

# New Employment Laws - A Review of the 2004 Legislative Session and A Look at Current Bills

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The 2004 legislative session concluded with the passage of a handful of new laws important to human resource professionals, employment lawyers and others concerned with employment law compliance. Many human resource bills were defeated or referred to interim study. The new laws represent some important changes about which human resource professionals should be aware.

## New Laws in Effect

- **Pro rate salary.** Correcting a longstanding dissatisfaction with New Hampshire law, effective January 1, 2005, an employer may prorate salary to a daily rate when it terminates an employee's employment for cause. This is new and increases the instances when salary proration is lawful (prior law allowed proration only when an employee is hired after the beginning of the pay period or terminates his employment of his own accord). RSA 275:43-b, II.
- **Deductions from wages.** A new law expressly authorizes employers, pursuant to a written request, to deduct the following items from an employee's wages: voluntary contributions into cafeteria plans and flexible benefit plans; child care fees and parking fees; and charges for pharmaceutical items and gift shop and cafeteria items purchased on site by hospital employees. RSA 275:48, I(d). Effective January 1, 2005, this law both clarifies the existing practice for the specified employee benefits plans and authorizes new deductions for hospital employees.
- **Protects confidentiality of worker's compensation records.** This new provision maintains the longstanding rule that Department of Labor records are public records available for inspection by any interested person, but, responding to society's heightened privacy concerns, adds a new section requiring the Department to protect the confidentiality of the names, addresses and medical records of claimants, along with the employee's First Report of Injury. Effective June 11, 2004.
- **Changes in video surveillance law.** Under this law, it is a misdemeanor to invade the privacy of others by photographing or recording people in places where they may reasonably expect privacy

such as restrooms, locker rooms and any place where a person's private body parts may be exposed. It also is unlawful to record, amplify or broadcast images or sounds in a non-private place that would not otherwise be audible. The law still permits a business to conduct video surveillance of its premises for security and loss prevention purposes. RSA 644:9.

- **Worker's compensation; subrogation waivers invalid.** The worker's compensation law permits employees, in certain instances, to seek recovery from third parties (other than the employer). In these circumstances, employers or their worker's compensation insurance carriers are granted a lien on part of the recovery by the employee up to the amount of worker's compensation benefits received by the injured employee. This new law, effective March 5, 2004, provides that any provision in a written agreement that requires the employer or its worker's compensation carrier to waive its subrogation rights is void. RSA 281-A:13, VI.

#### **Bills Referred to Interim Study in 2004**

- A bill that would provide unemployment benefits for employees who work less than full-time.
- A bill that would further define the wage and benefits obligations of employee leasing companies.
- A so-called "Right to Work" bill that would allow employees in organized workplaces the option of not paying union dues.

#### **Looking Ahead: Bills Pending in the 2005 Legislative Session**

Although the current legislative session is far from over, there currently are a number of bills that human resource professionals may want to keep an eye on as the session progresses.

- **HB 126 - Grounds for termination.** This bill protects a public employee from discharge or discrimination when the public employee has spoken about a matter that is of public interest concerning his or her employment.
- **HB 246 - Independent Contractors.** HB 246 establishes a committee to study the classification of employees as independent contractors.
- **HB 350 - Labor Protection.** This bill empowers the Labor Commissioner to hold hearings and investigate charges of violation of labor protection statutes at his or her initiative or by an employee complaint. Also adds the Department of Labor as a party entitled to initiate a wage claim and extends to 36 months the period for filing a

wage claim. HB 350 would overturn by statute a decision by New Hampshire Supreme Court in 2002 that held the Department was not authorized to initiate wage claims.

- **HB 524 - Outsourcing Penalties.** Reflecting concerns about New Hampshire jobs disappearing overseas, this bill requires companies that have reduced their workforces in the state by 50 or more employees by outsourcing to supply certain information to the state Department of Labor, including information about jobs lost to outsourcing in foreign countries. The bill prohibits companies that have outsourced 50 or more jobs to foreign countries from obtaining state contracts or economic aid.
- **HB 561 - Reasonable Accommodation.** This bill requires employers to make reasonable accommodation for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless this is an undue hardship on the employer. There currently is no reasonable accommodation requirement under state law.
- **HB 665 - Raising Minimum Wage.** HB 665 raises the minimum wage for hourly employees as follows: \$5.65 as of 7/1/05; \$6.15 as of 7/1/06; \$6.65 as of 7/1/07.