

## ON THE JOB

### *Employment*

In order to work in the United States, you must have a social security number, as required by the federal Social Security Act. If you do not have a social security number, you have forgotten your number, or you do not know if you have one, contact the nearest Social Security Administration for assistance. The telephone number for the Social Security Administration can be found in the telephone book white pages under "United States".

Employment in New Hampshire, and many other states, is considered "at will" unless there is an employment contract. Employment "at will" means that you can quit or be fired at any time for almost any reason, or even for no reason. Logic dictates that if you can walk into work and quit, your employer should have a comparable right to fire you. The major exception to this policy is that an employer cannot fire you for doing something favored by public policy, if you can show that the firing was out of malice, bad faith or in retaliation for your actions. For example, public policy supports employees reporting unsafe working conditions. Assume that you have reported an unsafe working condition to your employer. After an appropriate period of time, with no action being taken by your employer, you then report the same condition to a State or federal agency, and your employer fires you for doing this. Your actions were consistent with public policy, and it appears that you were fired in retaliation for your actions. This may constitute a "wrongful discharge" under the law, and provide the basis for a lawsuit. This exception to "at will" employment includes refusing to do something which is against public policy, such as refusing to perform a task which would require an illegal act.

Even if you have a contract with your employer, there are usually provisions in the contract for firing an employee "for cause". The term "for cause" refers to an employee action, which provides the grounds for immediate firing. For example, an employee that steals from the company or a customer, or who uses alcohol or illegal drugs during working hours, may be fired on the spot by his or her supervisor. The contract, or company handbook, usually identifies the actions that call for immediate dismissal.

### *Employment Benefits*

When you are offered a job, the first thought that flashes through your mind is likely to be how much will I get paid? The answer to this question is not always as simple as it seems. In addition to receiving pay for the work that you do, the employer also may provide "fringe" benefits. Your total compensation will be the combination of your actual pay and the value of the benefits provided by the employer.

Some of the more common benefits offered by employers include life insurance, health insurance, tuition reimbursement for college courses and some type of savings and/or pension plan. Because the employer pays for these benefits, your actual pay may be less in a job with these benefits. You must determine the value of these benefits to you, so that you can decide whether the total compensation package is acceptable.

The value of a fringe benefit to you depends on whether you need, or will use, the benefit. For example, health insurance provided by an employer is of little value to you if you are adequately covered by other health insurance. The same is true for tuition reimbursement if you have no plans or desires to further your education. Generally speaking, however, employer provided benefits are well worth the reduced hourly wage.

### *Workers' Compensation*

Workers' compensation laws in New Hampshire provide certain benefits for workers who are injured or disabled as a result of their employment. These benefits include: (a) weekly compensation for lost wages while disabled; (b) payment of medical bills and expenses for the work-related injury; (c) payment for loss, or permanent impairment, of a body part; and (d) death benefits. In some situations, an injured worker also may be entitled to vocational rehabilitation, light duty work during recovery, and re-employment following the disability if the position exists and is available and the employee is not disabled from performing the duties of such position, with reasonable accommodations for the employee's limitations. And, employer must employ 5 or more in order for this to apply.

Under New Hampshire law, it is presumed that employees have waived their right to sue their employer for job-related injuries, in return for the protection and benefits provided by the workers' compensation laws. A waiver of suit against employer does not include a suit for wrongful termination of employment. But, former employee is barred from bringing claims for injuries resulting from wrongful discharge. This means that you cannot sue your employer for a work related injury. The law provides limited benefits quickly and without the need to prove that the employer was at fault. This program allows an injured employee to receive benefits almost immediately while he or she is unable to work, rather than waiting years for a resolution through the courts. Any employer with one or more employees is required to provide workers' compensation benefits.

To collect workers' compensation benefits after an injury, you must: (1) notify the employer in a timely manner; (2) it must be determined that your employment created a risk that resulted in your injury; and (3) you must have been at your job (time, place and manner) when you were injured. If your employer or the employer's insurance carrier denies your legitimate claim for workers' compensation benefits, you should consult with an attorney, and ask for a hearing on the matter at the New Hampshire Department of Labor. If you are a federal employee, the Federal Employees Compensation Act provides similar benefits.

*For more information on workers' compensation ask your employer or see [Workers' Compensation](#) by the New Hampshire Bar Association.*

### *Employee Rights*

As an employee in New Hampshire, you have numerous rights. State law mandates some and federal law creates others. The size of this publication limits the scope of this topic, but some of the more common rights include:

1. Family and Medical Leave Act (FMLA): This federal regulation requires employers with 50 or more employees, to allow employees to take up to 12 weeks of leave in any 12 month period. This leave must be to care for a newly born child (including children placed with you as part of an adoption proceeding or foster care), to care for a spouse, child or parent with a serious health condition, or to care for the your own serious health condition. The leave period may run simultaneously with paid vacation or sick leave. Leave under the FMLA may be unpaid.

2. Personnel File: Under New Hampshire law every employee has the right to access his or her personnel file and the employer is obligated to provide a copy to the employee at a reasonable cost. If employer and employee disagree about something in the file, and it cannot be resolved, employee may write a statement and provide evidence to support that statement, which can then become part of the file. Disclosure is not required during the time an employee is under investigation

3. Lunch: Employers may not require employees to work more than 5 consecutive hours without a ½ hour break for lunch. The only exception to this law is if you can eat while you work and the employer permits this. An example might be a night security guard who is still “on the clock” while he or she eats.

4. Work Environment: Employees are entitled to a safe and healthy work environment. The terms “safe” and “healthy” are, however, relative terms. Some jobs, by their nature, are not safe or healthy. Examples include police officers, firefighters, garbage collectors, taxi cab drivers, window washers on high rise buildings, and healthcare providers treating people with contagious diseases. The intent of the law is to provide the safest and healthiest working environment within the limits allowed by the type of work being done.

