



New Hampshire AFL-CIO: 2016 Election Topics

The New Hampshire AFL-CIO supports legislation to safeguard and promote the principle of collective bargaining and the rights, health and economic wellbeing of all New Hampshire working people, and opposes legislation that is harmful to working families and our communities.

Collective Bargaining

Collective bargaining is the process by which working people, joining in union, negotiate contracts with their employers to determine their terms of employment, including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family and more. Collective bargaining is a way to solve workplace problems and gives workers a stronger voice in improving their own job conditions.

The legal rights and processes of collective bargaining are protected and regulated by the federal National Labor Relations Act (NLRA) of 1935. A number of states have passed or attempted to pass laws to weaken collective bargaining rights by limiting the power of trade unions to represent the good-faith interests of public and private sector employees.

“Right-to-work”

Despite the misleading name, so-called “right-to-work” laws do not guarantee anyone a job and do not protect workers’ rights.

“Right-to-work” laws prohibit trade unions from collecting fees to cover the cost of contract administration from employees who benefit from the protections of a collective bargaining agreement, but do not join the union. There are different versions of “right-to-work” legislation, but all “right-to-work” laws are designed to limit the power of labor unions, and the workers they represent, to negotiate for better pay and working conditions.

Federal law requires trade unions to equally represent all workers covered by a collective bargaining agreement, regardless of union membership status. In states without so-called “right-to-work” laws, employers and their employees are permitted to negotiate agreements that ensure everyone who benefits from a union contract contributes a share of the costs of obtaining and protecting those benefits. By prohibiting unions from asking non-members to pay a “service” or “fair share” fee to cover basic contract administration costs, so-called “right-to-work” laws give state governments the power to limit the terms and conditions that employers and their workers may freely negotiate as part of a collective bargaining agreement.

Labor unions in “right-to-work” states are forced to absorb the costs of grievance and arbitration procedures on behalf of non-members who benefit from the terms of a bargaining agreement, but who do not contribute to the union’s operating fund. By draining resources and hurting the ability of unions to grow, “right to work” laws are consistently linked with lower average wages and reduced workplace safety for all working people in states that have passed the legislation.

Well-funded “right-to-work” proponents include the National Right to Work Committee, U.S. Chamber of Commerce, American Legislative Exchange Council (ALEC) and Americans for Prosperity. While supporters typically claim that “right-to-work” laws are necessary to attract new businesses and increase employment opportunities, rigorous economic studies have failed to validate such claims.

FOR MORE INFORMATION:

“Right-to-Work” States Still Have Lower Wages

By Elise Gould and Will Kimball, Economic Policy Institute, April 22, 2015

<http://www.epi.org/publication/right-to-work-states-have-lower-wages/>

“Given that unionization raises wages both for individual union members as well as for nonunion workers in unionized sectors, it is not surprising that research shows that both union and nonunion workers in RTW states have lower wages and fewer benefits, on average, than comparable workers in other states.”

Right To Work: A Failed Policy - New Hampshire update

By Gordon Lafer, Economic Policy Institute, February 7, 2012

<http://www.epi.org/publication/ib326right-to-work-new-hampshire-update/>

“Proponents of a right-to-work law claim that it is needed to bring new jobs into the state. But New Hampshire has already seen significant growth in the number of new companies incorporating in the state, including both local startups and out-of-state companies opening locations in New Hampshire.”

Prohibitions on Voluntary, Automatic Paycheck Deductions of Union Dues

In most states, union members may elect to have their union dues automatically deducted from their paychecks. In recent years, bills to prohibit employers from allowing voluntary, automatic deductions of union dues from employee paychecks have advanced in several states. A close kin of “right-to-work,” the purpose of this legislation is to hurt labor unions and shrink wages by making it harder to collect the membership dues unions need to cover operating costs and provide basic services to the workers they are legally obligated to represent.

Similar legislation has been introduced in New Hampshire but has failed to pass.

State Regulation of Agency Fees

Also called “fair share” or “service” fees, agency fees are user fees that are negotiated as part of a collective bargaining contract and empower labor unions to recover a fair portion of the costs of contract administration from employees who benefit from the protections of a bargaining agreement, but do not join the union. Federal law provides an exemption from paying agency fees for employees who can demonstrate a bona fide conscientious (religious) objection to financially supporting labor unions.

In general, agency fees are less than the full rate of member dues negotiated for a bargaining unit, and include only the portion of dues that unions may use to cover the cost of contract negotiations, administration of the contract and grievance resolution. Agency fees do not include the portion of member dues that unions are allowed to use for political activities and other purposes.

