

HRAGC LEGAL UPDATE

MAY 18, 2023

FEDERAL

National Labor Relations Board

On May 1, 2023, the NLRB overruled the 2020 *General Motors* Board decision concerning whether an employer may terminate an employee for abusive conduct that occurs when engaged in statutorily protected activity. The *General Motors* decision overruled long-standing precedent and the Board viewed overruling *General Motors* as merely restoring decades of precedent. At issue was what test should be used when an employee is terminated for outbursts or abusive conduct during labor disputes when such conduct is protected, such as during collective bargaining, on the picket line, or discussing working conditions, whether in person or on social media. With its May 1 decision the Board restored the context-specific test, which examines the context in which the employee had the outburst or abusive conduct to determine if the employer properly disciplined the employee.

As a result, employers must be careful disciplining an employee who may be verbally abusive in certain settings. The setting matters. Conduct that is worthy of discipline in ordinary situations may not be so if it occurred when the employee was engaged in protected activity.

NEW HAMPSHIRE

Legislature

Consideration of bills is well underway and committees are holding public hearings and working in committee. A terrific resource to check on the status of a bill is www.legiscan.com/nh. There are committee hearings this week after this update was prepared so several that have been pending may have been acted upon.

HB74 This bill requires employers of 15 or more employees who offer paid earned time to provide a written policy to employees regarding accrual and use of unused earned time and pay unused earned time under certain circumstances.

The bill was passed by the House and is now pending in the Senate Commerce Committee. There was a hearing on April 18. It remains pending in committee.

HB82 This bill prohibits an employer from refusing to hire, or terminating the employment of a person solely because the person is a qualified patient of the New Hampshire therapeutic cannabis program and the person has a positive drug test indicating cannabis. It does not apply if drug screening is required for safety reasons. The bill does not require an employer to permit an impaired employee at work.

The bill was Retained in Committee on March 16 in the House Labor, Industrial and Rehabilitative Services Committee.

HB107 This bill prohibits a person convicted of certain sexual assault offenses from hiring or engaging in any employment or volunteer service providing direct services to a minor or supervising a minor.

The bill was passed by the House, as amended, and is pending in the Senate Judiciary Committee. There was a hearing on April 11. It was rereferred to committee on May 11.

HB118 This bill prohibits an employer from requiring an employee to attend or participate in anti-union training of any kind including requiring or coercing an employee to view a video that casts unions in a negative light. The penalty for violating the law is a fine of \$10,000 per employee.

The bill was deemed Inexpedient to Legislate by the House on March 16.

HB125 This bill clarifies the weekly work hour limitations and limits on night work for youths ages 16 & 17 during the school year and vacations.

The bill was deemed Inexpedient to Legislate by the House on March 16.

HB150 This bill reduces the number of employees required to certify a collective bargaining unit from 10 to 5.

The bill was passed by the House and is pending in the Senate Commerce Committee. There was a hearing on April 11. It remains pending in committee.

HB182 This bill provides no employer shall discharge or take any other disciplinary action against any employee by reason of failure of such employee to report for work at the commencement of such employee's regular working hours where the failure is due to the employee's responding to an emergency in his or her capacity as a volunteer member of a fire department or ambulance department.

The bill was Retained in Committee on March 16 in the House Labor, Industrial and Rehabilitative Services Committee.

HB190 This bill ties the duration of unemployment benefits to the state's average unemployment rate and provides for benefits between 14 weeks and 24 weeks depending on the unemployment rate.

The bill was Retained in Committee on March 16 in the House Labor, Industrial and Rehabilitative Services Committee.

HB362 This bill provides that only the complainant may remove a case from the Commission for Human Rights to a court. It eliminates the ability of the employer to remove the case to court.

The bill has been retained in the House Judiciary Committee.

SB42 This bill provides that the Dept. of Employment Security shall not charge interest on overpayments of unemployment benefits unless the person willfully made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase any benefit or other payment, either for oneself or any other person.

The bill was passed by the Senate on February 9. It is pending in the House Labor, Industrial and Rehabilitative Services Committee. There was a hearing on April 13. It remains pending in committee.

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