



New Hampshire

Human Resources LEGAL FACT SHEET

Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor, and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in January 2019, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.

ARE THERE NEW HAMPSHIRE STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday / Pay Rate ¹	YES	<p>At the time of hire and before making any changes, farms with 5 or more employees must <u>notify employees in writing of:</u></p> <ul style="list-style-type: none"> • Pay rate or salary and the basis for the pay – daily; weekly; bi-weekly; commission; or otherwise; • The day and place of payment; • How wage payments are made. <p>Employers must also provide written notice (through posting or otherwise) of practices and policies related to:</p> <ul style="list-style-type: none"> • Vacation pay; • Sick leave; • Other fringe benefits. <p>Signed acknowledgment of the written notices provided to employee must be maintained by the employer.</p>
Reporting ²	YES	<p><u>New hires</u> and rehires must be reported to the New Hampshire Department of Labor within 20 days of the first day the individual performs services.</p>

WAGES

TOPIC	ANSWER	DETAILS
Payday ³	YES	<p>Farms with 5 or more employees must pay all wages due within eight days after the end of the workweek in which the work was performed. Employers also must set regular pay days set in advance. Permissible pay schedules include:</p> <ul style="list-style-type: none"> • Biweekly wage payments, if the last day of the second week in the pay period is the day before wages are paid. • Payment in advance of and in full for the work period, even if less than biweekly. <p>Employers can petition the New Hampshire Department of Labor (NHDOL) to pay employees less frequently, but must pay wages at least monthly and regularly on a predesignated date.</p>
Final Pay ⁴	YES	<p>For farms with 5 or more employees, final pay is owed an employee:</p> <ul style="list-style-type: none"> • By the next regular payday, if the employee quits or resigns. • Within 72 hours after the termination, if the employee was involuntarily discharged. <p>If the employee is salaried, the employer can prorate the employee's salary on a daily basis if:</p> <ul style="list-style-type: none"> • The employee voluntarily ended his employment before the end of the pay period; or • Was terminated for cause (as defined by the employer's policy).
Overtime ⁵	NO	<p>New Hampshire overtime requirements do not apply to farm labor; federal rules may apply. Employers are encouraged to review the federal fact sheet.</p>

This fact sheet contains embedded hyperlinks. If you are viewing a printed copy, please refer to the FARM website at www.nationaldairyfarm.com for the online version to access the links.



WAGES

(Continued)

