



State of New Hampshire

Department of Labor

Hugh J. Gallen
State Office Park
Spaulding Building
PO Box 2076
Concord, NH 03302-2076
603/271-3176
TDD Access: Relay NH
1-800-735-2964
FAX: 603/271-2668
http://www.nh.gov/labor

Ken Merrifield
Commissioner

Rudolph W. Ogden, III
Deputy Commissioner

INSPECTOR'S REPORT

12/8/20	12/30/20	Becker	65	61786
DATE BEGAN	DATE ENDED	INSPECTOR	NUMBER	CASE #
Town of Franconia		9-Town	603-823-7752	
ESTABLISHMENT		TYPE OF BUSINESS	TELEPHONE NUMBER	
421 Main Street		Franconia, NH 03580	02-6000290	
PHYSICAL ADDRESS		CITY/TOWN LOCATED	EMPLOYER ID #	

PARENT COMPANY	PO Box 900, Franconia, NH 03580
	MAILING ADDRESS

townadmin@franconianh.org	<input type="checkbox"/> EMPLOYER REQUESTS ALL
BUSINESS EMAIL ADDRESS	CORRESPONDENCE VIA EMAIL

PRINT OWNER'S NAME & TITLE	SIGNATURE AND TITLE	DATE
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Kimberly Cowles, Town Administrator		
PRINT REPRESENTATIVE'S NAME & TITLE	SIGNATURE AND TITLE	DATE

Signature only confirms that the information above is correct. By signing this document, the employer does not necessarily agree with the findings of the inspection report.

MATERIAL GIVEN TO EMPLOYER	NUMBER EMPLOYED	TYPE OF INSPECTION
Minimum Wage poster <input type="checkbox"/>	Male, Adult <u>13</u>	Standard <input checked="" type="checkbox"/>
Protective Legislation poster <input type="checkbox"/>	Male, Minor <u>0</u>	Re-inspection <input type="checkbox"/>
Whistleblowers' Protection Act poster <input type="checkbox"/>	Female, Adult <u>7</u>	Special <input type="checkbox"/>
WARN Act poster <input type="checkbox"/>	Female, Minor <u>0</u>	
Criteria to Establish an Employee or Independent Contractor poster <input type="checkbox"/>	TOTAL <u>20</u>	
CD with Laws & Administrative Rules <input checked="" type="checkbox"/>		

VIOLATION	
Protective Legislation RSA 275	<u>3</u>
Citizens Job Protection RSA 275-A	<u>4</u>
WARN Act RSA 275-F	<u>N/A</u>
Youth Employment RSA 276-A	<u>13</u>
Minimum Wage RSA 279	<u>1</u>
Safety Law RSA 281-A:64	<u>0</u>
Workers' Compensation RSA 281-A	<u>0</u>
Misclassification RSA 281-A:2 IV(d)	<u>N/A</u>
Boiler RSA 157-A	<u>N/A</u>
Elevator RSA 157-B	<u>N/A</u>

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FEIN: 02-6000290

Workers' Compensation: Active - Primex

Inspection Period: 1/1/20 through 12/15/20

Safety Summary Form: On file eff. 8/30/06; Amended 7/13/12

Inspection Overview

A wage and hour inspection was conducted of The Town of Franconia, New Hampshire (hereinafter, "town" or "employer"). The town comprises the following departments: Administrative Offices; Safety Services (Police, Fire and Life Squad); Public Works (Highway, Water, Cemetery and Transfer Station); Library and Museums.

Prior to the start of the inspection, the inspector reviewed New Hampshire Department of Labor records to ensure the employer had on file workers' compensation insurance coverage and a safety program.

A Notification of Inspection ("Notice") was hand-delivered to the employer on December 8, 2020 at the employer's location in Franconia, New Hampshire. The inspector reviewed the Notice with Town Administrator Kimberly Cowles. She explained the inspection process and described the records needed for the inspection. The Notice stated that the inspection was scheduled to begin on December 16, 2020 and instructed the employer to produce records as follows:

- *Proof of Federal Employer Identification Number ("FEIN")*
- *Payroll Records from January 1, 2020 to December 15, 2020*
- *Time Records to include Edit/Audit Reports from January 1, 2020 to December 15, 2020*
- *Written Policy regarding Fringe Benefits*
- *Employee Files to include Employment Eligibility Documentation*
- *Proof of Workers Compensation Policy*
- *Proof of active Joint Loss Management Committee (15 or more employees)*
- *Safety Summary Form (15 or more employees)*
- *Boiler & Unified Pressure Vessel Certificate #*
- *Elevator Certificate #*

On December 16, 2020, the inspector began her review of records provided by the employer. Included therein were employee files, paper timecards, payroll registers, youth permissions, employer policies, and safety information.

In addition to speaking with the employer and reviewing documentation provided, the inspector conducted numerous confidential employee interviews throughout the inspection. This report consists of findings, comments and wage adjustments resulting from the inspection.

