

**DEVINE MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION
SMALL BUSINESS GROUP**

New Employer Checklist

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Introduction

Hiring your first employee is a big step for any company. After hiring just one employee, the company has now become an employer that is obligated to comply with a myriad of federal and state employment laws including, but not limited to, wage, hour and child labor laws, workers' compensation and unemployment, immigration, workplace safety, and mandatory leave requirements. As the number of employees increases, the number of laws with which a company has to comply grows. For example, in New Hampshire, companies with as few as six employees are subject to laws against workplace discrimination, which, in addition to prohibiting unlawful discrimination and harassment, create certain affirmative duties with respect to maternity leaves and disability accommodation. Many smaller companies, either out of lack of information or high risk tolerance, have not achieved compliance with applicable laws. This failure can be costly to employers who could potentially face lawsuits, claims before employment related administrative agencies, and penalties imposed by regulatory bodies. Damages for non-compliance with various state and federal employment laws can include civil or criminal penalties, as well as back wages, benefits, attorneys' fees, liquidated damages, compensatory damages, etc. In some cases, owners or supervisors may be held individually liable.

Employers should take the time to familiarize themselves with both the state and federal laws with which they must comply. The New Hampshire and United States departments of labor, as well as the Equal Employment Opportunity Commission ("EEOC") and the New Hampshire Commission for Human Rights all have robust websites that contain a lot of helpful information for employers. We urge any company hiring employees to familiarize themselves with those websites.

What this Document Is and What It Is Not

This "checklist" is meant solely as a resource to provide the basic requirements a company must follow when hiring an employee for the first time. It does not provide a substantive overview of all laws applicable to employers generally, and (as noted above) we strongly encourage employers to familiarize themselves with any/all state and federal discrimination laws, leave laws, wage and hour

laws, and other employment and labor laws with which they must comply. I recommend that employers consult with legal counsel with any questions they may have and before establishing an “employment handbook” or taking an adverse employment action against an employee in a protected class.

In the meantime, this checklist is comprised of items that a company should review and consider prior to hiring its first employee. While many of these items have deadlines after an employee’s first day of employment, some must be done at the time the employee starts work. Other items must be done before the employee begins work. These include: obtaining workers’ compensation insurance and submitting a request to pay employees less frequently than weekly (if you should choose to do so).

This document includes information as to deadlines, resources for additional information and links to forms and postings.

NOTE: Nothing in this checklist addresses youth employment issues. If/when a company hires any minors (under age 18) to perform work, they should be sure to read any/all state and federal rules and laws that apply to youth employment. This is an area that is watched closely by both the New Hampshire Department of Labor as well as the U.S. Department of Labor.

Workers Compensation

Under the New Hampshire Workers' Compensation Law RSA 281-A:5, every employer who has **any employees**, full or part-time, is required to cover these employees with workers' compensation insurance written by an insurance carrier or provided through membership in an approved risk pool. It does not matter if the employees are relatives, such as daughter, son, husband, etc. It also does not matter if the business is a "Not for Profit" organization. Sole proprietors, partners and self-employed persons are not required by law to carry workers' compensation on themselves but may elect to be covered, per RSA 281-A:3. If they have coverage at all, a corporation or LLC may elect to exclude up to 3 executive officers, under RSA 281-A:18a.

More information is available at:
http://www.labor.state.nh.us/workers_compensation.asp

Unemployment

Companies who meet the conditions set forth below are required to make contributions to the Department of Employment Security as an “employing unit”.

An employing unit becomes an "employer" when it meets certain specified conditions set forth in the Law. In general, an "employee" becomes covered by any of the following means:

- Having one or more persons working for some part of a day in 20 different weeks, not necessarily consecutive, in a calendar year;
- Having paid gross wages of \$1,500 in any quarter of a calendar year;
- Being liable under the Federal Unemployment Tax Act and providing employment as defined in New Hampshire Law;
- Successorship (acquiring the business of an employer already covered.
- Having paid total cash wages of \$ 1,000 or more (for all household employees) in a calendar quarter.
- Having paid wages of \$20,000 or more for agricultural labor in a calendar quarter or have
- 10 or more employees in 20 different weeks during the calendar year.

Each employing unit must file a Department form, “EMPLOYER STATUS REPORT”, within **30 days** after it begins operations in New Hampshire. Often, when a company hires an employee for the first time, it is not yet an “employing unit”, however, under normal circumstances, the company will meet the \$1500 per quarter threshold or the employment of a person in 20 different weeks very quickly (in the first month). As such, the company will become a covered “employing unit” under the N.H. employment security laws and it would be wise to get into contact with the Department and speak with them before meeting the threshold. You can do this on your own with the Department of Employment Security, directly.