5. Wages: Employees are entitled to receive a minimum wage for their work in accordance with federal and New Hampshire law. There are many exceptions, but the minimum wage is \$5.15 per hour for most employees at the present time. “Tipped” employees, such as waiters and waitresses, have a minimum wage of \$2.38. In general, if an employee works more than 40 hours in a one week period, he or she is entitled to overtime pay at the rate of 1½ times their normal hourly pay for the overtime worked.

### *Unemployment Compensation*

Unemployment compensation provides some reduced amount of pay for a limited period when you are out of work. In order to qualify for unemployment compensation, you must have worked a minimum amount of time for an employer who insured you for unemployment. Then if you are out of work, you may be eligible for unemployment compensation under the following conditions:

- You were fired for reasons not related to your job; or
- You were unable to do the job the way your employer wanted it done; or
- Your employer fails to prove that you were fired for serious misconduct; or
- You left a job because of illness or leave of absence and were told you could not return.

***You may not be eligible for benefits under the following conditions:***

- You lie about your education or experience on a job application or resume, and the employer relied on this information in hiring you;
- You were fired for misconduct connected with your work, including, but not limited to, being fired for:
  - (a) Using profanity, beyond what is accepted as "shop talk;"
  - (b) Violence, or threatening violence;
  - (c) Absenteeism or tardiness;
  - (d) Insubordination;
  - (e) Use of drugs or alcohol;
  - (f) In some special cases, off-duty behavior - for example being arrested and convicted of stealing where your job involves handling other people's money;
- You voluntarily quit your job without "good cause"; or
- You are unavailable for, or are not searching for, work.

To receive unemployment compensation benefits, you must file a claim with the nearest Employment Security office, regardless of the state or area where you last worked. Your former employers will be contacted to verify the information that you provided and to determine your eligibility for unemployment compensation. The Employment Security office then will advise you of your eligibility and, if eligible, your weekly benefit amount. You have the right to appeal any decision concerning your eligibility. An appeal must be received 14 days after recipient received determination.

After you have registered with the Employment Security office, you must report to the unemployment office on a regular basis, usually weekly. Be prepared to provide the names of places and people you have contacted for work in order to prove that you are actively looking for a job. You also must report all work that you do and money you earn. The Employment Security

office will sometimes contact the employers you claim to have contacted for work to verify your continued eligibility for benefits. To continue receiving benefits, you must: (1) be partially or totally unemployed; (2) be available for work; and (3) you must actively be seeking work.

*New Hampshire Employment Security Department has information on unemployment compensation and can provide you with a handbook explaining the rules, or see "Unemployment Compensation" by New Hampshire Legal Assistance.*

### ***Sexual Harassment***

The Civil Rights Act of 1964 prohibits employers from discriminating on the basis of sex with respect to compensation, terms, conditions, or privileges of employment. One form of sex discrimination is sexual harassment.

Sexual harassment in employment can be best defined as: (a) unwelcomed sexual advances, unwelcomed requests for sexual favors, or other unwelcomed verbal or physical conduct of a sexual nature, which affects employment decisions; (b) conduct that unreasonably interferes with an individual's work performance; or (c) conduct or behavior which creates an intimidating, hostile or offensive work environment.

The most recognized form of sexual harassment is a person in authority attempting to coerce or bribe another with the promise of a raise or job promotion in return for sexual favors. Sexual harassment, however, encompasses a wider range of conduct and behavior. ***Some behaviors, which may constitute sexual harassment include:***

- (a) Sexist comments or innuendoes;
- (b) Humor or jokes about sex or gender;
- (c) Profanity or other language which creates a hostile working environment;
- (d) Sounds which are suggestive, obscene, or insulting;
- (e) Whistling and "catcalls;"
- (f) Leering or ogling;
- (g) Display of sexually explicit material photos, magazines, or posters;
- (g) Propositions, invitations, or other pressure for sexual favors;
- (h) Obscene gestures;
- (i) Implied or actual sexual threats;
- (j) Inappropriate or unwelcomed body contact such as patting, pinching, brushing up against someone else, or any other form of sexual or sensual touching, which is not explicitly invited;
- (k) Uninvited and unwanted attempt or actual kissing or fondling;
- (l) Coerced sexual intercourse; and
- (m) Assault and rape.

The United States Supreme Court has stated that in order for these actions or behaviors to be considered sexual harassment they must make the workplace hostile or abusive to a

reasonable person. Ordinary socializing, including expected horseplay or flirtation, should not be substituted for discriminatory conditions of employment in an action under Title VII.

If you believe that your rights have been violated under these standards, your first step is to report the harassment to your employer and to follow the procedures established for addressing sexual harassment in the workplace. If this fails to resolve the situation, contact an attorney or the New Hampshire Human Rights Commission for further assistance.

### *Discrimination*

Job discrimination occurs whenever an employer makes decisions about an employee's hiring, wages, working conditions, promotions, vacations or other benefits, or other terms and conditions of employment based on an employee's age, sex, race, creed, color, marital status, physical or mental disability, national origin or sexual orientation. Discrimination may not always be obvious or hostile to be illegal.

An employer is allowed, however, to consider an employee's performance and ability to do a particular job in making job-related decisions. If only people having certain physical or mental capabilities can perform the essential duties of a job, it is lawful for the employer to hire only persons meeting such job qualifications.

*If you believe that you have been the subject of unlawful discrimination, or want more information, contact the New Hampshire Human Rights Commission or see the publication "Employment Discrimination" distributed by the New Hampshire Bar Association.*