

MANCHESTER AREA HUMAN RESOURCES ASSOCIATION

DECEMBER 8, 2020

LEGAL AND LEGISLATIVE UPDATE

by

Attorney Jim Reidy

SHEEHAN PHINNEY

Sheehan Phinney Bass & Green PA
1000 Elm Street
Manchester, NH 03105-3701
(603) 627-8217
jreidy@sheehan.com
www.sheehan.com

2020 from a New England perspective: It was wicked awful!

Brighter days are ahead, but looking back helps us to appreciate the future so much more.

So how bad was 2020?

Yes, COVID-19 was, and continues to be, a devastating disease affecting individuals, first responders, healthcare providers, businesses, and communities. Once thought to be no more serious than the seasonal flu, it was quickly found to be a highly contagious and, sadly, potentially deadly virus. In response to the pandemic, air travel from abroad was shut down, and business closures followed.

New England states weren't the first to see an increase in cases, and therefore most governors initially resisted implementing state-of-emergency or stay-at-home orders. In fact, New Hampshire was one of the last New England states to impose public health restrictions on businesses and gatherings. But by late March, everything in the Granite State effectively shut down except for essential businesses.

Corned beef and Guinness were among the first economic casualties as St. Patrick's Day celebrations were canceled. The state's nation-leading unemployment rate of 2.3% quickly evaporated, and as shuttered businesses furloughed employees, the rate skyrocketed to as high as 18%. The closing of state parks, beaches, trails, and even borders to neighboring states reflected the new serious reality of the virus.

As in most states, toilet paper, Lysol wipes, and hand sanitizer as well as canned soup, chicken, and pasta replaced gold and silver as the most valuable commodities.

Contentious political season didn't help

If the pandemic's economic impact wasn't bad enough, the Granite State became the Wuhan Province of politics ushering in the contentious 2020 presidential race with the nation's first primary. The tone and temperament of the campaigns went downhill from there.

For the second year in a row, the state's Republican governor vetoed all of the workplace legislation passed by the Democratic House and Senate. That meant bills promoting paid family leave, banning credit and criminal record checks, establishing a minimum wage nearly double the federal level, and requiring paid sick and vacation leave upon separation were sent to study committee or were shelved or outright killed.

New England's sports teams pile on fans' sadness

In the world of 2020 New England sports, the Patriots struggled and joined the heavily favored Boston Celtics and Bruins in being unceremoniously bounced from their respective playoffs. Tom Brady left New England for Tampa Bay. (Tampa Bay, seriously?) Gronk came out of retirement, followed Brady to sunny Florida, and put his wrestling career and CBD business on hold for now. Then Mookie Betts left the Red Sox, who ended up in last place in a COVID-19-shortened season while Mookie won the World Series with the Dodgers.

The Patriots returned in the fall with a new quarterback. With several missing veterans, however, the team looked more like the pre-2000 Patriots. Watching sports with empty stadiums gave us a sense of what it must be like to be a Cincinnati Bengals or Baltimore Orioles fan.

COVID-19 surge puts kibash on summer hopes, plans

New Hampshire beaches, golf courses, and parks did open by mid-summer, albeit with social distancing procedures in place, so things seemed somewhat normal. Just when we thought "well, we can finally go out to dinner and visit with friends," COVID-19 numbers spiked again, which led to rolling back the indoor dining and reinstating other restrictions.

Initially, travel within New England states was permitted, but then Maine, Massachusetts, and Vermont reimposed their quarantine rules. New Hampshire answered with its own restrictions but then permitted a test-out option, but only for travel-based quarantining, not other quarantine requirements. Confused? Join the club.

Wild times at work keep HR pros on their toes

Back in the workplace, HR professionals had to answer the call and deal with furloughs, layoffs, and remote work arrangements. Then Congress hurriedly passed the Families First Coronavirus Response Act (FFCRA), leaving HR pros with little time to read, understand, and translate it for others. It was like asking a rookie or free agent to understand a Coach Bill Belichick playbook in less than a week.

Just as employers were getting a handle on the FFCRA and digesting corresponding guidance from the U.S. Department of Labor, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The somewhat schizophrenic law on the one hand boosted weekly unemployment benefits by \$400 on top of state benefits but also created an incentive for employers to get furloughed employees back on the payroll. Again, HR pros had to stay informed, understand the evolving federal and state laws, manage paid leave (FFCRA and otherwise), and maintain a safe workplace.

At the same time, HR departments were dealing with complaints from (1) employees who didn't feel comfortable coming back to work, (2) others who worked remotely, and (3) still others who resented the first two groups. The HR pros had to create new policies, amend others, and enforce them all. (They also had to be sure the office's toilet paper and hand sanitizer didn't mysteriously disappear overnight.)

Just when things seemed to be somewhat manageable, wage and hour and safety inspectors began knocking on office doors like relatives inviting themselves for a holiday visit. Yup, courageous and dedicated HR pros tried their best, but they were often overwhelmed like parrot hat vendors at a Jimmy Buffet concert.

Positives, negatives, and other hopeful signs

So, how did the end of 2020 shake out? It was a real mixed bag, just like the Patriots' record.

Pluses. On the one hand, New Hampshire's unemployment rates came down considerably. Many businesses adapted to limited travel, remote work, and limited in-office density. Holiday parties were shelved or went virtual (which was music to the ears of most HR pros, who didn't need to lock up the copy machines or hold emergency harassment training refreshers).

The stock market reached new highs after the dramatic drop in March, which means 401(k) statements were looking more like holiday cards than credit card bills. FFCRA leave requests leveled off, at least for the time being, and businesses started recruiting and hiring again.

Minuses. On the other hand, Payroll Protection Program audits started to reveal fraud or mismanagement by some businesses. In addition, DOL officials reported their phones were ringing off of the hook with Fair Labor Standards Act, Family and Medical Leave Act, Occupational Safety and Health Act, and FFCRA complaints from employees, meaning inspectors could be fanning out across the country soon.

Hopeful signs. Congress was considering passing a new stimulus package, which could augment unemployment benefits again, and perhaps extending the FFCRA into the new year. And in the Granite State, wearing masks has become the norm, even outside.

Bottom line

The year 2020 obviously wasn't typical. The exclamation "humbug!" comes to mind. But then again, brighter days are ahead.

Attorney Jim Reidy is the VP of Legal and Legislative Affairs for MAHRA. He is a shareholder at Sheehan Phinney Bass & Green PA in Manchester, New Hampshire, where he is the chair of the law firm's labor and employment practice group. You can reach him at jreidy@sheehan.com.