The employer status form, available at:

<http://www.nh.gov/nhes/employer/documents/empstatus.pdf>

Other information you may want to review includes the “Employer Handbook”, available at:

<http://www.nh.gov/nhes/employer/documents/EmployerHandbook.pdf>

Wage and Hour Paperwork

- **Any request to pay employees less frequently than weekly**
 - If a company is going to pay employees on a biweekly or monthly basis, it will need to get special permission from the Department of Labor
 - The company needs to complete and submit a form to request payment less frequently than weekly. This form can be found at: <http://www.labor.state.nh.us/INS-RequestForPaymentOfWagesOtherThanWeekly.pdf>
 - OR it may be completed on-line at:
 - <http://www.labor.state.nh.us/request.asp?ptype=>

- **Time worked**
 - Under both NH and Federal law, companies are required to maintain an accurate record of all hours worked for any employee (unless exempt under the Fair Labor Standards Act).
 - This means that each employee must record start/end time and start/end time of any unpaid breaks during the work day
 - Companies can use their own form, but must include the following:
 - Employee name
 - Day of the week on which the employee's workweek begins
 - Time of day the employee's workweek begins
 - Work start time
 - Work end time
 - Hours worked each day
 - Total hours worked each workweek
 - Total overtime hours worked each workweek
 - We also highly recommend that companies include a statement that says something to the effect of: "I have reviewed this timecard and by signing below I attest that the time recorded is true and accurate"; and have a line for the employee to sign the timecard.
 - Note: IF a company ever changes the employee's time (if, for example, the time recorded was in error), the company is required to have the employee initial the place where the time was changed and sign the time card.

New Employee Forms/Filings/Paperwork

Forms to fill out on or before hire:

- **W-4**, available at: <http://www.irs.gov/pub/irs-pdf/fw4.pdf> (Please check to make sure this is the most recent form available as they change periodically.)
- **Form I-9**, available at: <http://www.uscis.gov/files/form/i-9.pdf> (Please check to make sure this is the most recent form available as they change periodically.)
- Some instructions: The I-9 must be filled out within three days of the employee starting work. The employer must review the documents presented (establishing identity and work authorization) and record the documents reviewed. The I-9 is not "filed" with the government, but must be kept on file by the employer for three years after the date of hire or for one year after employment is terminated, whichever is later.

Forms to fill out shortly after hire:

- **New Hampshire/Fed New Hire Reporting Form**

New Hampshire State new hire reporting law requires every employer to report every new hire and rehire (and contractors over \$2,500) within **20 days** of hire. The employer must report the federally required elements of:

Employee's name

Employee's UI ID

Employee's address

Employee's social security number

Employer's name

Employers address

Employer's Federal Employer Identification Number (EIN)

The information can be sent as a W4 or equivalent by mail, fax or electronically to:

NH Employment Security
PO Box 2092
Concord, NH 03302-2092
Attn: New Hire Program

FAX: (603) 229-4324 or 1-888-783-3598.

This form is available at:

<http://www.nh.gov/nhes/employer/documents/newhirefillable.pdf>

For more information, go to:

<http://www.nh.gov/nhes/documents/newhire.pdf>

Other Paperwork to Give Employee/Have Employee provide on First Day of Employment (or before)

- **New Hire Rate of Pay Paperwork**

- Employers should already have included most of this in an offer letter, however per N.H. RSA 275:49, I, an employer must notify an employee **in writing at the time of hiring** of his/her rate of pay, and of the day and place of payment. This form can be easily

