

November 16, 2023 - HRAGC Legislative Update

"And we should be thankful, too. We should just be thankful for being together."— A Charlie Brown Thanksgiving

FEDERAL

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)



TECHNICAL ASSISTANCE: 05-18-2023: [Link to Guidance](#)

Title VII and AI: Assessing Adverse Impact

Employers now have a wide variety of algorithmic decision-making tools available to assist them in making employment decisions, including recruitment, hiring, retention, promotion, transfer, performance monitoring, demotion, dismissal, and referral. Employers increasingly utilize these tools in an attempt to save time and effort, increase objectivity, optimize employee performance, or decrease bias.

Many employers routinely monitor their more traditional decision-making procedures to determine whether these procedures cause disproportionately large negative effects on the basis of race, color, religion, sex, or national origin under Title VII of the Civil Rights Act of 1964 ("Title VII"). Employers may have questions about whether and how to monitor the newer algorithmic decision-making tools. The Questions and Answers in this document address this and several closely related issues.

Title VII applies to all employment practices of covered employers, including recruitment, monitoring, transfer, and evaluation of employees, among others. However, the scope of this document is limited to the assessment of whether an employer's "selection procedures" — the procedures it uses to make employment decisions such as hiring, promotion, and firing — have a disproportionately large negative effect on a basis that is prohibited by Title VII. As discussed below, this is often referred to as "disparate impact" or "adverse impact" under Title VII. This document does not address other stages of the Title VII disparate impact analysis, such as whether a tool is a valid measure of important job-related traits or characteristics. The document also does not address Title VII's prohibitions against intentional discrimination (called "disparate treatment") or the protections against discrimination afforded by other federal employment discrimination statutes.

EEOC Lawsuits: [Link to EEOC Newsroom](#)

| Defendant | Claims and/or Settlement |
|-----------------------------|---|
| Mueller Co. and IH Services | Sexual Harassment and Retaliation/\$150,000 |
| Weis Markets | Sexual Harassment and Unlawful Use of EAP |
| PRC Industries | Racial Harassment and Retaliation/\$400,000 |
| Dollar General | Disability and GINA/\$1 Million |

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| Title Loan Companies | Racial Harassment and Disability Discrimination/\$60,000 |
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US DEPARTMENT OF LABOR (USDOL)



NEWS RELEASE: 10-31-23: [Link to Source](#)
USDOL, NLRB Sign Agreement to Strengthen Information-Sharing, Outreach on Whistleblower Protections

WASHINGTON – The U.S. Department of Labor and the National Labor Relations Board today announced that the department’s Occupational Safety and Health Administration and the board have signed an agreement to strengthen the agencies’ partnership and outline procedures for information-sharing, referrals, training and outreach that explain federal anti-retaliation protections.

The Memorandum of Understanding will also enable OSHA and the board to cooperate more effectively and efficiently to enforce related laws and protect workers’ rights.

“Everyone should be able to exercise their legal rights in the workplace without fear of losing their job or other forms of punishment,” explained Assistant Secretary for Occupational Safety and Health Doug Parker. “Our partnership with the National Labor Relations Board will expand both of our agencies’ impact and effectiveness in protecting workers who raise concerns about workplace violations or retaliation.”

The collaboration will also create mechanisms to increase overall awareness on the rights and remedies available under federal anti-retaliation and whistleblower protection laws. The agencies have jointly created a fact sheet, “Building Safe & Healthy Workplaces by Promoting Worker Voice” to help workers better understand what

recourse they have when their rights are violated.

“Workplace safety can be a matter of life and death for workers and so the ability to report workplace hazards without fear of retaliation is critically important,” said National Labor Relations Board General Counsel Jennifer A. Abruzzo. “Today’s MOU will bolster protections for workers to speak out about unsafe working conditions by strengthening coordination between OSHA and the NLRB on our enforcement efforts.”

NEW HAMPSHIRE NEWS

NH LAW REMINDER
POTENTIAL LEGISLATION:

The subcommittee of the House Judiciary committee is working on HB 362 relative to complaint procedures before the Commission on Human Rights is likely to ITL bill.

NH EMPLOYMENT SECURITY
PRESS RELEASE: October 17, 2023: [Link to Source](#)

New Hampshire’s preliminary seasonally adjusted unemployment rate for September 2023 was 2.0 percent. This was an increase of 0.2 percentage points from the August rate, which remained at 1.8 percent after revision. The September 2022 seasonally adjusted rate was 2.8 percent.

Seasonally adjusted estimates for September 2023 placed the number of employed residents at 742,570, a decrease of 1,480 from the previous month and a decrease of 4,950 from September 2022. The number of unemployed residents increased by 1,350 over-the-month to 15,130. This was 6,690 fewer unemployed than in September 2022. From August 2023 to September 2023, the total labor force decreased by 130 to 757,700. This was a decrease of 11,640 New Hampshire residents from September 2022.

Seasonally adjusted New Hampshire nonfarm employment for September 2023 was 701,600.

This was 2,600 more jobs than in August 2023 and 10,900 more jobs than in September 2022. Private industry accounted for 614,100 of these jobs in September 2023; 2,400 more jobs than in August 2023 and 10,000 more jobs than in September 2022.

Nationally, the seasonally adjusted unemployment rate for September 2023 was 3.8 percent, unchanged from the August rate, and an increase of 0.3 percentage points from the September 2022 rate. National nonfarm payroll employment increased by 336,000 from August to September 2023.

NH DEPARTMENT OF LABOR
TOP 10 THINGS YOU NEED TO KNOW ABOUT
NH WORKERS' COMPENSATION: [Link to Checklist](#)

1. Insurance Coverage — Have it for your employee even part time employees must be covered.

2. Must file First Report within 5 days of notification of an injury.

3. First Aid Treatment — One time treatment less than \$2,000.00; you may pay but you must file First Report with the NH-DOL and no need to file with your carrier.

4. Communicate with the adjuster handling your employee's claim.

- Advise them of any extenuating circumstances.
- Provide names of witnesses.
- Advise the adjuster that you have a light duty program.

5. Reinstatement Laws — If you have 5 or more employees and the injured employee is released to return to work within 18 months of the injury by their treating physician, you must reinstate that employee to their former position.

6. Light Duty — If you have 5 or more employees, you must offer temporary alternative duty.

7. Job Modification Reimbursement — This provision provides for reimbursement of 1/2 of

the cost of a job modification up to \$5000 per year per employer. There does not have to be any lost time, but there does have to be a First Report on file, and the application must have prior approval.

8. The Workers' Compensation Division does hold hearings to settle disputes in Workers Compensation cases. From time of request to time of hearing is usually 4-6 weeks.

9. Appeals of the hearing officers' decisions go to the Compensation Appeals Board. This board is administratively attached to the DOL. Time of request to time of hearing is 3 to 5 months.

10. When in doubt.... Call us we're here to help employees and employers. We can be reached at 603-271-3176.