Unions and employers may negotiate different options for collecting non-member services fees, such as allowing agency fee-payers to direct their fees to an approved charity of their choice, or may completely waive the option to collect non-member fees. Courts have consistently upheld the right of public and private sector unions to collect agency fees, but this aspect of union contract negotiation has faced repeated legal and legislative attacks from anti-labor legislators and organizations.

State legislation that hurts unions by regulating the ability to negotiate fair share fees includes so-called “right-to-work” laws, but also includes proposals to allow non-members to direct their agency fees to a charity without having to demonstrate a valid conscientious objection and similar restrictions on negotiating the terms of non-member fees to pay for collective bargaining activities.

New Hampshire Retirement Security

Pension benefits are one of the most important benefits workers have. Public retirement benefits have been under attack across the nation and in New Hampshire, with the intention to eliminate or drastically cut defined-benefit pension plans for public employees such as teachers, other school employees and state and local government employees. For both public and private sector workers, defined-benefit pension plans provide the strongest guarantee for income security in retirement.

Public employees’ retirement benefits are legislated, giving New Hampshire legislators the power to cut benefits and shift more costs onto workers. Recent legislative actions affecting employees covered by the New Hampshire Retirement System (NHRS) include:

- Cost-shifting employer contributions to employees (resulting in an effective pay cut for employees);
- Eliminating a funding source for cost-of-living-adjustments for current retirees (resulting in seniors having less to live on each year);
- Changing the definition of earnable compensation;
- Increasing the length of service before an employee is eligible to retire with full benefits;
- Increasing the length of service before an employee is considered vested.

All of these changes result in decreased retirement security for those who have spent their career providing public service.

Wage & Hour Protections

Basic wage & hour protections are regulated by the federal Fair Labor Standards Act (FLSA) of 1938. The FLSA establishes minimum wage rates, overtime pay rules, employer recordkeeping requirements and child labor standards for full- and part-time workers in the private sector and in federal, state, and local governments.

States may enforce laws that expand wage & hour protections above beyond those provided under the FLSA, but may not act to weaken federal protections. For example, a majority of state legislatures have passed state minimum wage laws with 29 states and the District of Columbia setting the state's minimum wage above the federal minimum of \$7.25/hour.

The New Hampshire Department of Labor Wage & Hour Division has the power to investigate violations and enforce state labor regulations that cover payment or non-payment of wages and misclassification of employees as independent contractors.

Minimum Wage

The state of New Hampshire has no minimum wage law. Consequently, the state's minimum wage currently defaults to the federal minimum of \$7.25/hour for non-tipped employees. The minimum wage for New Hampshire employees who earn more than \$30/month in tips is set at 45% of the non-tipped minimum (\$3.26/hour), but employers are responsible for paying \$7.25/hour if the combination of an employee's base wage plus tips adds up to less than the federal minimum wage.

New Hampshire currently has the lowest minimum wage in the New England region. Opponents of raising New Hampshire's minimum wage typically claim that most minimum wage earners are teenagers, and that low-paying jobs act as an important incentive for entry-level workers to improve their skills and find better jobs with higher wages. Today, 72% of minimum wage workers in New Hampshire are adults (age 20 and over); 36% are over age 30. 6-in-10 are women, and 14% of minimum wage workers in New Hampshire have children. 32% work full time.

At \$7.25/hour, New Hampshire's minimum wage is inadequate for any Granite State worker or working family with children to make ends meet. Based on the actual cost of living in New Hampshire, economists estimate that a single adult with no children employed full-time, year round must earn a minimum of \$11.43/hour to achieve financial self-sufficiency. For families with children, the minimum living wage in New Hampshire ranges from \$13.25/hour for households with 1 child and 2 adults employed full-time, to \$34.67/hour for families with 3 children and 1 adult employed full-time.

The Economic Policy Institute (Washington, D.C.) estimates that 115,000 New Hampshire employees would directly benefit from raising the minimum wage to \$12/hour by 2020. 81% of the direct beneficiaries are adults; 16% are working parents. An estimated 43% of New Hampshire workers who would benefit from raising the state minimum wage to \$12.00/hour have some post-secondary education, and 14% have a 4-year college degree:

MIT Living Wage Calculator for the state of New Hampshire:
<http://livingwage.mit.edu/states/33>

Misclassification of Employees as Independent Contractors

The misclassification of employees as independent contractors is one of the most serious problems facing affected workers, employers and the New Hampshire economy.

