

October 19, 2023 - HRAGC Legislative Update

“To learn through listening, practice it naively and actively. Naively means that you listen openly, ready to learn something, as opposed to listening defensively, ready to rebut. Listening actively means you acknowledge what you heard and act accordingly.” — Betsy Sanders, Nordstrom

FEDERAL

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)



PRESS RELEASE: 09-29-23: [Link to Source](#)

[EEOC Proposes Updated Workplace Harassment Guidance to Protect Workers](#)

WASHINGTON - The U.S. Equal Employment Opportunity Commission (EEOC) invited the public to comment on its proposed “Enforcement Guidance on Harassment in the Workplace.” The Federal Register today posted for public inspection and, on Oct. 2 will publish, the EEOC’s notice of this proposed guidance and a request for comment. The proposed guidance is available for review at [Link to Proposed Guidance](#), and the public is invited to submit comments and view the document via the federal e-regulation website until Nov. 1.

The EEOC first released a proposed guidance on workplace harassment for public comment in 2017, but it was not finalized. The updated proposed guidance reflects notable changes in law, including the Supreme Court’s decision in *Bostock v. Clayton County*, the #MeToo movement, and emerging issues, such as virtual or online harassment.

The proposed guidance explains the legal standards and employer liability applicable to

harassment claims under the federal employment discrimination laws enforced by the EEOC. These laws protect covered employees from harassment based on race, color, religion, sex (including sexual orientation, transgender status, and pregnancy), national origin, disability, age (40 and older) or genetic information.

Specifically, it provides numerous updated examples to reflect a wide range of scenarios, incorporates updates throughout on current case law on workplace harassment, and addresses the proliferation of digital technology and how social media postings and other online content can contribute to a hostile work environment.

“Preventing and addressing harassment in America’s workplaces has long been a key priority for the EEOC, and this guidance will provide clarity on new developments in the law and build on the Commission’s previous work,” said EEOC Chair Charlotte A. Burrows. “The Commission looks forward to receiving public input on the proposed enforcement guidance.”

Harassment remains a serious workplace problem. Between fiscal years 2016 and 2022, more than one-third of charges received by the EEOC included an allegation of harassment. The Commission has identified two harassment-related national enforcement priorities in the EEOC’s new Strategic Enforcement Plan: preventing and remedying systemic harassment, and protecting vulnerable workers

and people from underserved communities from harassment.

The EEOC’s work to prevent and address harassment in America’s workplaces is reflected in additional EEOC resources. On April 20, 2023, the EEOC issued Promising Practices for Preventing Harassment in the Federal Sector, a technical assistance document which provides practical tips for preventing and addressing harassment within the federal civilian workforce. In 2017, the EEOC issued a technical assistance document, Promising Practices for Preventing Harassment based on findings by the Select Task Force on the Study of Harassment in the Workplace established in 2015. In June 2016, former Commissioners Chai R. Feldblum and Victoria A. Lipnic presented their Report of the Co-Chairs of the Select Task Force on Harassment in the Workplace with findings and recommendations about harassment prevention strategies.

EEOC Lawsuits: [Link to EEOC Newsroom](#)

Defendant	Claims and/or Settlement
Wheeler Trucking	Race and Religious Discrimination, Retaliation
Landry’s Restaurant Chain	Religious Discrimination/\$25,000
Dollar General	Pregnancy Discrimination/\$42,000
Lilly USA, LLC, Eli Lilly and Company	Age Discrimination/\$2.4 million
Public Service Company of New Mexico and PNMR Services Co.	ADA Disability and Retaliation/\$750,000
Munster Medical Research Foundation, Inc. d/b/a Community Hospital	Disability Discrimination/\$158,000
The Laurels of Athens	Age and Sex Discrimination and Retaliation

Union Pacific Railroad	Disability Discrimination (Perceived Disability)
Mexico Restaurant	Sexual and Racial Harassment/\$227,500
Midwest Farms	Sexual Harassment and Retaliation

US DEPARTMENT OF LABOR (USDOL)



Opinion Letter: 02-09-23: [Link to Source](#)

FMLA2023-1-A

Whether an eligible employee with a serious health condition that requires a reduced leave schedule may use FMLA leave to limit their workday indefinitely. An eligible employee with a serious health condition that necessitates limited hours may use FMLA leave to work a reduced number of hours per day (or week) for an indefinite period of time as long as the employee does not exhaust their FMLA leave entitlement.

NEW HAMPSHIRE NEWS

NH BILLS LAST SESSION – NOW LAW

Senate Bill 269 relative to tip pooling and sharing was signed into law by the Governor on July 28, 2023 and was effective September 26, 2023. [Link to Text of Law](#). This law amended RSA 279:1, XII to clarify that employers may document their employees’ tip pooling or tip sharing agreement, as long as the employer does not require or coerce employees to participate in such a program. This was an important statutory change for employers because the NHDOL had taken the position that the existence of a document created by the employer related to their employees’ tip pooling or tip sharing agreement was evidence of coercion. Now employers in the service industry can document such agreements without fear of such an inference being drawn.