TOPIC	ANSWER	DETAILS
Minimum Wage ⁶	NO	New Hampshire minimum wage requirements do not apply to farm labor; federal rules may apply. Employers are encouraged to review the federal fact sheet.
Hours Worked	NO	New Hampshire law does not explicitly define “hours worked” for calculating compensable time. Employers are encouraged to review the federal fact sheet.
Reporting Time Pay ⁷	YES	<p>A farm with 5 or more employees must pay an employee at least two hours’ pay at the employee’s regular pay rate if it requests the employee report to work. This does not apply if:</p> <ul style="list-style-type: none"> • The employer makes a good faith effort to notify the employee not to report to work; • The employee reports to work and then requests to leave because of illness or a personal or family emergency, and a written explanation is entered on the employee’s time card and initialed by the employee; or • The employee is hired for a position with duties that consistently require that he or she will work less than two hours per work day, reports to work with the expectation that he or she will work less than two hours per work day, and the employer provides the employee with written notification upon hire.
Pay Stub ⁸	YES	Farms with 5 or more employees must provide each employee with a statement of deductions made from his wages for each pay period.
Taxes and Withholding ⁹	YES/NO	<p>In New Hampshire, the only individual income taxed is income received from interest and dividends. Individual wages are not subject to income tax by New Hampshire, but refer to the federal fact sheet for federal income tax information.</p> <p>Employers must pay New Hampshire Unemployment Insurance taxes if:</p> <ul style="list-style-type: none"> • You paid cash wages to farm workers of \$20,000 or more in any calendar quarter of the calendar year or preceding calendar year; OR, • You employed 10 or more farm workers for some part of a day in any 20 or more weeks in the calendar year or preceding calendar year. <p>Certain family employment is excluded from coverage requirements (children under 21 working for a parent, an individual working for a spouse or parent working for a son or daughter). Unemployment benefits come from employer contributions; employees do not pay for the cost of unemployment benefits. You can credit the amount you pay to New Hampshire in calculating how much you owe for federal unemployment taxes. More details.</p>
Deductions and Allowances ¹⁰	YES	<p>Farms with 5 or more employees cannot make <u>deductions from an employee’s wages</u> unless:</p> <ul style="list-style-type: none"> • Required or allowed to do so by state or federal law. • With written authorization from the employee for the benefit of the employee such as the following: <ul style="list-style-type: none"> - Union dues; - Contributions to health, welfare pension, and apprenticeship funds; - Voluntary contributions to charities; - Housing and utilities; - Payments into savings funds that are not held by the employer; - Voluntary rental fees for non-required clothing; - Voluntary cleaning of uniforms and non-required clothing; - Payment to a retail vehicle dealer for employee’s use of the dealer’s vehicle; - Medical, surgical, hospital, and other group insurance benefits without financial advantage to the employer, when the employee provides written authorization for the deduction and the deductions are duly recorded; - Required clothing that is not a uniform; - Legal plans and identity theft plans without financial advantage to the employer, when the employee provides written authorization for the deduction and the deductions are duly recorded; and - For any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded. • Certain deductions upon an employee’s written request, provided the employer provides a written itemized accounting of such requested deductions to the employee at least once per month. • The employee requests in writing that deductions be made for contributions to a political action committee. • The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee’s final wages any amount the employee may owe for voluntary payments requested and paid in advance of eligibility (i.e., a paid time off day). <p>New Hampshire law also prohibits deductions from salaried employees’ pay with some specific exceptions provided in N.H. RSA § 275:43-b; N.H. Code Admin. R. Lab. 803.02(c) and 803.03.</p>



WAGES

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TOPIC	ANSWER	DETAILS
Bonuses ¹¹	YES	<p>The law does not include the term “bonus” in its description of “wages,” but the New Hampshire Supreme Court has determined that certain benefits, including bonuses, are to be treated as wages “when due;” i.e., when the employee has performed all duties to trigger the employer’s obligation to pay the bonus. A discretionary bonus, not based on performance of certain duties/criteria, may not constitute wages.</p> <p>Employers should follow any written policy they have about paying bonuses as a best practice.</p> <p>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee, and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p>

RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll ¹²	YES	<p>Employers must <u>maintain records</u> of all employees’ hours worked for at least 4 years, unless the employee is exempt under the federal Fair Labor Standards Act (FLSA). Time records must:</p> <ul style="list-style-type: none"> • Show the time work began and ended, including meal periods. • Support the payroll records. • Be signed or initialed by the employee, if the record was changed. <p>Payroll records must show:</p> <ul style="list-style-type: none"> • The time work began and ended, including meal periods. • The employee’s signature or initials, if the record was changed. • How the employee’s compensation was calculated.
Personnel Files – Employee Access ¹³	YES	<p>Upon request, an employer must provide a reasonable opportunity for any current or former employee to inspect his or her personnel file and/or provide a copy of all or some portion of the file. An employer may charge the employee a fee reasonably related to the cost of supplying the requested documents. There is no specified limit on the number of requests an employee can make per year.</p> <p>If the employee disagrees with any of the information contained in the personnel file, the employer and employee can agree to removal or correction, or the employee may submit a written statement explaining his or her version of the information along with any supporting evidence to be maintained in the personnel file.</p> <p>Certain information should not be disclosed upon request:</p> <ul style="list-style-type: none"> • Information in the personnel file that would prejudice law enforcement if the employee is the subject of an investigation; or • Information related to a government security investigation. <p>In addition, information obtained in relation to a health risk assessment or wellness program cannot be retained in an employee personnel file.</p>
Unemployment Insurance ¹⁴	YES	<p>Employers subject to paying unemployment taxes must submit <u>quarterly wage reports</u>.</p> <p>For Unemployment Insurance, New Hampshire law requires that employers keep sufficient records that show:</p> <ul style="list-style-type: none"> • The period covered by the payroll; • For each worker: <ul style="list-style-type: none"> - The worker’s name; - Dates of employment; - The number of hours employed for each calendar week in which services were performed; - Wages earned in each pay period including money wages, cash value of all other remuneration, any special payments for services (i.e., bonuses, gifts, prizes, accrued leave, vacation, etc.); - Amount and date of such wage payment; and - Social Security number. <p>Records shall be maintained for not less than 6 years after the calendar year in which compensation for services was paid or due.</p>



