

HRAGC LEGAL UPDATE

APRIL 20, 2023

FEDERAL

National Labor Relations Board

The NLRB General Counsel issued a Memorandum on March 22, 2023 following the Board's February 21 decision in the *McLaren Macomb* case, to provide guidance on the enforcement of confidentiality and non-disparagement provisions in severance agreements. In *McLaren* the Board found it was unlawful to condition execution of a severance agreement on agreeing to confidentiality and non-disparagement provisions that restricted protected activity. The GC's Memorandum opines that the decision is retroactive and applies to agreements executed before the decision. The Memorandum explains that confidentiality provisions may still be lawful if they are "narrowly-tailored to restrict the dissemination of proprietary or trade secret information for a period of time based on legitimate business justifications." Non-disparagement provisions may be lawful if "limited to employee statements about the employer that meet the definition of defamation as being maliciously untrue, such that they are made with knowledge of their falsity or with reckless disregard for their truth or falsity."

Employers should review the provisions in their severance agreements to limit the risk they are deemed unenforceable.

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

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.
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. The was a hearing on April 13.

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