In recent years, the employment relationship between workers and the businesses receiving the benefit of their labor has weakened as companies contract out or otherwise outsource work to be performed by other business operations. This is accomplished through the use of subcontractors, temporary agencies, labor brokers and third-party management.

This breakdown, or “fissuring,” of the employment relationship can result in the misclassification of employees as independent contractors in a variety of ways, such as employers simply mislabeling certain employees as independent contractors to reduce payroll costs. The use of legitimate independent contractors plays an important role in the New Hampshire economy, but when employers deliberately misclassify employees in an attempt to cut costs, everyone loses.

Misclassified employees often are denied access to critical benefits and protections to which they are entitled, such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance and safe workplaces. The U.S. Department of Labor reports that employee misclassification generates substantial losses to state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers’ compensation funds.

Legislative attempts to weaken regulation of worker misclassification typically focus on relaxing the legal definition of workers who may be appropriately classified as independent contractors, excluding specific occupations from workers’ compensation and wage & hour protections, and requiring individual workers who are sometimes self-employed to register as a business owner with the state.

FOR MORE INFORMATION:

National Employment Law Project, May 2016

Independent Contractor vs. Employee: Why Misclassification Matters and What We Can Do To Stop It

<http://www.nelp.org/publication/independent-contractor-vs-employee/>

New Hampshire Workers’ Compensation System

The New Hampshire Workers’ Compensation System administers benefits to provide for the cost of medical treatment and lost-time wage indemnity for workers who are sidelined by a job-related injury or illness. New Hampshire employers are required to maintain workers’ compensation insurance to cover all employees in their business. If an employer misclassifies an employee as an “independent contractor” or otherwise fails to provide the required level of workers’ comp insurance coverage, workers injured on the job can still file a claim, and if found eligible, will receive the approved range of workers’ comp benefits paid for by the state. The state of New Hampshire has the right to impose penalties and take action to recover costs of workers’ compensation claims from employers who violate state workers’ compensation insurance regulations.

The New Hampshire legislature has the power to modify workers’ compensation regulations, including setting upper limits on allowable costs for medical treatments and procedures (known as a “medical fee

schedule”), changing the indemnity rate for lost-time wages (currently set at 60% of weekly wages), and limiting or expanding which workers and injuries are covered by the system. In several states which have implemented workers’ compensation medical fee schedules, there is documented evidence of failures to provide adequate rehabilitative and medical care to injured workers who require intensive treatment or long-term services in order to return to work or manage permanent disabilities caused by a workplace injury.

Pressure to reduce workers’ compensation costs for New Hampshire employers have previously resulted in legislative proposals to institute a state workers’ compensation medical fee schedule, based on unverifiable cost data provided by a private insurance industry vendor. While it may be feasible to consider future legislative adjustments to stabilize workers’ compensation medical costs in New Hampshire, any changes to the current system must be based on reliable, comprehensive measurements of actual in-state costs of providing medical treatments to injured workers.

Best Value Procurement Standards

Achieving the best value for New Hampshire taxpayers and communities requires a conscientious evaluation of all the potential costs and impacts of public procurement decisions. “Best value” procurement standards expand the criteria for selecting a contractor for state-funded construction projects or vendor services beyond the default practice of awarding contracts to the lowest bidder, regardless of an applicant’s record of poor past performance or history of labor violations.

Rather than saving public money, lowest-bid procurement standards can have a serious negative impact on working people, communities and state revenue. If a low-bid contractor cuts operating costs by misclassifying employees as independent contractors (a common labor violation in the construction industry), the state subsequently loses business tax revenue and is obligated to cover workers’ compensation costs for misclassified employees who get hurt on the job. If a low-bidder achieves cost savings by cutting back on the training, skill level or experience of the workforce or by using substandard materials, it can contribute to unsafe working conditions, increase expensive change orders to redo subpar work and produce a lower-quality end product with higher repair and maintenance costs over time.

The state of New Hampshire must consider the public interest and community good before giving default preference to low-bid contractors with a known record of non-compliance with state labor, tax, insurance and safety laws, and give fair consideration to the added value of awarding bids to high-road contractors who have a demonstrated commitment to delivering top-quality services and on-time project completion at a competitive cost, while also providing safe workplaces, living wages and middle-class job benefits for their employees.

Prevailing Wage Laws

Prevailing wage laws ensure that workers on publicly-funded construction projects are guaranteed baseline pay rates and health care benefits that are comparable to the wages and benefits of similarly-skilled workers in the same geographic region who perform the same kind of job. Prevailing wage laws also require contractors and sub-contractors on covered projects to keep detailed records of all the workers they hire, what class of job each worker was assigned to perform and his or her hourly rate of pay.