- updated if/when anything changes. Employers should have employee sign and the employee should receive a copy. Copies of documents evidencing that this information was given to the employee should be kept in personnel file along with copy of offer letter (if applicable).
- **For sample, see Attachment A**
 - **Direct Deposit Form**
 - Companies must offer employee live check option and can only direct deposit his/her paycheck in the event s/he specifically requests it.
 - There is no specific form, but you can obtain one from your banking institution/payroll company.
 - **Emergency Contact Information**
 - No specific form. Companies should simply collect name/address/phone number/relationship to employee of emergency contact.
 - **Vacation/Holiday/time off listing**
 - Companies must give employees written notice of company policies relative to vacation pay, sick leave and other fringe benefits. This includes information regarding accrual and what happens when the employee terminates (e.g. does s/he lose any accrued unused sick/vacation time or is it paid out to him/her?)
 - Companies often put this information in an offer letter. However, in the event this information is not conveyed in an offer letter OR if the information in the offer letter changes, the information must be communicated in writing to the employee per N.H. RSA 275:49, III.
 - **Benefits paperwork**
 - **Any company policies**
 - For example: handbook and signed receipt of handbook, if applicable.
 - **Meal/Lunch waiver**
 - Under N.H. RSA 275:30-a, every employee who works five (5) consecutive hours is entitled to a 30 minute meal break. Sometimes, however, employees wish to "waive" this meal break to accommodate their own schedules. Even if the employee voluntarily forgoes the meal break, the employer will have to prove that it was offered. Thus, in the event an employee wishes to waive his rights under the meal break law, the employer should maintain the waiver on file.
 - **See Attachment B for a sample waiver form.**
 - **Statement regarding payroll deductions**
 - Per N.H. Admin. Rule Lab 803.03, employers are provided to give employees written notification as to permissible deductions under N.H. RSA 275:48.
 - **See Attachment C for a sample.**

REQUIRED POSTINGS

State Required Postings (many of these postings can be found on the New Hampshire Department of Labor website)

- Protective Legislation Law
 - <http://www.labor.state.nh.us/ProtectiveLegislation.pdf>
- Criteria to Establish an Employee or Independent Contractor
 - http://www.labor.state.nh.us/CriteriatoEstablishanEmployeeorIndependentContr_010108.pdf
- NH Minimum Wage law
 - <http://www.labor.state.nh.us/INS-Poster-NHMinimumWageLaw.pdf>
- NH Whistleblowers' Protection Act
 - <http://www.labor.state.nh.us/INS-Poster-Whistleblowers.pdf>
- Right to Know Law
 - <http://www.labor.state.nh.us/RightToKnow.pdf>
- Workers' Compensation Law poster
 - Obtain from Insurance Carrier
- Unemployment Notice
 - <http://www.nh.gov/nhes/employer/documents/uinotice.pdf>
- **Not required unless/until you have 6 employees: Discrimination Laws**
 - http://www.nh.gov/hrc/documents/employment_poster.pdf

Federal Required Postings (many of these are available on the U.S. Department of Labor website)

- Job Safety Poster
 - Download at: <http://www.osha.gov/Publications/poster.html>
- Fair Labor Standards Act Poster
 - Download at:
<http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>
- USERRA
 - Download at:
http://www.dol.gov/vets/programs/userra/USERRA_Private.pdf
- Employee Polygraph Protection Act
 - Download at: <http://www.dol.gov/oasam/programs/osdbu/eppac.pdf>
- **EEOC (not required unless you reach 15 employees)**
 - <http://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf>

Miscellaneous Notifications

- OSHA requires employers to prepare Material Safety Data Sheets ("MSDS") for hazardous chemicals used in a workplace. This does not apply to consumer products (i.e. window wash) **if** used in the same manner as a consumer would use the product.

- If, however, companies are using industrial cleaners, they have to complete a MSDS, as follows:
- <http://www.osha.gov/dsg/hazcom/msds-osh174/msdsform.html>

If you have any questions after reviewing this checklist, please do not hesitate to call Laurel A. Van Buskirk, Esq. at 603.695.8565 or contact her at lvanbuskirk@devinemillimet.com.

Laurel A. Van Buskirk, Esq. is a member of Devine Millimet's Labor, Employment and Employee Benefits practice group where she regularly counsels businesses of all sizes with regard to hiring, discipline, termination, discrimination, sexual harassment, leaves of absence, and wage and hour issues and advises on contracts, non-competes and employment policies. Laurel also represents employers on employment issues before administrative agencies and state and federal court.

Attachment A

***New Hire Rate of Pay
Company name
Address
Address***

Employee name: _____

Date: _____

Rate of pay \$ _____

Pay period is _____

Payday is _____

Benefits offered: _____

Signature of employee

Changes in Rate of Pay

Date: _____

Rate of pay _____

Signature of employee

Changes in Rate of Pay

Date: _____

Rate of pay: _____

Signature of employee

Attachment B

REQUEST TO WAIVE THE LUNCH OR EATING PERIOD

RSA 275:30-a Lunch or Eating Period. – An employer may not require an employee to work more than 5 consecutive hours without granting him a 1/2 hour lunch or eating period, except if it is feasible for the employee to eat during the performance of his work, and the employer permits him to do so.

