

# MANCHESTER AREA HUMAN RESOURCES ASSOCIATION

JUNE 7, 2011  
(AS REVISED 9/20/11)

## LEGAL AND LEGISLATIVE UPDATE

by

Attorney Jim Reidy



Sheehan Phinney Bass + Green, Prof. Assn.  
1000 Elm Street  
Manchester, NH 03105-3701  
(603) 627-8217  
[jreidy@sheehan.com](mailto:jreidy@sheehan.com)  
[www.sheehan.com](http://www.sheehan.com)

As our program year comes to a close, the legislative session is also near its end for the summer. Congress, especially after the mid-term elections, wasn't as active as state legislatures across the Country this year. Many states, including New Hampshire, had a wide variety of workplace bills to consider this legislative session. It was indeed a busy year in Concord. Let's take a few minutes to review the most significant workplace bills and see what happened to them.

**HB 26-FN** – (New Title) Relative to the **definition of gross misconduct for purposes of unemployment compensation.**

**Summary:** Seeks to clarify the definition of gross misconduct for unemployment compensation purposes. It deals with the basis on which a worker will lose wage credits for the purpose of calculating the amount of the employee's weekly benefit. The bill has passed the House with amendment stating that theft of an amount in excess of \$250 in one or multiple events constitutes gross misconduct. The bill has nothing to do with proper grounds for termination or the basis for disqualifying someone from receiving unemployment compensation.

**Potential Workplace Impact:** Could assist employers and the Department with guidance in discharge cases.

**Status:** This bill was signed by the Governor on July 13, 2011 and became effective September 11, 2011.

**HB 185** – Relative to **determining bargaining units for purposes of public employee collective bargaining.**

**Summary:** The board or its designee has the power determine the appropriate bargaining unit for public employees and would certify the exclusive representative when petitioned to do so under RSA 273-A:10. In making its determination the board should take into consideration the principle of community interest. This will require a public employee bargaining unit to have at least 10 members.

**Potential Workplace Impact:** This could result in fewer new public sector collective bargaining units being certified.

**Status:** This bill was signed by the Governor on May 9, 2011 and will become effective on July 8, 2011.

**HB 326** – **Eliminating the automatic continuation requirement for public employee collective bargaining agreements.**

**Summary:** As stated in the title, this bill would have eliminated the provision that calls for automatic continuation for public employee collective bargaining.

**Potential Workplace Impact:** Potential for minimizing or eliminating power of public employee collective bargaining units.

**Status:** This bill was killed by the House on February 15, 2011.

**HB 582** – Relative to **communication between employers and employees during bargaining negotiations.**

**Summary:** Allows any party to the collective bargaining process to communicate to employees at any time.

**Potential Workplace Impact:** Would give employers increased access to employees during the process of negotiation.

**Status:** This bill remains Retained in Committee. A full Committee work session is scheduled for September 21, 2011 at 9:00 a.m.

**HB 647** – **Relative to withholding of wages**

**Summary:** Another attempt at clarifying RSA 275:48 by adding the following paragraph to allow deductions:

(12) For any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded. The withholding shall not be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business.

**Potential Workplace Impact:** Would allow more flexibility in terms of voluntary payments from wages.

**Status:** This bill was signed by the Governor on June 7, 2011 and became effective on August 6, 2011.

**HB 474** - (3<sup>rd</sup> New Title) Relative to **freedom of choice on whether to join a labor union.**

**Summary:** Bars unions from making membership or payment of union dues a condition of employment with any private or public employer. The legislation does not take away the right of employees to organize.

**Potential Workplace Impact:** May have the intended effect of dissuading unions from attempting to organize. If bill becomes law, this would make New Hampshire the only “Right to Work” state in the northeastern United States.

**Status:** This bill passed both the House and the Senate, with amendments, but was vetoed by the Governor on May 11, 2011. The votes have not yet been in place to override that veto.

**SB 86** – **Requiring the Department of Labor to warn employers of certain violations prior to imposing a fine.**

**Summary:** SB 86 if passed would require the DOL to warn employers of certain violations prior to imposing fines.

**Potential Workplace Impact:** Possible reduction in the number of audits. The DOL strongly opposes this bill stating that the current process of audits followed by informal conferences meets the objectives of the sponsor making the bill unnecessary.

**Status:** This bill was signed by the Governor on June 14, 2011 and became effective August 13, 2011.

**SB 121** – **Relative to the application of the worker adjustment and retraining notification (WARN) act.**

**Summary:** Modifies the definition of employer under the NH Warn Act to raise the threshold to 100 employees and thereby follow the federal act.

**Potential Workplace Impact:** Rolls back the requirements of the state Warn Act.

**Status:** This bill was signed by the Governor on June 7, 2011 and has an effective date of January 1, 2012.

It has been a busy year in Concord. Thanks to many of our MAHRA members who provided useful testimony and information to legislators during this session. The voice of HR was heard again this year.