

MANCHESTER AREA HUMAN RESOURCES ASSOCIATION

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LEGAL AND LEGISLATIVE UPDATE

by

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2014 Overview of Workplace Bills (Congress and N.H. Legislation)

This Congress is competing with the Truman era “Do Nothing Congress” as being one of the least productive legislatures in many years. Here is an update of the workplace bills still pending before Congress.¹

A. Workplace Bills Pending Before Congress²

1. Equal Employment for All Act

¹ While there were other workplace bills before Congress (e.g. comprehensive immigration reform (House Resolution 15), e-verify laws, tax code revisions prohibiting employer deductions for wages paid to illegal aliens, and reauthorization of the Violence Against Women Act (House Resolution 11 and Senate Bill 47)), these were the bills with the greater likelihood of serious consideration or passage this session.

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(HR 645) Introduced in the House by Representative Steve Cohen (D-Tennessee) and referred to committee on February 13, 2013

(S 1837) Introduced in the Senate by Senator Elizabeth Warren (D-Massachusetts) and referred to committee on December 17, 2013

Summary: Would amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions.

2. **Paycheck Fairness Act**

(HR 377) Introduced in the House by Representative Rosa DeLaura (D-Connecticut) and referred to subcommittee on April 23, 2013

(S 84) Introduced in the Senate by Senator Barbara Milkulski (D-Maryland) and referred to committee on January 23, 2013

Summary: Would amend the Equal Pay Act of 1963 and the Fair Labor Standards Act to address male-female income disparity in the United States. This is the 6th consecutive Congress that Representative DeLaura has introduced this legislation.³

3. **Fair Pay Act of 2013**

(HR 438) Introduced in the House by Representative Eleanor Holmes Norton (D-Connecticut) and referred to committee on April 23, 2013

(S 168) Introduced in the Senate by Senator Tom Harkin (D-Iowa) and referred to committee on January 29, 2013

Summary: Would amend the Fair Labor Standards Act to prohibit discrimination in the payment of wages on account of sex, race, or national origin while still permitting disparity under seniority systems, merit systems, systems that measure earnings by quantity or quality of production, or other bona fide job-related factors. Prohibit retaliation against individuals opposing prohibited discrimination.

4. **Pregnant Workers Fairness Act**

(HR 1975) Introduced in the House by Representative Jerrold Nadler (D-New York) and referred to committee on July 8, 2013

³ A related pay equity bill (SB 207) passed in NH this year and will become law on January 1, 2015. See page 9 of this outline.

(S 942) Introduced in the Senate by Senator Robert P. Casey, Jr. (S-Pennsylvania) and referred to committee on May 14, 2013

Summary: Would make it an unlawful practice for employers and other related entities to fail to make reasonable accommodations for known limitations related to the pregnancy, childbirth, or related medical conditions of job applicants, deny employment opportunities based on the need for such reasonable accommodations, require applicants or employees to accept accommodations, or require employees to take leave if other reasonable accommodations could be provided. The Act also provides for enforcement and remedial procedures under the Civil Rights Act of 1964 and other related legislation.

5. **Protecting America's Workers Act**

(HR 1648) Introduced in the House by Representative George Miller (D-California) and referred to committee on July 8, 2013

(S 665) Introduced in the Senate by Sen. Patty Murray (Washington) and referred to the Senate Health, Education, Labor and Pensions Committee on March 22, 2013.

Summary: Would amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for high gravity violations, to adjust penalties for inflation, to provide rights for victims or their family members, and for other purposes.

6. **Veterans and Service-members Employment Rights and Housing Act of 2013**

(HR 2654) Introduced in the House by Representative Derek Kilmer (D-Washington) and referred to committee on September 19, 2013

(S 1281) In committee, hearings held October 30, 2013

Summary: Would prohibit employment practices and decisions concerning failure to hire and discharge that discriminate based on an individual's military service and amends the Fair Housing Act and Civil Rights Act of 1968 to prohibit housing discrimination against members of the armed services.

7. **Employment Non-Discrimination Act of 2013**

(HR 1755) Introduced in the House by Representative Jared Polis (D-Colorado) and referred to committee on July 8, 2013

(S 1281) Introduced in the Senate by Senator Jeff Merkley (D-Oregon) and referred to committee on January 8, 2014

Summary: Would prohibit covered employers and related entities from engaging in employment discrimination on the basis of an individual's actual or perceived sexual orientation or gender identity. Does not provide protection for so-called disparate impact claims (only disparate treatment) and does not apply to religious employers or the military. The Act also provides for enforcement and remedial procedures under the Civil Rights Act of 1964 and other related legislation.