Description of Violations – Wage and Hour; Records

1. 4 Violations RSA 275-A:4-a Employment of Undocumented Workers Prohibited

No employer may employ any employee without obtaining documentation showing the employee's eligibility to work in the United States. The employer shall maintain such documentation for the period required by federal law. Acceptable documentation of eligibility to work in the United States shall include documents required by federal law or supporting documentation that satisfies the requirement of federal law.

Documentation to Work – 4 Violations – (1 violation per employee)

The employer allowed four employees to work without proper documentation showing identity and eligibility as required by the above statute. Two employees had only a New Hampshire driver's license on file and two other employees had nothing on file. During the inspection, the employer updated the employee files to include the missing eligibility to work documentation.

(See Worksheet – Employee Files)

2. 1 Violation RSA 275:49 Notification, Posting, and Records – Every employer shall:

- I. Notify the employees, at the time of hiring of the rate of pay, and of the day and place of payment;
- II. Notify his or her employees of any changes in the arrangements specified above prior to the time of such changes, provided however that there shall be no penalty for failure to provide notification to an employee concerning changes to the minimum hourly rate pursuant to RSA 279:21;
- III. Make available to his or her employees in writing or through a posted notice maintained in a place accessible to his or her employees employment practices and policies with regard to vacation pay, sick leave, and other fringe benefits;
- VI. Make such records of the persons employed by him or her, including wage and hour records, preserve such records for 3 years, and make such reports therefrom to the commissioner, as are required in statute for the enforcement of the provisions of this subdivision;

Lab 803.03 Notification and Records

- (a) Every employer shall at the time of hiring and prior to any changes notify his or her employees in writing as to the rate of pay or salary, whether by daily, weekly, biweekly, semi-monthly, or yearly, or by commissions, as well as the day and place of payment and the specific methods used to determine wages due pursuant to RSA 275: 49.
- (b) Every employer shall provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employee's expenses, pension and all other fringe benefits per RSA 275:49.
- (c) Pursuant to RSA 275:49, every employer shall inform his or her employees in writing of any change to such employees rate of pay, salary, or employment practices or policies as referred to in Lab 803.03 (a) and (b) prior to the effective date of such change.

- (d) Pursuant to RSA 275:49, any vacation pay, holiday pay, sick pay, bonus pay, personal day pay, employee expenses, and all other fringe benefits earned, accrued, or vested prior to any change shall not lapse due to the change.
- (f) Pursuant to RSA 279:27 and RSA 275:49, VI, relative to record keeping requirements, every employer shall:
 - (6) Maintain on file a signed copy of the written notifications, signed by the employee and provided to each employee as required by Lab 803.03 (a), (b) and (c) above.

Rate of Pay Notification – 1 Violation

*Eight of the 20 current employees, whose records were reviewed, did not have written notifications of rate of pay on file as required by the above statute. During the inspection, the employer provided written rate of pay notifications to employees who did not previously receive one.
(See Worksheet – Employee Files)*

3. 2 Violations RSA 275:43 Weekly or Biweekly –

- I. Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis, or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph IV or IV-a(a), on regular paydays designated in advance by the employer and at no cost to the employee:
 - (a) In lawful money of the United States;
 - (b) By electronic fund transfer;
 - (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
 - (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
 - (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e)...

Lab 803.01 Payment of Wages

Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance.

Lab 803.04 Hours Worked

For the purpose of determining "all wages due" for hours worked in accordance with RSA 275:43, I, the department of labor, under the authority provided by RSA 275:54, incorporates the "Wage and Hour Publication 1312, Title 29 Part 785 of the Code of Federal Regulations, United States Department of Labor".

USDOL 29 CFR 785.18 – Rest

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

No Permission to Pay Monthly – 1 Violation

During the inspection period, employees working at the library were paid on a monthly basis without permission from the New Hampshire Department of Labor. During the inspection, the employer changed this practice and now pays library employees weekly and on the same designated payday as all other town employees.

Rest Periods Not Paid – 1 Violation – (1 violation per employee)

The employer failed to pay one employee for rest periods of less than 20 minutes. The definition of a rest period is a short duration of time up to 20 minutes, which must be counted as hours worked. (See Wage Adjustment)

4. **1 Violation RSA 279:27 Records of Hours and Wages** - Every employer of employees shall keep a true and accurate record of the hours worked by each, wages paid to each, and classification of employment when necessary, and shall furnish to the commissioner or the commissioner's authorized representative upon demand a sworn statement of the same. Employers shall retain such records of hours and wages for 3 years and such records shall be open to inspection by the commissioner or the authorized representative at any reasonable time, subject to the provisions of RSA 273:9. Every employer subject to a statutory minimum wage shall post and make available to his or her employees a copy of such statutory minimum wage. Employers shall be furnished copies of posters on request without charge.

Lab 803.03 Notification and Records

(f) Pursuant to RSA 279:27 and RSA 275:49, VI, relative to record keeping requirements, every employer shall:

- (1) Record payroll information so that time records, showing the time work began and ended including any bona fide meal periods, shall support individual pay sheets and that payroll sheets, in turn, shall support canceled checks or cash receipts;
- (2) Require that time records with entries that are altered shall be signed or initialed by the employee whose record was altered;

- (3) Not make use of automated time keeping devices or software programs that can be altered by an employer without the knowledge of the employee, or that do not clearly indicate that a change was made to the record;
- (4) Make such good records as shall show the exact basis of remuneration of an employee's compensation;
- (5) Make any such records available if requested, to show other than an employer-employee relationship; and
- (6) Maintain on file a signed copy of the written notifications, signed by the employee and provided to each employee as required by Lab 803.03 (a), (b) and (c) above.

