

HRAGC LEGAL UPDATE

SEPTEMBER 19, 2024

FEDERAL

First Circuit Court of Appeals

In *Caruso v. Delta Air Lines* the First Circuit Court of Appeals affirmed the grant of summary judgment to Delta Air Lines in a case involving claims of sexual harassment, failure to accommodate and retaliation. The focus was on the employer's investigation following a complaint of sexual assault and its handling of an accommodation request addressing the employee's alcohol use. A flight attendant failed a breathalyzer when reporting for work, which led to her being suspended. She then reported that a pilot had sexually assaulted her the night before. The pilot was not her supervisor. Delta promptly investigated, interviewed every witness and found the pilot's version credible. It thus determined the complaint was unfounded. The employee sought accommodations to address her alcohol issues, they engaged in the interactive process, and Delta proposed a set of accommodations. However, the employee rejected them and insisted that Delta meet each of her demands. Delta sought to engage again in the interactive process to address that response but the employee refused. She terminated her employment after finding a new job.

The Court assessed whether Delta acted reasonably in responding to her complaint against a non-supervisor and found based on the undisputed facts it took reasonable action to prevent future harassment. The Court found the employer's investigation reasonable, highlighting that Delta spoke with every possible witness and continued investigating even after the police declined to bring charges. The Court also found that Delta had properly engaged in the interactive process and was willing to continue but the employee refused, which was fatal to her ADA violation claim.

Federal Trade Commission

A nationwide injunction was issued by a federal court in Texas preventing implementation of the FTC's rule banning most non-compete agreements. Similar challenges are pending in two other jurisdictions. While the ban is paused for now, employers should address how best to protect their protectable business interests. Broad non-compete agreements are disfavored and are difficult to enforce in many jurisdictions, including New Hampshire. Narrowly tailored agreements used with a smaller subset of employees are more likely to be enforced.

Other restrictive covenants are readily enforced by courts, including those to protect trade secrets, other confidential information and goodwill. Employers should review and tighten their non-disclosure agreements, non-solicitation agreements and policies addressing those matters. The review should include what steps are taken to ensure that trade secrets and confidential information are protected internally, as courts will look to whether the company actually treated as confidential what it seeks to protect with a former employee.

NEW HAMPSHIRE

LEGISLATION

Firearms in locked employee vehicles

This law amends RSA 159. It provides that employers who receive any public funds (state, federal or local) may not:

“(a) Prohibit an employee who may legally possess a firearm from storing a firearm or ammunition in the employee’s vehicle while entering or exiting the employer’s property or while the vehicle is parked on the employer’s property as long as the vehicle is locked, and the firearm or ammunition is not visible.

(b) Take any adverse action against any employee who stores a firearm or ammunition in accordance with this section.”

It also provides “Any employer or agent of any employer is prohibited from requiring an employee to disclose whether or not the employee is storing a firearm or ammunition in the employee’s vehicle, and no searches of the employee’s vehicle for a firearm or ammunition may be undertaken except by a law enforcement officer pursuant to a warrant or pursuant to a recognized exception to the warrant requirement.” There is a provision providing civil immunity to employers for any economic loss, injury, or death that results from an employer’s adherence to this law.

The law becomes effective January 1, 2025. Employers should review their policies concerning possession of firearms on the premises and adjust them if they conflict with this law. This law does not prohibit a policy that bans firearms from inside the workplace.

The CROWN Act

This law amends RSA 275 and RSA 354-A. It also prohibits discrimination in schools. As it relates to employers, the law provides “No person shall be subjected to discrimination in employment because he or she wears a protective hairstyle. In this section, “protective hairstyles” means hairstyles or hair type, including braids, locs, tight coils or curls, corn rows, Bantu knots, Afros, twists, and head wraps. A person subjected to discrimination based on wearing a protective hairstyle shall have a private cause of action and shall be exempt from the jurisdiction of the human rights commission and the provisions of RSA 354-A. This section shall not apply to those employed by the department of corrections.”

This law became effective September 1, 2024. Employers should review their handbooks and policies that may address hairstyles, grooming or dress codes, and adjust as necessary to ensure compliance. It may also be appropriate to educate all personnel on this law.

Volunteer firefighters and EMTs

This law became effective August 13, 2024. It amends RSA 275 to provide in part: “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, in his or her capacity as a volunteer member of a fire department or ambulance department, to an emergency they witness or come upon while en route to a place of employment....” The employer is not required to compensate the employee for any missed work hours.

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