RECORD KEEPING

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TOPIC	ANSWER	DETAILS
Workers' Compensation ¹⁵	YES	Employers must record work-connected injuries and diseases in sufficient detail and keep these records for a period of 5 years from date of injury for future reference. The "Notice of Accidental Injury or Occupational Disease" form 8aWCA together with the "Employer's First Report of Injury" form 8WC, when satisfactorily completed, shall constitute proof of compliance with the foregoing requirement.
OSHA	YES	Employers must comply with the federal OSHA recordkeeping standard. See the federal fact sheet for details.
Federal	YES	There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.

WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms ¹⁶	YES	New Hampshire has incorporated the federal Pasteurized Milk Ordinance (PMO). The PMO rules specify that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated, and maintained in a sanitary manner.
Working Hours ¹⁷	NO	New Hampshire law does not specify max hour or day requirements for adults engaged in farm service.
Rest and Meal Breaks ¹⁸	YES	Employers cannot require that an employee work more than five consecutive hours without granting a 30-minute meal break. This does not apply if both: <ul style="list-style-type: none"> • <i>It is feasible for the employee to eat while working.</i> • <i>The employer permits the employee to eat while working.</i> An employee may waive the right to a meal break, which the employee should confirm in writing and sign
Labor Relations	NO	No provision in state law recognizing farm worker rights to organize.
Whistleblower Protection ¹⁹	YES	The Whistleblowers' Protection Act prohibits any form of retaliation against an employee who: <ul style="list-style-type: none"> • <i>In good faith, reports or causes to be reported what the employee has reasonable cause to believe is a violation of the law;</i> • <i>Objects or refuses to participate in an activity the employee has a good faith belief violates the law; or</i> • <i>In good faith, participates in an investigation, hearing, or inquiry conducted by a governmental agency on allegations the employer has violated the law.</i> The law also prohibits an employer from retaliating or discriminating against an employee who refuses to execute a directive that violates the law.
Paid Sick and Vacation Leave ²⁰	NO	Paid sick or vacation leave is not required under New Hampshire law. If paid leave is provided by an employment policy or practice, it is considered "wages" when it becomes due. Any vacation earned, accrued, or vested cannot be lost as a result of a change in an employer's policy.
Breaks for Nursing Mothers ²¹	NO	Under New Hampshire law, the act of breastfeeding does not constitute indecent exposure and restricting or limiting a mother's right to breastfeed her child is discriminatory. New Hampshire law does not address <u>workplace accommodations for employees that are nursing</u> , but there may be requirements under federal law. Employers should refer to the federal fact sheet.
Pregnancy Accommodations and Leave ²²	YES	Farms with six or more employees must permit their female employees to take leave for the period of temporary physical disability resulting from pregnancy, childbirth, or related medical conditions. Leave must be permitted until the employee is physically able to return to work and, at that time, she must be returned to her original job or a comparable position unless business necessity makes this impossible or unreasonable. This law excludes individuals employed by a parent, spouse or child.
Family and Medical Leave	NO	New Hampshire does not have a state-level family and medical leave law. Federal law requiring unpaid leave may apply depending on the size of the employer. Refer to federal fact sheet.