NH LAW REMINDER

POTENTIAL LEGISLATION:

The subcommittee of the House Judiciary committee is holding a work session on HB 362 relative to complaint procedures before the Commission on Human Rights. This is the final opportunity to provide input to the subcommittee before they make a recommendation to the full Judiciary committee. If the Committee recommends that this bill "Ought to Pass," it will head to the House floor.

NH EMPLOYMENT SECURITY

PRESS RELEASE: September 12, 2023: [Link to Source](#)

New Hampshire's preliminary seasonally adjusted unemployment rate for August 2023 was 1.8 percent. This was an increase of 0.1 percentage point from the July rate, which remained at 1.7 percent after revision. The August 2022 seasonally adjusted rate was 2.7 percent.

Seasonally adjusted estimates for August 2023 placed the number of employed residents at 744,100, a decrease of 3,180 from the previous month and a decrease of 4,460 from August 2022. The number of unemployed residents increased by 690 over-the-month to 13,780. This was 7,080 fewer unemployed than in August 2022. From July 2023 to August 2023, the total labor force decreased by 2,490 to 757,880. This was a decrease of 11,540 New Hampshire residents from August 2022.

Seasonally adjusted New Hampshire nonfarm employment for August 2023 was 699,000. This was 500 more jobs than in July 2023 and 9,700 more jobs than in August 2022. Private industry accounted for 611,200 of these jobs in August 2023; 300 more jobs than in July 2023 and 8,300 more jobs than in August 2022.

Nationally, the seasonally adjusted unemployment rate for August 2023 was 3.8 percent, an increase of 0.3 percentage points from the July rate, and an increase of 0.1 percentage point from the August 2022 rate. National nonfarm payroll employment increased by 187,000 from July to August 2023.

NOTE: Detailed state nonfarm employment estimates are available on our Internet Web site: www.nhes.nh.gov/elmi concurrent with this release. Local area unemployment rates are expected to be available on Thursday, September 21. All monthly data will continue to be published in the monthly newsletter New Hampshire Economic Conditions.

NH DEPARTMENT OF LABOR

EMPLOYER COMPLIANCE CHECKLIST – NEW HIRE: [Link to Checklist](#)

GENERAL REQUIREMENTS

- Workers Compensation Coverage, required if you have one or more employees, full or part-time. RSA 281-A:5;
- Documents verifying employment eligibility, (i.e., I-9). RSA 275-A:4-a;
- W-4;
- Register with NH Employment Security within 30 days of first providing employment;
- Report new employees to NH Employment Security;
- Mandatory State & Federal Posters;
- Register Business with NH Secretary of State Office.

PAYMENT OPTIONS FOR WAGES DUE

- Permission required by NHDOL to pay wages other than Weekly or Biweekly. (i.e. semi-monthly, monthly);
- Paper Check - Required Offering to Employees. RSA 275:43 I (e);
- Direct Deposit – Cannot be Mandated. RSA 275:43 I (c);
- Payroll Card – Cannot be Mandated. RSA 275:43 I (d)

RECORD KEEPING REQUIREMENTS

- Written Notification signed & dated for every employee. RSA 275:49 I, II;
- Rate of pay - Hourly/Salary, Commissions, Piece Rates, Flat Rates. RSA 275:49;
- Established and Posted Payday. RSA 275:49 ;
- Written Fringe Benefits Policy - How benefits are accrued; how they are to be used; and how they can be lost; (i.e., termination or resignation). RSA 275:49;

- Accurate & Legal Time Recording Procedures & Protocols. RSA 279:27. Administrative Rules Lab 803.01(g); Lab 803.03(f) & (g);

- Written Authorization for legal deductions. RSA 275:48;

- Written Authorization for recovery of Accidental Overpayment of Wages RSA 275:48(d) (4);

- Arrangement with local bank for free check cashing. RSA 275:43 (e);

- Proper Classification of employees – Misclassification. RSA 281-A:2,VI (d)

SAFETY (15 or more employees RSA 281-A:64)

- Safety Program & Manual;
- Safety Committee (Joint Loss Management Committee);
- Safety Summary Form

YOUTH EMPLOYMENT

- 12-15 yr. olds, Youth Certificates due within 3 days of first day of employment. RSA 276-A:5;

- 16-17 yr. olds, Parental Permission due prior to or on first day of employment. RSA 276-A:4,VIII;

- Youth Hours RSA 276-A:4 IV, VI, VII; RSA 276-A:11; RSA 276-A:12; RSA 276-A:13;

- Hazardous Occupations for 14/15 yr. olds & 16/17 yr. olds; see state requirements RSA 276-A:4 I, III; Administrative Rules Lab 1003.01; Federal Requirements; and Child Labor Bulletin 101;

- NHDOL Approved “School to Work Program” RSA 279:22-aa.



Have a Ghoulish Month!