



Legal Aspects of Managing an ECE Center

Protecting you and your business

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Workshop objectives

- Review must-have policies for a productive, legal, and safe workplace
- Understand the role of insurance in protecting you and your business



Laws are a good thing

Attention to legal matters can appear burdensome and boring. Laws are important in several ways. As business owners and directors, they are integral to your success.

- Laws promote the common good – without laws we would be governed by our own competing self-interests.
- Laws govern the resolution of disputes.
- Laws encourage people to do the right thing.



NH Labor Law Resources

- **NHLABORNET** - an electronic discussion group sponsored by Sheehan Phinney. It is a free service designed to address the needs and concerns of human resources professionals in New Hampshire.

(<https://www.sheehan.com/resources/labornet/>)

- **NH Department of Labor Email Alerts** – Informational alerts of interest to businesses in New Hampshire. The alerts may announce new laws, changes to existing labor law and rules or announce department-sponsored events or training seminars.

<http://www.nh.gov/labor/forms/email-alert.htm>

- **NH Department of Labor Law Seminars** – Attend at least once; then every year or so attend again! Sign up for email alerts regarding trainings.

<http://www.nh.gov/labor/news-events/events/index.htm>



NH Labor Law Resources

- **NH Department of Labor Top Ten Violations**
<https://www.nh.gov/labor/documents/violations-fact-sheet.pdf>
- **Upton and Hatfield, Attorneys at Law**
Article: *Top 10 New Hampshire Labor Law Violations*,
September 11, 2017
<https://www.uptonhatfield.com/articles/top-10-new-hampshire-labor-law-violations/>



Keeping it legal with employees

- New Hampshire's Labor Laws are comprehensive. There is a lot to know. NH Department of Labor officials will tell you that most violations are made due to lack of awareness and are not intentional.

Know the laws
that affect you
and your
business!



Top Employment Law Violations in New Hampshire

1. Failing to Give Written Notice of Pay and Benefits

- Each employee must be informed in writing of their wage rate, pay period, and a general description of fringe benefits (if any), including leave benefits, when they are hired.
- Employers must also outline any deductions; it is best to have this in writing too as it ensures that both employer and employee understand what total compensation will be.

Best Practice - Keep written notices of wage and benefit designations and changes in each employee's personnel file with proof that the employee received a copy. This includes notices of promotion, demotions, and any changes in pay.



Top Employment Law Violations in New Hampshire

2. Failing to Pay All Wages Due

- Employers must pay for breaks that are less than 20 minutes. Each year the NH Department of Labor collects millions in owed wages for employees.
- Records must show that employees are paid for all breaks that are less than 20 minutes.
- Employee complaints can subject an employer to a Department of Labor Audit.
- Final paychecks must be paid to an employee within eight days of his or her last day of work.



Top Employment Law Violations in New Hampshire

3. Failing to Keep Accurate Records of All Hours Worked

- Employers must keep an accurate record of all hours worked by employees and all wages paid. These records must be kept for a minimum of four years.
- This is the most common labor law violation in New Hampshire.
- All employees (except salaried, overtime exempt employees) must keep track of their hours each day, including actual time work started, work ended and any bona-fide meal break or personal break greater than 20 minutes in duration.



Top Employment Law Violations in New Hampshire

3. Failing to Keep Accurate Records of All Hours Worked, cont.

- Records can be kept in a variety of forms, including paper, e-mail, time cards, or punch clocks-as long as it is accurate and the employee initials any changes to the entries
- These records must then correspond to payroll/paycheck records.

Best Practice – Conduct self-audits of payroll records to ensure they are accurate!



Top Employment Law Violations in New Hampshire

4. Failing to Pay the Minimum Two Hours

- Employers must pay the required minimum time when an employee shows up for work. An employee who reports to work at the employer's request must be paid for a minimum of two hours, at their regular rate unless the employer contacts the employee prior their arrival.



Top Employment Law Violations in New Hampshire

5. Making Illegal Deductions

- Payroll deductions are numerous and common these days and they are also on the list of common labor law violations.
- According to the labor department, the only deduction an employer can make from a paycheck without permission is taxes.
- Employees must provide written authorization for insurance premiums deductions or contributions to a charity.

Best Practice – Detail payroll deductions in the employee handbook and ensure each employee acknowledges reading the handbook via signature when hired.



