

Employment Law Business Guide

PRACTICAL INSIGHTS FOR HUMAN RESOURCES, MANAGERS & BUSINESS OWNERS

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Businesses Take Note — New Hampshire Has New Pay Equity Laws

By Nicholas Casolaro on August 22, 2014

Governor Maggie Hassan recently signed two bills into law that may have significant impacts on New Hampshire businesses. The first, HB 1188, which takes effect on January 1, 2015, prohibits employers from discharging, disciplining, or otherwise discriminating against an employee because he or she disclosed the amount of his or her wages, salaries, or paid benefits.

House Bill 1188 was proposed as a companion law to SB 207, known as the “Paycheck Fairness Act,” and the passing of HB 1188 was dependent on the passing of SB 207. Because the Governor signed SB 207 a week prior to signing HB1188, both bills became law.

The second bill, The Paycheck Fairness Act, prevents employers from discriminating between employees on the basis of sex by paying employees of one sex at a rate less than the rate paid to employees of the other sex for what the statute refers to as “equal work.” Such work requires “equal skill, effort, and responsibility and is performed under similar working conditions” by both the employees of one sex and employees of the other sex. The statute allows employers to pay employees of one sex at a lower rate than employees of a different sex if the decision is made pursuant to a seniority system, a merit or performance-based system, a system which measures earnings by quantity or quality of protection, based on the employee’s expertise, differentials in the employees’ shifts, or factors such as education, training, or experience. These exceptions give employers the necessary flexibility to make legitimate and reasonable pay decisions without having to look over their shoulders for discrimination claims.

Employers should review their anti-discrimination and retaliation policies and revise them accordingly to reflect this new form of discrimination. Employers and human resources managers should also train their supervisory staff on how to implement the Paycheck Fairness Act and identify what jobs are considered “equal work.” In addition, employers should review their pay scales and salary schedules to ensure that pay differentials and considerations for raises and bonuses are based on merit-based, seniority, or other acceptable systems as recognized in the statute. Finally, with respect to the law on disciplining employees for disclosing the amount of their wages, employers should use caution when citing “insubordination” as a reason for terminating or disciplining their employees. Specifically, if an employee complains about their pay, and in the course of verbalizing that complaint, discloses the amount of his or her wages, employers could face liability if that



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complaint was cited as the reason for the employee's termination.



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