Prevailing wage laws level the playing field for best-practice contractors to bid competitively against low-road companies that would otherwise have incentives to cut project labor costs to the bone in order to make a low-dollar bid. Prevailing wage laws additionally ensure that all workers on state- and federally-funded public works projects have or can afford to purchase health care coverage, which saves uncompensated care costs for the community. Prevailing wage regulations also help construction workers at the lowest end of the pay scale earn enough to get by without needing to rely on public assistance.

Prevailing wages for federally-funded public works projects are regulated under the federal Davis-Bacon Act. The New Hampshire legislature repealed state's prevailing wage law in the early 1980s. New Hampshire is the only New England state that lacks a prevailing wage requirement for state-funded public works projects.

Abolishing Criminal History Check Box on Job Applications (“Ban the Box”)

An arrest record or history of criminal charges is a significant barrier to employment for New Hampshire residents, even if a job applicant was never convicted of a crime. For New Hampshire businesses, the practice of automatically disqualifying job seekers based on a “yes” response to a standard criminal history inquiry on a job application potentially eliminates a pool of experienced, reliable job candidates who are eager to work.

In some cases, skilled workers with old convictions but no history of re-offending may be successfully employed for years or decades, but struggle to find new employment due to criminal history inquiries during the preliminary job application process. This factor has such a significant impact on limiting the pool of qualified job applicants that several major retail chains have already eliminated the criminal history check box on their standard application forms.

The inclusion of a criminal history check box on job applications disproportionately disadvantages low-income workers, who may not have the financial resources to pay the fees necessary to expunge an old criminal record. Recent studies suggest that when employers wait to inquire about criminal history until later in the candidate evaluation process, job seekers are better able to explain the context of a criminal record and are more likely to get hired.

“Ban the Box” laws stop employers from including a criminal history check-box on standard job application forms, usually with some exceptions for jobs where any type of criminal history would automatically disqualify an applicant. Restrictions on criminal history inquiries only apply to the initial stage of the job application process; employers are free to ask criminal history questions after a job applicant has been identified as a potential candidate for employment.

FOR MORE INFORMATION:

National Employment Law Project, April 2016

Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies

<http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>

Expanding Protections for New Hampshire Temporary Workers

Each year, approximately 2% of New Hampshire workers are employed through the temporary staffing industry. Temporary staffing firms hire and compensate workers to perform jobs for a third-party client company, which pays the temporary agency a pre-arranged fee for staffing services. In this contractual arrangement, the temporary staffing company serves as the employer of record, while the client employer determines pay rates, job duties and onsite work activities of temporary workers assigned to the client's facility. In some industries, such as light manufacturing, it is now common for businesses to retain only a small, specialized "core group" of regular direct-hire employees while staffing all other production operations with temporary workers.

Overall, temporary employees are paid less and are less likely to have employer-provided benefits such as affordable health care coverage and paid time off compared to regular, direct hire workers employed in the same jobs. Many so-called temporary jobs are not short-term. Some New Hampshire employees report that they were assigned to temporary jobs in an ongoing position with the same company for multiple years before receiving a permanent job offer.

Temporary employees are also more likely to experience job-related injuries and fatalities than regular employees, because they are more likely to be new to a job or industry, are unfamiliar with workplace safety standards and sometimes receive only rudimentary training for the high-risk jobs they are assigned to perform.

The "triangular" employment relationship created by temporary staffing is fundamentally different from the standard "direct" employment relationship that serves as the foundation for most state and federal regulations protecting the wages, workplace rights and health and safety of New Hampshire employees. Yet current New Hampshire law makes no distinction between temporary staffing companies that make profits by employing workers to farm out to third-party clients, and conventional employers who directly hire, pay and control the working conditions of people who work for them. This gap in employment law puts working people employed through the temporary staffing industry at greater risk of poor job outcomes, lower wages and unsafe working conditions.

For example, temporary workers report that they are often unclear about which firm actually employs them and who has the authority to approve absences or help with problems on the job. Currently there is no New Hampshire statute requiring temporary staffing companies to provide temp workers with clear and complete information about the terms of their employment, special work requirements or safety hazards when they are assigned to a new job.