Top Employment Law Violations in New Hampshire

6. Neglecting Employee Safety

- The State of New Hampshire was one of the first states to recognize the need to enact legislation to protect the safety and health of its workforce.
- With regard to the safety and health of employees, several statutes and Administrative Regulations apply, such as:
- Occupational Health (RSA 140);
- Smoking in the Workplace (RSA 155:50);
- Safety and Health of Employees (RSA 277);



Top Employment Law Violations in New Hampshire

6. Neglecting Employee Safety, cont.

- Toxic Substances in the Workplace (RSA 277-A); and,
- Workers' Compensation (RSA 281-A)
- The essence of the rules are that each employer shall furnish to each of its employees employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees; and,
- Each employee shall comply with all safety rules and regulations that are applicable to their own actions and conduct.

Joint Loss Management Committee and Safety Plan Rules – Requirements changed from 5 (and 10) employees to 15 in 2013.



Top Employment Law Violations in New Hampshire

7. Illegally Employing Minors

- Violations of the labor laws applying to workers under the age of 18 are among the most common violations in NH.
- No one under age 16 can work earlier than 7 a.m. or later than 9 p.m., more than three hours per day on school days, and more than 23 hours during school weeks.



Top Employment Law Violations in New Hampshire

7. Illegally Employing Minors, cont.

- Youth who are 16 or 17 years old and enrolled in school cannot work more than six consecutive days or more than 30 hours during a school week, and cannot work more six consecutive days or 48 hours per week during vacations, including summer.
- Even 16- or 17-year-olds who have already earned a high school diploma cannot work unless the employer obtains and maintains on file a signed written document from the parent or legal guardian permitting their employment.

Best Practice – Closely manage the schedule of employees that are minors; under-schedule them so the likelihood of exceeding hour rules is less.



Top Employment Law Violations in New Hampshire

8. Misclassifying Employees

- There are criteria to determine whether a person is an independent contractor, and all criteria must be met. Found [here](#).

Question: Are substitute teachers employees or independent contractor?

Answer: They can be independent contractors if they are self-employed with their own business catering to several centers; registered with state; services governed by contract.

- Use of a third-party service to protect yourself from this making a mistake classifying substitutes.
- Primary issue is that work of individual is directed and controlled by the business.



Top Employment Law Violations in New Hampshire

9. Posting Mandatory Notices

In order, to make the employees aware of the rights and remedies available to workers in this state, the Legislature has mandated that employers post specific notices in every work place. More info can be found here:

<http://www.nh.gov/labor/forms/mandatory-posters.htm>



Other Employment Laws to Know

1. Wage and Hour Laws

- New Hampshire labor laws require an employer to pay overtime to employees, unless otherwise exempt, at the rate of 1½ times the employee's regular rate of pay for all hours worked in excess of 40 hours in a workweek.
- Employers cannot require that an employee work more than five (5) consecutive hours without granting a thirty (30) minute lunch or eating period.
 - If the employer cannot allow thirty (30) minutes, the employee must be paid if they are eating and working at the same time.



Other Employment Laws to Know

1. Wage and Hour Laws, cont.

- An employer cannot pay employees less frequently than weekly without special permission from the NH Department of Labor. If you are not paying weekly and never obtained permission you should file an appropriate request with the NHDOL to avoid having the NHDOL assess a fine during an audit.
 - <http://www.nh.gov/labor/forms/non-weekly-payment.htm>
- Employers must offer employees the option of receiving a paper check.



Other Employment Laws to Know

2. Workers Compensation Insurance

- All employers must provide workers' compensation insurance for their employees.
- Workers' compensation is a “no-fault” system. Employees receive compensation without having to prove that the employer was at fault for the injury. They need only show that the injury arose “out of and in the course of employment.”
- Both part-time and full-time employees must be covered.



Other Employment Laws to Know

2. Workers Compensation Insurance, cont.

- Liability and health insurance do not take the place of worker's compensation insurance.
- Employers must report or cause to be reported to the Department of Labor a First Report of Injury as soon as possible but no later than 5 days from when the employer learns of the injury.



Other Employment Laws to Know

3. Wrongful Termination

- There are numerous reasons why staff are fired, and many of them will be valid. However, many employers, lacking understanding of federal and state employment laws, will terminate employees in violation of law
- Whistleblower Laws can be found here:
<http://www.gencourt.state.nh.us/rsa/html/XXIII/275-E/275-E-2.htm>



Other Employment Laws to Know

3. Wrongful Termination, cont.

- Even in states which allow for “at will” employment (NH does), which means that any reason is sufficient grounds for terminating an employee (as opposed to states which require “good cause”), an employer may still be found liable if the employer violates its own personnel policies. It is very important that centers implement their policies consistently.
- Centers should also give themselves time to investigate allegations of wrongdoing. It is not always wise to fire on the spot – even for egregious violation, such as that a teacher hit a child. Instead, it is better practice to immediately put the employee on administrative leave (can be unpaid) and determine whether termination is warranted.