I _____ understand that my Employer _____ offers a lunch or eating time as defined in RSA 275:30-a, whenever I am scheduled to work more than 5 consecutive hours. However, I am requesting not to take this time as offered. I also understand that at any time I wish to take the lunch or eating time I will be allowed to do so. I can revoke this waiver at any time by submitting a letter to _____, indicating that I no longer wish to have this waiver on file.

Employee's signature

Date

Witness

Date

Attachment C

Notice Regarding Payroll Deductions

Deductions from your pay checks will be made in accordance with federal and state laws.

There are generally two categories of payroll deductions: those required by state or federal law and those authorized by the employee. Payroll deductions required by state and federal law include federal withholding, income tax, social security tax, and wage garnishments required by law, such as child support payments, court-ordered payments, and IRS garnishments.

If authorized in writing by an eligible employee, _____ will also make payroll deductions for health and dental insurance, savings plans, retirement contributions, and other deductions permitted by applicable state and federal law.

The New Hampshire Department of Labor permits these deductions, and requires employers to provide employees with notice of the other circumstances in which payroll deductions are permitted by law. Payroll deductions are also permitted for the following (note: we recognize that not all of the following apply in our workplace, but we are providing the whole list approved by the Department of Labor): installment payments of legitimate loans made by the employer to the employee; repayment of accidental overpayments made to the employee; repayment of advances on vacation or other paid time off; required clothing not considered to be uniforms; voluntary rental fees for non-required clothing; voluntary cleaning of uniforms and non-required clothing; medical, surgical, hospital, and other group insurance benefits having no financial advantage for the employer; the use of a demonstrator vehicle as defined in RSA 261:111; payments into savings funds held by someone other than the employer; housing and utilities; strictly voluntary contributions to charity; union dues; and health, welfare, pension and apprenticeship fund contributions; voluntary contributions into cafeteria plans or flexible benefit plans, or both, as authorized by section 125 or section 132 of the Internal Revenue Code; and voluntary payments by the employee for the following: child care fees by a licensed child care provider, parking fees, and/or pharmaceutical items, gift shop, and cafeteria items purchased on the site of a hospital by hospital employees; recovery of tuition for non-required educational costs; payments for the employee's use of a qualifying health or fitness facility; and contributions to a political action committee.

If an employee elects supplemental coverage under one of the Company's benefits plans, which requires employee contributions, the employee's share of the cost will be deducted from his or her check each pay period. If the employee is not receiving a payroll check due to illness, injury, or leave of absence, he or she will be required to pay the monthly cost directly to the Company.

Payroll Deductions for Exempt Employees

_____ complies with all federal and state laws with regard to deductions from paychecks, including deductions from the salaries of exempt employees. In accordance with the laws, salaried exempt employees receive a predetermined salary which is not subject to reduction because of variations in the quality or quantity of work performed, and is not subject to reduction for absences requested by _____ or due to the operating requirements of _____.

_____ recognizes that under federal and state law there are only limited reasons for which an exempt employee's salary for a pay period can be subject to deductions. _____ prohibits deductions from salaries that are inconsistent with an employee's exempt status.


Exempt employees should note that salaries are subject to modification from time to time such as at compensation review time, when an employee's position or responsibilities change, and at other appropriate times.

Exempt employees should also note that it is permissible for an employer to apply vacation, sick, personal, and other forms of paid time off to partial or full day absences for personal reasons, sickness, or disability, and that applying paid time is not considered a deduction from salary.

_____ salaried employees and does not permit any unlawful docking of salaries. The application of vacation and/or personal time to absences is not pay docking, and is permissible. When a salaried employee exhausts all vacation and personal time and continues to work a portion of the pay period, the employee will receive his/her full salary if required by law. However, all employees must be mindful that attendance is an important part of job performance and it is expected that absences and other time away from work will be kept to a minimum. Corrective/disciplinary action may be utilized if an employee's attendance is not meeting expectations, regardless of whether the employee is salaried or hourly, and regardless of whether pay is required or otherwise provided for the absence.

Questions Regarding Paychecks and Payroll Deductions

Please review your paycheck each and every pay period to ensure its accuracy. If you have any questions or concerns about your paycheck or any deductions from your pay, please contact the Human Resource Manager as soon as possible. Questions and concerns regarding pay and deductions will be investigated and addressed promptly. If there has been an error, such as a deduction made in error, the employee will receive a corrected check or a check reimbursing the employee for the error, whichever is more practicable under the circumstances.



Employees should feel free to communicate any questions or concerns regarding pay or deductions. _____ will not tolerate retaliation against employees who have expressed concerns using this procedure.

Employee Signature

Date