8. **Healthy Families Act**

(HR 1286) Status: Introduced in the House by Representative Rosa DeLauro (D-Connecticut) and referred to committee on April 23, 2013

(S 631) Introduced in the Senate by Senator Tom Harkin (D-Iowa) and referred to committee on March 20, 2013.

Summary: Would require certain employers employing 15 or more employees for each working day during 20 or more workdays per year to allow employees to earn sick time equal to at least 1 hour for every 30 hours worked, up to a minimum of 56 hours per calendar year.

9. **Fair Minimum Wage Act of 2013**⁴

(HR 1010) Introduced in the House by Representative George Miller (D-California) and referred to committee. Motion to Discharge Committee filed on February 26, 2014.

(S 460) Introduced in the Senate by Senator Tom Harkin (D-Iowa) and referred to committee on March 5, 2013

Summary: Would amend the Fair Labor Standards Act to provide for an increase in the Federal minimum wage.

10. **Fair Playing Field Act of 2013**

(S 1706) Introduced in the Senate by Senator Sherrod Brown (D-Ohio) and referred to committee on November 14, 2013

Summary: Would amend the Internal Revenue Code of 1986 to permit the Secretary of the Treasury to issue prospective guidance clarifying the employment status of individuals for purposes of employment taxes and to prevent retroactive assessments with respect to such clarifications.

11. **National Right to Work Act**

⁴ These bills are two of several legislative efforts proposed in the 113th Congress to raise the minimum wage. These particular bills have received the most attention because of their sponsors.

(HR 946) Introduced in the House by Representative Steve King (R-Iowa) and referred to committee on April 23, 2013

(S 204) Introduced in the Senate by Senator Rand Paul (R-Kentucky) and placed on general legislative calendar

Summary: Would amend the National Labor Relations Act and the Railway Labor Act to repeal provisions permitting employers to require employees to join a union as a condition of employment.

12. **Social Networking Online Protection Act**

(HR 537) Introduced in the House by Representative Eliot Engel (R-Iowa) and referred to committee on April 23, 2013

Summary: Would prohibit employers and certain other entities from requiring or requesting that employees and certain other individuals provide a user name, password, or other means for accessing a personal account on any social networking website. Sets forth statutory penalties, remedies, and jurisdiction for private actions. Amends the Higher Education Act of 1965 and the Elementary and Secondary Education Act of 1965 to extend protections to students and potential students.⁵

13. **Union Coercion Prevention Act**

(HR 1815) Introduced in the House by Representative Steve Stockman (R-Texas) and referred to committee on July 8, 2013

Summary: Would amend the National Labor Relations Act to make it unlawful for a labor organization to engage in the “Card Check” system of organizing labor unions.

B. New Hampshire Workplace Bills

1. HB 1168 Title: **Relative to employer documentation of worker eligibility to work in the United States**

Status: Signed by the Governor on June 16, 2014. Effective August 15, 2014.

Summary: Amends RSA 275-A:4 to prohibit employment of undocumented workers. All employees will need to satisfy I-9 requirements. This would apply to contractors too.

⁵ A similar bill (HB 1407) passed in NH and became law. See page 7 of this outline.

2. HB 1169 Title: **Relative to enforcement of labor laws by the department of labor**
Status: Signed by the Governor on May 27, 2014. Effective July 26, 2014.
Summary: Permits the Department of Labor's Commissioner authority to assess civil penalties for violations of certain wage laws.
3. HB 1174 Title: **Establishing a commission to study the payment of subminimum wages to persons with disabilities**
Status: Signed by the Governor on May 27, 2014. Effective May 27, 2014.
Summary: Establishes study committee to recommend changes to NH laws on payment of subminimum wages to people with disabilities.
4. HB 1188 Title: **Relative to paycheck equity**
Status: Signed by the Governor on July 22, 2014. Section 1 effective January 1, 2015. The remainder effective July 22, 2014. See also companion legislation SB 207.
Summary: In addition to repeal and replacement of NH Equal Pay law this law prohibits employers from requiring employees to refrain from disclosing amount of his/her wages. It also includes prohibitions against discipline and retaliation for complaints and disclosures.
5. HB 1189 Title: **Relative to temporary worker rights**
Status: Introduced and Pending in House Committee. Referred to Interim Study.
Summary: Requires temporary staffing companies to provide temporary workers with certain information regarding wages, benefits, hours, safety, etc. Also provides protection for temporary workers.
6. HB 1349 Title: **Relative to the definition of employee for purposes of workers' compensation.**
Status: Introduced and Pending in House Committee. Passed the House with Amendment. Passed the Senate with Amendment. House non-concurred with Senate Amendment.

