.

Employers may also satisfy this general rule with biweekly payment of wages, but only if the last day of the second week falls on the day immediately preceding the day of payment. For example if your current pay period runs from Wednesday, June 2, 2010 at 12:00am through the second Tuesday, June 15, 2010 at 11:59 pm, your payday must fall on the following Wednesday, June 16, 2010.

Alternatively, employers may satisfy this general rule by payment in advance of and in full for the work period, even though less frequent than biweekly. See RSA 275:43, I; Lab. 803.01 (a).

The Commissioner of the Department of Labor may permit payment of wages less frequently, upon written petition and for good cause shown, although the Commissioner will not approve pay schedules less frequently than once per month. See RSA 275:43, II. The Department of Labor provides a [sample form](#) for employers to use to petition for less frequent payment of wages. This request for alternative pay periods are routinely filed and approved by the Department of Labor, and are necessary to avoid civil penalties if your company does not follow any of the above statutorily prescribed pay period.

**Paydays and Methods of Pay:** As noted above, employers must pay all wages due on regular paydays designated in advance. Employees should be told in writing when, where and at what times his/her wages will be available. The Department of Labor may find a violation if an employer limits a “payday” to only one or two hours, or any similar action which prevents an employee from receiving his/her wages on the designated payday.

If a payday falls on a holiday that prevents distribution of wages on that day, then the employer must pay employees in full prior to that holiday. If a

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payday falls on a day when an employee is out sick or otherwise unavailable to receive his/her wages from the employer, then the employer should hold the check until it is picked up by the employee, unless the employee requests (preferably in writing) that the check be sent via mail. Employers should be cautioned, however, that any time a paycheck is distributed by U.S. Mail, the employer runs the risk of a finding by the DOL that either the check was not timely received by the employee, or not received by the employee at all. If the employee claims the check was never received, the employer will likely bear the cost of reissuing a new check.

Wages must be paid in cash, by check, by direct deposit with written authorization by the employee, or paycard with written authorization by the employee. See RSA 275:43, I and II. Employers may not mandate the use of direct deposit or paycards. Wages paid by check must be drawn on a financial institution convenient to the place of employment, and arrangements must be made so that employees may cash their checks for the full amount of wages due without incurring any check-cashing fees. If there is a dispute regarding the amount of wages payable, the employer must pay without condition and within the times required by law all wages or parts thereof conceded by the employer to be due. See Lab. 803.02 (c). The employer's payroll practices should be clearly communicated.

If you have questions regarding the issues discussed in this e-alert, please do not hesitate to contact any of the lawyers in Devine Millimet's Labor and Employment Practice Group.

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