Client companies that use temporary staffing services to supply workers to meet normal demands of business operations can exploit the murky relationship of temporary employment to shed liability for the fair treatment and job safety of the temp workers they co-employ. Several large New Hampshire manufacturers are known to use temporary workers to staff ongoing production jobs, and have temporary staffing company offices permanently installed on the business premises to ensure a constant flow of new and "permanent" temporary workers.

The growth rate of the number of temporary staffing firms in New Hampshire has been robust, even during the recent economic downturn when other types of business establishments were contracting. Employment through the temporary staffing industry does not conform to the standard understanding of the employer-employee relationship and the basic legal protections for workers that are derived from it.

Temporary staffing practices put workers at greater risk for mistreatment, financial hardship and job injuries and should be appropriately regulated, similar to the way that the state of New Hampshire currently regulates employee leasing companies.

For more information:

ProPublica, February 2014

U.S. Lags Behind World in Temp Worker Protections

<https://www.propublica.org/article/us-lags-behind-world-in-temp-worker-protections>

National Employment Law Project, September 2014

Temped Out: How Domestic Outsourcing of Blue-Collar Jobs Harms America's Workers

<http://www.nelp.org/publication/temped-out-how-domestic-outsourcing-of-blue-collar-jobs-harms-americas-workers/>

Prohibiting Use of Personal Credit History Information in Employment Decisions

Scientific studies find there is no relationship between a poor personal credit history and future job performance. Yet companies marketing pre-employment background check services encourage businesses to use personal credit history information as a legitimate employment screening tool, even for jobs that do not involve substantial access to business funds. A 2012 survey of members of the Society for Human Resource Management found that 47% reported using personal credit history information in routine hiring decisions.

Many New Hampshire working families experienced some level of financial stress in recent years, but low-wage workers; women; people of color; single parents; people who are recently divorced; workers who experience extended periods of unemployment; and, those with high medical debt due to a serious injury or illness are disproportionately disadvantaged by the use of personal credit history information in employment decisions. Except for positions that require an employee to have substantial control of business funds, a spotty credit record has no proven relevance to a job seeker's integrity, reliability or work qualifications.

Personal credit history information has no legitimate value for making good employment decisions. While popular with some employers, the routine use of credit history records as an employment screening tool is an unjustified invasion of privacy and creates unfair barriers to work for job seekers who need stable employment to get back on a secure financial footing. Because the practice also disproportionately affects protected groups of job applicants, it may also be discriminatory.

FOR MORE INFORMATION:

Demos, 2012

Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job

<http://www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job>

Expanding Access to Paid Sick Days and Family and Medical Leave

Everyone gets sick. Yet Granite State working families rarely have a parent or spouse outside the paid workforce who can be “on call” when a child gets sick or an elderly parent needs hands-on care.

Over 200,000 New Hampshire workers lack access to a single paid sick day to recover from their own illness or care for a sick child. Workers without access to paid sick days are nearly twice as likely as those with paid sick days to report going to work with contagious illnesses, like the flu or viral infection. Across the U.S., it is especially common for women and workers in low-wage industries, including retail, restaurant and food service industries, to lack access to paid sick leave.

The United States is the only economically developed nation that does not guarantee all workers a minimum number of paid sick days for personal illness or to care for a sick family member. Similarly, the United States is one of only three countries worldwide that do not guarantee a minimum period of paid, job-protected time off for the birth or adoption of a child (the other outliers are Oman and Papua New Guinea).

In the absence of federal leave laws, states and municipalities are taking action to ensure that more workers have access to the time off they need for family caregiving or to recover from an illness, without having to worry about losing a full day’s pay or getting fired. Early returns from states that have implemented paid leave laws suggest that the impact on businesses and the economy has been neutral or slightly beneficial. Because of the high number of New Hampshire children (79%) who live in households in which all parents are in the workforce and the growing importance of jobs in low-wage retail and hospitality industries to New Hampshire’s economy, it is especially critical for the state to consider legislative action to help more low- and middle-income working families get access to paid sick and family leave.

FOR MORE INFORMATION:

Center for American Progress, 2012

Ask an Expert: The Need for Paid Sick Days

http://images2.americanprogress.org/CAP/2012/08/081612_ATE_PaidSickDays.mp4

National Partnership for Women & Families

State Paid Leave Laws

<http://www.nationalpartnership.org/issues/work-family/state-paid-leave-laws.html>

PaidSickDays.org:

Current Sick Days Laws

<http://www.paid sick days.org/research-resources/current-sick-days-laws.html>

Paid Sick Days Fact Sheets

<http://www.paid sick days.org/research-resources/fact-sheets.html#.V1hPLL6YA6o>

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