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Legal Overview for Small Businesses - Employment Law.

Small businesses play an important role in the economic vitality of New Hampshire. Many experts believe that the growth of small businesses will provide the greatest boost to the recovery of our state's economy. The legal issues facing small businesses as they grow, however, can create hurdles. This is the first of three articles to address briefly some of the key legal issues facing New Hampshire small businesses.

Small businesses in New Hampshire are defined as a business with 500 or fewer employees. In 2008, the last year with complete data available, there were 135,716 small businesses in New Hampshire. They made up 96.3% of the state's employers. Small businesses face a number of potential legal issues. This article will address some of the employment law issues faced by small businesses.

Wages and Hours: All employers must comply with New Hampshire's wage and hour laws, which is set forth in NH RSA Chapter 275. This statute provides specific mandates that employers must ensure they follow. A workday is defined as 8 hours of labor unless otherwise agreed upon by the employer and employee. The law also re-



quires that a meal period be given to an employee. An employee cannot be required to work more than 5 consecutive hours without a half hour meal period unless it is feasible for the employee to eat during the course of work and this is permitted by the employer. Employees who are not exempt from the overtime laws, must be paid at the rate of time and a half for all hours worked in excess of forty hours per week.

Wages are to be paid within 8 days of being earned unless permission to pay less frequently is obtained from the NH Department of Labor. Generally, an employer cannot withhold wages unless such withholdings are specifically authorized by law.

No employer shall pay less than the amount set forth in

the federal minimum wage law unless the type of employment falls under an exception. According to New Hampshire RSA Chapter 279, minimum wage laws apply to all employees except restaurant, hotel, motel, inn, or cabin employees who earn more than \$30 a month in tips directly from customers. These employees will receive a base rate from the employer of not less than 45% of the applicable minimum wage. Minimum wage laws do not apply to an employee of an amusement, seasonal, or recreational establishment if it does not operate more than 7 months out of the calendar year.

If an employee is discharged the employer must pay the employee's wages within 72 hours. If the employee quits or resigns, the

Legal Overview Small Businesses, Employment Law cont.



employer must pay the employee no later than the next regular payday.

Personnel Records and Files:

The New Hampshire Department of Labor broadly defines personnel file as any personnel records created and maintained by the employer and pertaining to an employee including and not limited to employment applications, internal evaluations, disciplinary documentation, payroll records, injury reports and performance assessments. Current and past employees must be given access to their personnel file when requested according to RSA 275:56 .

Employee Handbooks: Employers should implement an employee handbook. The

handbook should include general information on the company's business purpose, employee conduct, pay policies, security policies, employee benefits, and the employer's legal requirements. It should not include any statements that may appear to create an employment contract. New Hampshire is an employee-at-will state but handbooks can modify this and form a contract. It is good practice to put a disclaimer or waiver in the handbook stating that the employee handbook does not create a contract. See Commercium article dated November 2006 on our website, www.dtclawyers.com for more information on employee handbooks.

Discrimination: New Hampshire's discrimination law, RSA Chapter 354-A, applies to employers with six or more employees. It prohibits employment discrimination based on "age, sex, race, creed, color, marital status, physical or mental disability or national origin" all of which it protects as a civil right. New Hampshire also

protects individuals based on their sexual orientation and pregnancy.

Employers are also not permitted to discriminate against an individual who uses tobacco outside of work and may not require employees to abstain from tobacco use outside of the course of their employment under RSA 275:37-a.

Conclusion: Small businesses face a number of legal issues in addition to those outlined above. It is important to stay up to date on employment law changes, to ensure that company policies are in compliance with state and federal law, especially when hiring employees or letting them go, and to seek legal assistance when issues arise.

This article was written by **Attorney Douglas M. Mansfield** and law clerk **Ann Moynihan**. For more information you may contact Attorney Mansfield.

Small Businesses Overview, – Corporation and LLC Formation; NH Tax Issues.

In setting up a business one must first decide on what form of a business to set up. Two of the more common forms are corporations and limited liability companies. There are a number of steps involved in forming a legal business entity which this article will address. This arti-

cle will also address generally the New Hampshire taxation concerns faced by small businesses. This is the second of three articles to address briefly some of the key legal issues facing New Hampshire small businesses.