The employer uses paper timecards to track employees' time worked. Each department of the town administers its own time-keeping method and managers are responsible for verifying the accuracy of timecards. Employees sign their final timecards at the end of each pay period. Payroll is processed by the employer through a QuickBooks program.

Record-Keeping – 1 Violation

The employer failed to keep a true and accurate record of hours worked by employees. Many time records reflected only the total number of hours worked in a work day, rather than the actual start and end times as required by this section. On more than one occasion during this inspection, the employer did not require employees to acknowledge changes to time records as required by the above statute.

The inspector conducted confidential employee interviews throughout the inspection. One hundred percent of employees interviewed believe their timecards were accurate and that they were paid for all hours worked. All employees interviewed stated that they were able to easily communicate with the employer regarding timecard and pay questions, and that concerns and issues were addressed quickly.

The employer was notified that employees have 36 months to file a wage claim with the New Hampshire Department of Labor if they believe they were not paid all wages due to them, this report notwithstanding.

Description of Violations – Youth Employment

5. 3 Violations of RSA 276-A:4 Prohibitions –

VIII. No youth 16 or 17 years of age, except a youth 16 or 17 years of age who has graduated from high school or obtained a general equivalency diploma, shall be employed by an employer unless the employer maintains on file a signed written document from the youth's parent or legal guardian permitting the youth's employment.

Lab 1002.02 Parental Permission Requirements

- (a) In accordance with RSA 276-A:4, VIII, no youth 16 or 17 years of age, who has not graduated from high school or obtained a general equivalency diploma, shall be permitted to work without prior written authorization by the youth's parent or legal guardian.
- (b) The parental permission shall include the following:
 - (1) The establishment's name and location;
 - (2) The date permission is given by the parent or legal guardian;
 - (3) The signature of the parent or legal guardian;
 - (4) The title of the position the minor will fill or a description of the work activities; and
 - (5) The minor's date of birth.
- (c) The parental permission shall be on file at the establishment's worksite prior to the first day of employment

Parental Permission – 3 Violations – (1 violation per youth)

The employer allowed three youth employees aged 16 or 17 to work without first obtaining written parental permission. Three parental permissions were signed and dated after each youth employee began work. In addition, one of the late parental permissions was incomplete and did not contain the name of the employer and description of work.

(See Worksheet – Youth Permission)

6. 10 Violations 276-A:4 Prohibitions. –

I. No youth shall be employed or permitted to work in any hazardous occupation, except in an apprenticeship, vocational rehabilitation, or training program approved by the commissioner.

Lab 1003.01 Hazardous Occupations. Under the authority of RSA 276-A:8, and in reference to the term hazardous occupation, as defined in RSA 276-A:3, V, employers shall comply with the following federal orders regulating youth employment in hazardous occupations:

- (a) The following standards and orders of the Child Labor Bulletin No. 101 contained in "Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standard Act", publication WH-1330 Revised February 2013, available as noted in Appendix II:

- (1) The occupation standards for 14- and 15 year olds;
 - (2) The employment standards for 16- and 17 year olds; and
 - (3) The exemptions for apprentices and student-learners.
- (b) The following standards and orders of the Child Labor Bulletin No. 102 contained in "Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standard Act", publication WH-1295 revised June 2007, available as noted in Appendix II:
- (1) The Hazardous Occupation Orders for Agricultural Employment; and
 - (2) The exemptions for Student-Learners, 4-H Federal Extension Service; and
 - (3) Vocational Agriculture Training Programs.

Child Labor Bulletin No. 101 ("Bulletin") sets forth Occupation Standards for 14- and 15-year-old youths and Hazardous Occupations Orders ("HO") for 16- and 17-year-olds.

HO 12 (See Bulletin, Pages 20 and 21) addresses occupations involved in the operation of balers, compactors, and paper product machines. HO 12 provides that 16- and 17-year-old youths are prohibited from engaging in occupations of operating or assisting to operate power-driven paper product machines, such as scrap paper balers and paper box compactors. The HO lists certain exemptions that allow youths aged 16 and 17 to load, but not operate or unload, certain scrap paper balers and paper box compactors if specific conditions are met. (See HO 12 Exemptions 2.a through 2.e)

Hazardous Occupation – 10 Violations (1 Violation per youth per occurrence)

On at least 10 occasions, the employer permitted two 17-year-old youth employees to operate and assist with the operation of a scrap paper baler/paper box compactor. The youths worked at the town's transfer station, where they sorted paper and cardboard, and subsequently loaded it into a baler/compactor. Employee interviews revealed that both youths loaded the machine with no evidence that the employer met the aforementioned exemptions under HO 12. Moreover, employee interviews also indicated that both youths operated the baler/compactor, turning it on to compress the cardboard and paper they loaded into it.

NOTE:

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