WORKING CONDITIONS

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TOPIC	ANSWER	DETAILS
Military and other Service Leave ²³	YES/NO	New Hampshire law does not have a state specific military leave law for private employers, but there are such requirements under federal law (USERRA). Employers should refer to the federal fact sheet. Employees who are fire department, rescue squad or emergency medical services agency members called into service when a state of emergency is declared are entitled to leave to respond to the emergency.
Crime Victim and Witness Leave ²⁴	YES	Farms with 25 or more employees for each working day in each of 20 or more calendar weeks must permit an employee, who is a crime victim or whose immediate family member is a crime (if a minor or incompetent) or homicide victim, leave to attend court, or any other legal or investigative proceedings associated with the prosecution of the crime. An employer may limit this leave if it creates an undue hardship to the employer's business.
Jury Duty Leave ²⁵	YES	An employee may take leave to respond to a summons, serve as a juror or attend court for prospective jury service.
Voting Leave	NO	No specific voting leave law covering private employers in New Hampshire.
School Activity Leave	NO	New Hampshire law does not address leave for private sector employees to attend a child's school activity.

HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination ²⁶	YES	<u>New Hampshire law</u> prohibits employers with 6 or more employees from discriminating based on race, color, religious creed, age, sex, pregnancy, sexual orientation, gender identity, national origin, physical or mental disability, marital status, tobacco use outside of employment, jury service, status as a victim or engagement in National Guard Duty. Employment discrimination means discrimination in hiring (including during interviews), promotion, firing, pay and other terms and conditions of employment. Employers are prohibited from discriminating in the amount or rate of pay based solely on sex. It is illegal to retaliate against employees for filing or otherwise aiding with a complaint or investigation related to activity protected by the applicable laws.
Harassment/ Sexual Harassment ²⁷	YES	Harassment is generally considered a type of employment discrimination. Harassment is unwelcome conduct. It becomes illegal when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe that a regular person would see it as intimidating, hostile or abusive. New Hampshire law prohibits harassment based on the protected classes identified in the previous section. Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when: <ul style="list-style-type: none"> Engaging in such conduct is made an implicit or explicit term or condition of employment. Example: A newly hired milker is told that sexual jokes, touching and nude posters are just part of farm life and she should try to ignore it. Acceptance or rejection of such conduct is made implicitly or explicitly the basis for an employment decision affecting an employee. Example: A manager tells a worker applying for a promotion that the job would be his if he just "treated her right." The conduct unreasonably interferes with an employee's work or creates an intimidating, hostile or offensive work environment. Example: One worker experiences repeated advances from another asking her for dates or "just to go out for drinks after work." The worker says she isn't interested, but the co-worker won't take "no" for an answer. It is illegal to retaliate against employees for filing or otherwise aiding with the filing or investigation of a harassment complaint.
Forced Labor ²⁸	YES	Human trafficking is illegal. Trafficking in persons means to knowingly compel a person against his or her will to perform a service or labor for the benefit of another through the use of force, threats, fraud or any other coercion. The payment of a wage or salary is not determinative on the question of whether or not a person was compelled to perform a service or labor against his or her will. In New Hampshire, forced labor is a class A felony. Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.



CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor ²⁹	YES	<p>No youth under the age of 12 years old may be permitted to work except for his or her parents, grandparents, or guardian or if the work is “casual.”</p> <p>Youth under 16 years old cannot work:</p> <ul style="list-style-type: none"> • <i>Before 7:00 a.m. or later than 9:00 p.m.</i> • <i>More than 3 hours per day on school days or 23 hours per week during school weeks.</i> • <i>More than 8 hours per day on non-school days and 48 hours per week during vacation.</i> <p>However, an employer who employs a youth under 16 years old in agricultural work can apply to the commissioner of labor to have these restrictions on hours suspended.</p> <p>Employers must obtain and maintain on file a signed document permitting the youth’s employment from the parent or legal guardian of a youth between 16 and 17 years old unless he or she has graduated or obtained a general equivalency diploma.</p> <p>Youth between 16 and 17 years old duly enrolled in school cannot work:</p> <ul style="list-style-type: none"> • <i>More than 6 consecutive days or more than 30 hours during a work week predetermined by the employer in which school is in session for 5 days.</i> • <i>More than 6 consecutive days or more than 40 ¼ hours during a work week predetermined by the employer in which school is in session for 4 days.</i> • <i>More than 6 consecutive days or more than 48 hours during a work week predetermined by the employer in which school is in session for more than 1 but less than 4 days.</i> • <i>No more than 6 consecutive days or more than 48 hours in any one week during school vacations, including summer vacation.</i> <p>No youth can be allowed to work at night (past 8:00 p.m.) more than 8 hours in any 24 hours or more than 48 hours during the week.</p> <p>No youth may be permitted to work in any hazardous occupation (as defined by federal law), except in an approved apprenticeship, vocational rehabilitation or training program. Refer to the federal fact sheet. More information on New Hampshire youth employment laws can be found online.</p>

HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers’ Compensation ³⁰	YES	<p><u>Workers’ Compensation</u> coverage is required in New Hampshire.</p> <p>Employers must report to the department of labor any injury sustained by an employee in the course of employment no later than 5 days after the employer learns of the injury. If the injury results in a disability extending beyond 3 days, the employer must file a supplemental report giving notice of the disability within 7 days of the accidental injury. Employers must also direct injured employees to complete and make available the “Notice of Accidental Injury or Occupational Disease,” form 8aWCA, as soon as possible with respect to any injury or disease which requires medical attention. More details.</p>
OSHA	YES/NO	New Hampshire is under federal OSHA jurisdiction. See the federal fact sheet for more information.
Housing	YES/NO	New Hampshire law does not explicitly address standards for farm-provided permanent agricultural housing, though general landlord/tenant or public health laws may apply. Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The FARM HR Manual has guidance around best practices for agricultural worker housing.

References

1. N.H. RSA § 275:49; N.H. Code Admin. R. Lab. 803.03.
2. N.H. RSA § 282-A:117(a).
3. N.H. RSA § 275:43; N.H. Code Admin. R. Lab. 803.01(a).
4. N.H. RSA § 275:44(I) and (II); N.H. RSA § 275:43-b(II).
5. N.H. RSA § 279:21(VIII).
6. N.H. RSA § 279:21.
7. N.H. RSA § 275:43-a; N.H. Code Admin. R. Lab. 803.03(h) and (i).
8. N.H. RSA § 275:49.
9. N.H. RSA § 77:3(I); N.H. RSA § 282-A:1 et seq.
10. N.H. RSA § 275:48.
11. See Annotations for N.H. RSA § 275:42.
12. N.H. RSA § 279:27; N.H. Code Admin. R. Lab. 803.03(f) and (g).
13. N.H. RSA § 275:56.
14. N.H. RSA § 282A-A:1 et seq.;
15. N.H. Code Admin. R. Lab. 303.02 and 303.05.
16. N.H. RSA § 184.
17. N.H. RSA § 275:35(IV).
18. N.H. RSA § 275:30-a.
19. N.H. RSA § 275-E:1 et seq.
20. N.H. RSA §§ 275:42(III) and 275:43(V); N.H. Code Admin. R. Lab. 803.03(d).
21. N.H. RSA § 132:10-d.
22. N.H. RSA § 354-A:7(VI)(b).
23. N.H. RSA § 275:66.
24. N.H. RSA §§ 275:61-275:65.
25. N.H. RSA § 500-A:14.
26. N.H. RSA §§ 354-A:1-354-A:26; N.H. RSA § 275:37; N.H. RSA §§ 275:71-275:72; N.H. RSA § 275:37-a; N.H. RSA § 500-A:14; N.H. RSA § 110-B:65.
27. N.H. RSA §§ 354-A:1-354-A:26; N.H. RSA § 354-A:7(V).
28. N.H. RSA §§ 633:6-633:7.
29. N.H. RSA §§ 276-A:1-276-A:26.
30. N.H. RSA § 281-A:53; N.H. Code Admin. R. Lab. 504.02.