Summary: Would exempt an employer that relies in good faith on a written determination of the department of labor that an individual is not an employee from certain interest or late fees under RSA 28-A:141 and RSA 282-A:142

7. HB 1368 Title: **Relative to the consideration of criminal records for occupational and professional licensing**

Status: Signed by the Governor August 1, 2014. Effective January 1, 2015.

Summary: Prohibit certain regulatory boards and commissions from denying a license to any person because of a prior conviction of a crime in and of itself.

8. HB 1404 Title: **Relative to payroll cards**

Status: Passed the House with Amendment on February 19, 2014. Senate Commerce Committee referred to interim study.

Summary: Would update and expand employer authorization to use paycards as method of employee payroll.

9. HB 1405 Title: **Prohibiting an employer from using credit history in employment decisions**

Status: Passed the House with Amendment on February 19, 2014. Companion legislation was introduced in the Senate under SB 295, prohibiting an employer from using credit history in employment decisions. Senate Commerce Committee laid on table.

Summary: Would establish "Employer Credit Privacy Protection Act" prohibiting employers from using credit history in employment decisions for most jobs.

10. HB 1407 Title: **Relative to privacy in the workplace**

Status: Signed by the Governor on August 1, 2014. Effective date September 30, 2014.

Summary: Prohibits employers from requiring applicants or employees to disclose his/her social media or email passwords.

11. HB 1571 Title: **Relative to breastfeeding**

Status: Introduced and Pending in House Committee. Passed the House with Amendment on 3/19/14. Referred to Senate Health, Education and Human Services Committee. Laid on table.

Summary: Would amend RSA 132 and RSA 345:7 to require employers to provide reasonable accommodation to women who are breastfeeding. Also provides for exemption from jury duty.

12. HB 1599 Title: **Relative to employment protection for victims of domestic violence**

Status: Introduced and Pending in House Committee. Referred to Interim Study.

Summary: Would permit victims of domestic violence to take leave from work to seek medical or psychological care, to relocate or participate in criminal or civil proceedings.

13. SB 351 Title: **Repealing the requirement for notice of non-compete and non-piracy agreements prior to the start of employment**

Status: Signed by the Governor on July 28, 2014. Effective July 28, 2014.

Summary: Amends RSA 275:70 which requires employers to provide applicants with non-compete or non-piracy agreements when making an offer of employment to delete section of law requiring presentation of Noncompete and Nonsolicit agreements to employees who are promoted into positions requiring those agreements. This new law doesn't impact employment, confidentiality, nondisclosure, trade secrets, intellectual property or any other type of employment agreement.

14. HB 1334 Title: **Relative to contributions to charities by employees**

Status: Signed by the Governor on May 27, 2014. Effective July 26, 2014.

Summary: Amends RSA 275:48 to clarify that voluntary charitable contributions may be deducted from wages.

15. HB 1498 Title: **Relative to wages lost when an employee submits to a medical examination required under workers' compensation law**

Status: Passed the House with Amendment on February 19. Referred to Senate Commerce Committee. Laid on Table.

Summary: Would require employers to reimburse an employee for lost wages if employee who returns to work is required to submit to an IME.

16. HB 1499 Title: **increasing the maximum weekly benefit amount of unemployment benefits; amending the definitions of "full-time" and "part-time" work; and establishing a commission study the effect on the unemployment compensation trust fund of the contribution rate reduction**

trigger levels in RSA 282-A:82 and RSA 282-A:82-a and the elimination of some or all of the waiting periods required to be served pursuant to RSA 282-A:31, I(h).

Status: Introduced and pending in House committee. Passed the House with Amendment on March 25, 2014. Referred to Senate Finance Committee.

Summary: This NHES sponsored bill would adjust maximum weekly benefit amount and minimum quarterly earnings before individual eligible for unemployment benefits

17. SB 207 Title: **relative to paycheck equity**

Status: Signed by the Governor on July 14, 2014. Effective January 1, 2015.

Summary: This law strengthens equal pay protections for women in the workplace. It also goes further and prohibits employers from disciplining employees for disclosing wage and benefit information or complaining about those terms of employment. (Same as HB 1188)

18. HB 597 Title: **relative to a drug-free workplace for licensed health care facilities and providers to adopt a policy establishing procedures for prevention, detection, and resolution of substance abuse, misuse, or diversion in the workplace.**

Status: Signed by the Governor on May 27, 2014. Effective August 25, 2014.

Summary: This bill requires licensed health care facilities and providers to adopt a policy establishing procedures for prevention, detection, and resolution of substance abuse, misuse, or diversion in the workplace.

Conclusion: It was a busy year in New Hampshire. While Congress may be at a standstill (and that isn't necessarily a bad thing) our legislature has been hard at work. Like they say in Infomercials, as a new legislative session is already on the horizon, "Wait, wait, there's still more!" Stay tuned.