

HRAGC LEGAL UPDATE

FEBRUARY 16, 2023

FEDERAL

United States Department of Labor

The Wage and Hour Division of the U.S. Dept. of Labor issued its first Field Assistance Bulletin of the year on February 9, 2023. It addresses Telework under the Fair Labor Standards Act and the Family and Medical Leave Act. The Bulletin provides guidance to Division staff regarding how to ensure workers who telework are paid properly under the FLSA, how to apply protections under the FLSA that provide reasonable break time for nursing employees to express milk while teleworking from their home or another location, and how to apply eligibility rules under the FMLA when employees telework or work away from an employer's facility. Helpful examples are provided. The Bulletin can be found on the DOL website: www.dol.gov/agencies/whd/field-assistance-bulletins.

The Bulletin emphasizes that employees who telework are entitled to compensation for all hours worked, for short rest breaks, and, in qualifying circumstances, for breaks to express breast milk. Breaks of 20 minutes or less count as hours worked and are compensable. For meal breaks (typically 30 minutes or more) and breaks longer than 20 minutes to be non-compensable the time must be uninterrupted and the employee must be completely relieved of duty and free to use the time effectively for his or her own purpose. The FLSA's requirement that employers must provide reasonable time for a covered employee to express breast milk and a private place to do so applies "at the employee's worksite, including when an employee is teleworking from their home or another location."

Employees who telework are eligible for FMLA leave on the same basis as employees who report to any other worksite to perform their job. All hours worked are counted for eligibility purposes when an employee teleworks from home consistently or in combination with working at another or at various worksites. When an employee works from home or otherwise teleworks, their worksite for FMLA eligibility purposes is the office to which they report or from which their assignments are made.

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.

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 is pending in the House Labor, Industrial and Rehabilitative Services 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 is pending 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 is pending in the House Criminal Justice and Public Safety Committee.
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 is pending in the House Labor, Industrial and Rehabilitative Services Committee.
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 is pending in the House Labor, Industrial and Rehabilitative Services Committee.
HB150	This bill reduces the number of employees required to certify a collective bargaining unit from 10 to 5. The bill is pending in the House Labor, Industrial and Rehabilitative Services 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 is pending 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 is pending 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.

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