The Role of Insurance in Protecting the ECE Center

When you care for children for a fee at a commercial daycare center you face exposures to liability. As a provider you have a duty of Reasonable Care.

Reasonable Care - a legal duty to act with reasonable care while supervising children in your custody. When a provider fails to use reasonable care and a child is consequently injured or becomes sick, it can be said that the provider "breached the duty of care" or "acted negligently," and that provider can be sued.



The Role of Insurance in Protecting the ECE Center

To protect your center and in some instances your personal assets, you need to:

- Maintain a good safety program.
- Practice Transparency.
- Follow applicable licensing requirements
- Purchase insurance.



The Role of Insurance in Protecting the ECE Center

- Are NH licensed child care centers required to carry liability insurance? **NO!**
- If you do not carry insurance, you must disclose this in writing to parents.
- ECE centers will most often carry liability insurance. There are different types and different coverages. What you need will depend on the services you provide.

Insurance does not prevent you from being sued; it is a resource to be used if and when you are sued.



The Role of Insurance in Protecting the ECE Centernce

Types of Liability Insurance:

- General liability insurance provides a broader coverage and extends to cover field trips. It can also be extended to include other coverages, including child abuse (May entail additional cost.).
- Professional Liability/Errors and Omissions insurance is considered by many to be the broadest coverage. It provides coverage for negligent supervision for childcare. It is the same type of insurance carried by doctors.

Negligent supervision is when a child's injury or illness could have been avoided with reasonable care.

You can be sued if you are not negligent. Lawsuits can be filed against you when the injured child's parents/guardians "think" you are at fault.

Even groundless claims have to be defended by an attorney. With insurance, if the claim is covered, the insurance company pays the defense cost. If there is no insurance, you pay.



The Role of Insurance in Protecting the ECE Center

How does liability insurance protect you?

- If you are sued because a child is injured, or becomes sick and the claim is covered by the policy, the insurance company will pay your legal defense costs. If you are found liable (negligent), it will pay the amount specified by the judgement up to the policy limit.
- How much liability insurance you should buy depends on your individual needs. An insurance agent can help you determine appropriate coverage and limits.

Important reminders about insurance:

- Report incidents to your insurance carrier right away even if you don't think it will turn into a claim.
- Business insurance is tax deductible. Consult your tax preparer for specifics.



The Role of Insurance in Protecting the ECE Center

Policy Forms

Occurrence Forms vs. Claims-Made Forms - There are two types of insuring forms. An "Occurrence Form" is best because it covers claims reported after the policy expires, after you have gone out of business or changed insurance companies.

A "Claims-Made" policy only covers claims reported during a specified time, usually during the policy term or within one or two years after the policy expires. However, claims can be made against a provider a number of years after the injury, after the child has left the provider's care, or after a provider goes out of business.



The Role of Insurance in Protecting the ECE Center

Exclusions

All insurance policies have exclusions, events that are NOT covered by the policy. It is important to read your policy.

Exclusions might include incidents related to swimming pools or other bodies of water, overnight care, communicable diseases, or non-emergency care before or after your regular operating hours.

Read the resource provided in the
online library,
What Should I Look for in a Policy?



The Role of Insurance in Protecting the ECE Center

I'm incorporated, am I protected?

- Being incorporated, such as an LLC, offers some protections, predominantly related to contractual obligations related to your business and in instances where there is misconduct by employees. It does not protect you from personal liability.
- In the business of ECE any lawsuit related to negligence or the failure to fulfill your duty of reasonable care, can result in a suit against you personally. Insurance is a good way to protect yourself in this instance.



Key Takeaways

- Laws exist to protect your business; know which laws are most relevant to your business and stay informed;
- Recordkeeping is your best friend in ALL instances; documenting decisions made related to staff and families can protect you in a lawsuit.
- Developing a relationship of trust with the families you serve will limit your exposure to a lawsuit.
- Review your insurance policies. Know what coverage you have and know where your exposure is – beef up policies to minimize exposure in those areas.



Sources

- Cohen, A. *Bettering Your Odds of Not Getting Sued*. The Art of Leadership: Managing Early Childhood Organizations.
- DC Insurance Services, Inc. <https://www.dcins.com/faq.php>
- New Hampshire Child Care Program Licensing Rules, 2008-2016, Department of Health and Human Services
- New Hampshire Department of Labor, <http://www.nh.gov/labor/>
- Sheehan, Phinney, Bass & Green, PA <https://www.sheehan.com/>