

PENDING NEW HAMPSHIRE WAGE AND “FAMILY FRIENDLY” LEGISLATION

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While President Barack Obama has been busy during his first days in office signing bills and executive orders to help in his words “level the playing field for workers and unions that represent their interests,” here in New Hampshire legislators have filed numerous bills this session which if enacted would significantly impact employers and employees. Included in this proposed legislation are several bills on payment of wages as well as a trilogy of “family friendly” bills sponsored by Representative Mary Stuart Gile intended to assist employees in the area of home/work balance.

Minimum Wage:

House Bill 146 provides an annual automatic minimum wage rate escalator for New Hampshire employees based on the Consumer Price Index for All Urban Consumers, Northeast Region. This adjusted minimum wage rate would go into effect January 1st of each year beginning January 1, 2010.

Pay at Termination:

House Bill 103 would require employers to pay any employee that the employer terminates or lays-off all wages owed at the time of termination, rather than within 72 hours of lay-off or dismissal as New Hampshire law currently provides.

Paid Leave:

First of the “family friendly” bills sponsored by Representative Gile is House Bill 662. If enacted this bill would require that all New Hampshire employers provide each of their employees, both full and part time, accrual and use of 40 or more hours of paid leave

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per calendar year. It should be noted that there is no pro-ration in this legislation as it is currently drafted with respect to the amount of paid leave to be provided to part-time workers.

An employee can use this leave for their own and their family members mental or physical illness, injury or health condition and for preventative medical care, as well as for absences related to domestic violence, sexual assault or stalking. This leave must be available to an employee once the employee completes six months of employment. The legislation permits but does not require that an employer allow employees to carry forward accrued unused sick leave into the next calendar year. And, similarly the legislation allows but does not require that an employer pay an employee for accrued unused sick time at termination.

This bill makes it unlawful for an employer to retaliate or discriminate against an employee for using this leave, and provides that an employer may not use time taken under this leave in any adverse way against the employee. The legislation further provides a rebuttable presumption of unlawful retaliation whenever an employer takes adverse action against an employee within 90 days of the employee informing any person of their rights under this section or who reports or opposes any policy, practice or act that is unlawful under section. Employers are required to post notices of employee rights under this law and to maintain specified records.

Work Flexibility:

House Bill 663, also sponsored by Representative Gile, if enacted would give New Hampshire employees working for an employer with 15 or more employees the right to request “flexible work terms” from their employer. An employee is allowed to make one such request in any rolling 12 month period. “Flexible work terms” is defined in this bill to include:

1. The number of hours the employee is required to work;
2. The times the employee is required to work; and
3. The location the employee is required to work.

Once an employee makes a request for “flexible work terms” the employer is required to meet with the employee within 14 days to discuss the request, and the employee must be allowed to have a representative of their choosing at this meeting. The employer then has up to 14 more days to consider the request and to give the employee its decision on the request in writing, including if the request is rejected the basis of the employer’s decision. To the extent applicable, an employer must include in any written decision rejecting a “flexible work term” request:

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1. The identifiable cost of the request;
2. The effect on meeting customer needs;
3. Geographic issues; and
4. Other factors specified in adopted rules.

This bill also specifies that it shall be unlawful for an employer to take any adverse action against an employee for exercising their rights under this law. An employer violating this law can be fined up to \$1,000 for each violation, as well as be ordered to reinstate and make whole the affected employee.

Family Leave Insurance:

Last in family friendly trilogy of employment bills sponsored by Representative Gile this session, House Bill 661- Family Leave Insurance requires federal funding for its implementation. This legislation recognizes that although unpaid leave is available to many employees for their own serious illnesses and injuries as well as to care for family members in such circumstances and for the birth or adoption of a child, many employees are unable to take these leaves because they can't afford to go without pay. To remedy that this legislation provides employees that meet the current criteria for federal Family Medical Leave Act leave who work 35 or more hours a week with a weekly benefit while on family leave of up to \$250, and a pro-rata benefit amount for employees who work less than 35 hours per week or who work a reduced schedule or take intermittent leave. This benefit would only be available after the first 7 days of family leave.

Like the federal Family Medical Leave Act this legislation is only mandatory for employers that have 50 or more employees, but smaller employees are allowed to opt in to this program. This legislation also provides an employee with the right to reinstatement to their job at the conclusion of their receipt of family leave insurance benefits/leave.

Complaints before the NH Human Rights Commission:

The analysis of House Bill 686 states that it's purpose is to limit a complainant's right to remove a case from the NH Human Rights Commission to superior court. However, what the proposed bill actually does is completely remove the responding party's right to remove a complaint to superior court while fully preserving the complainant's right to removal. Since employees are always the complaining party in these actions and employers are always the respondent this proposed change to NH RSA 354-A:21-a I-II is a completely unfair and unbalanced proposal.



Legislation Exclusive To Public Employment:

A number of dueling and/or overlapping bills affecting public sector employment have been introduced this session which if they continue to be considered by the NH legislature will be covered in a later Friday e-alert including:

- House Bill 308- Giving non-emergency employees the right to strike;
- House Bill 231- Overruling last sessions “Evergreen” legislation;
- House Bill 631- Establishing a panel to rule on collective bargaining items on which the parties have reached impasse;
- House Bill 46- Giving a neutral party final authority to determine and bind the parties for a period of 1 year everything except cost items on which they have reached impasse in collective bargaining;
- House Bill 500- Repealing the authority for an exclusive representative to conduct collective bargaining for employees;
- House Bill 163- Overruling the “fireman’s rule,” which prevents public safety officers from recovering damages or benefits for negligently caused injuries..

STAY TUNED:

We will keep you updated on any developments in these and other bills impacting the workplace pending in the New Hampshire legislature this session. Do not hesitate to contact any member of Devine Millimet’s labor, employment and employment benefits or lobbying groups if you have any questions with regard to any pending legislation.

The Devine, Millimet & Branch Labor, Employment and Employee Benefits Group offers this free Friday E-Mail Alert service to provide information on recent developments in labor, employment and employee benefits law. If you have any questions about this e-mail, or if you know of anyone else who may be interested in receiving these alerts, please send us an e-mail at employment@devinemillimet.com.

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