Corporations: A corporation is formed when articles of



organization are filed with the New Hampshire Secre-

Corporations and LLC cont.

tary of State. It is governed by NH RSA Chapter 293-A. The business name must contain "corporation," "incorporated," or "limited" or an abbreviation for those words. If the business would like to use a different name than the corporate name to do business under that name should be registered as a trade name at the same time. Corporations are required to have a registered agent and registered office in New Hampshire and must file an annual report with the Secretary of State by every April 1st. A corporation will have perpetual duration unless the incorporation elects a finite duration. The management of a corporation is vested in its board of directors. See Commercium article dated Winter 2008 on our website, www.dtclawyers.com for more information on choice of entity.

Limited Liability Companies: A certificate of formation must be filed with the NH Secretary of State to form a limited liability company ("LLC"). The laws pertaining to NH LLCs are outlined in RSA Chapter 304-C. An LLC should have an operating agreement and it may have different classes of members. The LLC operating agreement is an agreement between the members and the LLC on how the LLC shall be operated on such issues as adding members, departing members, taxation and management. An LLC can

be set up with members managing all decisions or it may have managers as well as members. Like a corporation, an LLC must have a registered agent and a registered office in the state. See Commercium article dated Winter 2008 on our website, www.dtclawyers.com for more information on choice of entity. New Hampshire Taxation

New Hampshire small businesses are subject to federal and state taxes. One of these is the business profits tax, RSA Chapter 77-A. This is an 8.5% tax on a business' income from conducting business activity within the state. The Business Enterprise Tax ("BET") found in RSA Chapter 77-E is also applicable to small businesses. It is imposed at a rate of .75% of the "taxable enterprise value tax base" of businesses with over \$150,000.00 in gross business receipts.

Another tax effecting businesses is the Real Estate Transfer Tax. This is regulated under RSA Chapter 78-B as well as under Department of Revenue Administration regulations. The rate is \$.75 per \$100 of the price or consideration for the sale, granting, or transfer. The tax is split evenly between the buyer and seller. The tax is assessed based on the fair market value of the real estate not on its sale price. This tax may impact

on the transfer of an interest in an LLC or corporation where the LLC or corporation is deemed a real estate holding entity.

Finally, the Interest and Dividend Tax imposes a 5% tax on the gross amount of interest and dividend income, exceeding \$2,400.00, received by residents, LLCs, partnerships, associa-



tions, trusts, and fiduciaries.

Conclusion: Small businesses face legal hurdles in entity formation and taxation. It is important to obtain the advise of an attorney before such issues turn into legal obstacles.

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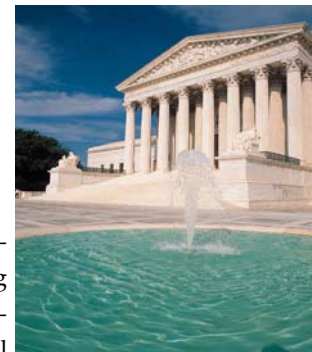


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Established in 1985, DTC Lawyers is one of New Hampshire's leading law firms, with offices in Exeter, Portsmouth and Meredith. We are a full-service firm with our lawyers offering personalized representation to small businesses, large institutions and individuals. We represent and advise our clients in the areas which include general business and commercial law, municipal, development and real estate law, telecommunications, utility and internet law, employment and labor law, family law, environmental law, appellate, litigation, bankruptcy, and probate/estate planning.

Our attorneys provide affordable, quality legal services and personal attention to small and large businesses, agencies, boards, municipalities and individuals. Our focus on the client has enabled DTC to provide general counsel services, as well as special representation on specific matters to our clients. It allows us to be trusted counselors and advisors as well as advocates.

Our clients come from throughout New England. We represent many firms and individuals relocating to New Hampshire from across the nation.

The materials contained in this newsletter are for informational purposes only and not for the purpose of providing legal advice or a comprehensive summary of recent developments in the law or treat exhaustively the subjects covered. For advice about a particular problem or situation, please contact an attorney of your choice. © 2011 Donahue, Tucker & Ciandella, PLLC

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