

A FREQUENT NH DEPARTMENT OF LABOR VIOLATION - FAILURE TO HAVE A WRITTEN SAFETY PLAN, JOINT LOSS MANAGEMENT COMMITTEES AND SUMMARY SAFETY FORM FILED BIENNIALY

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Question: We are a small employer in New Hampshire and have only been in business for less than a year. One of our newer employees asked whether we have a "safety committee." We don't have one. Are we required to have one under New Hampshire law?

Answer: It depends on the number of persons you employ. An employer with **5 or more** employees must establish and administer a **joint loss management committee**, which is no doubt what your employee is referring to. An employer with **10 or more employees** must establish and administer the committee plus **prepare a written safety program and file a summary safety form** every 2 years with the NH Department of Labor ("NHDOL"). The summary safety form must be filed by January 1st in the year it is due. The failure to comply with this particular employment law (found at R.S.A. 281-A:64) appears each year in the NHDOL'S "[Top 10 New Hampshire Labor Law Violations](#)." Below is an overview of the law's specific requirements. Specific details of the statute and implementing regulations may be found at the following web links: [RSA 281-A:64](#) and [Lab. Reg. 600](#).

Threshold Coverage Issues: This safety law applies to both public and private employers. All employees -- full-time, part-time, and seasonal -- should be counted when determining the total number of employees in the workforce. By its terms, the requirements of this law attach when the threshold employee figures are met. That is, there is no minimum time period that the threshold figures must be employed in order for the statutory requirements to apply. Consequently, the fact that an employer may only employ 5 or more employees for less than a year does not eliminate an employer's obligations under the statute. If the threshold employee amounts are met, then the employer must comply with the statute's requirements.

Further, it should be noted that this statute's obligations do not merely apply in industrial, construction or other hazardous workplaces. If the employee

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threshold amounts are met, then the statute applies to virtually all workplaces in the state of New Hampshire.

Joint Loss Management Committee: The purpose of the committee is to promote safety and health in the workplace by having designated management personnel as well as employees addressing these issues on a regular basis. The committee must be composed of equal numbers of employer and employee representatives. If you are an employer with 20 or fewer employees, your joint loss management commission should have a minimum of 2 members. If you are an employer with more than 20 employees, then your committee should have a minimum of 4 members. The employee representatives must generally be selected by the employees.

A joint loss management committee should be located at each of the employer's primary places of employment. Each location should have employer and employee representatives present. Committee members should be trained in workplace hazard identification and accident/incident investigation adequate to carry out the committee's responsibilities. The law expressly provides that the committee must meet at least quarterly and must keep minutes of every meeting. The minutes must be made available for other employees to review. During an audit, the Department of Labor will likely ask to review these minutes. The committee must also have an elected chairperson, alternating between employee and employer representatives.

The specific tasks of the committee are to: develop clear goals and objectives; review workplace accident and injury data; assist with the identification of necessary safety and health training for employees; assist with the identification and definition of temporary, alternative duty assignments and develop specific safety programs as set forth by the NHDOL's regulations. [See Lab. 603.03.](#)

Employees must be paid for any time spent in committee activities at their regular rate of pay. Additionally, any required safety and health training for employees must be at no cost to them and without any loss of pay.

Written Safety Program: Employers with ten or more employees must develop a written safety program. The NH Department of Labor has developed a template for employers to follow ([A Guide For Developing A Written Safety Program and Lab. 600](#))

In large part, this written program merely documents the requirements of the Joint Loss Management Committee. As such, the written program should identify the mission and specific responsibilities of the committee members. The program should also contain resources on the pertinent safety rules applicable to the workplace at issue and should contain information on how to investigate and respond to accidents in the workplace. Each workplace should have an annual review process in place to ensure safety compliance. Further, once the committee develops specific emergency evacuation

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and other response plans, these should also be included in the program. Lastly, the program should also provide notice to employees about potential consequences for violations of the written safety program's directives. The written safety program should be made available for all employees to review.

Summary Safety Form: As noted above, the summary safety form must be filed every two years. This form is merely a summary of the above written safety program. Employers are not required to file the actual (and lengthy) written safety program. Instead, employers should use the Summary Forms available on-line on the NHDOL's website at the following link [Safety Summary Form](#).

Potential Penalties: Violations of this safety provision may lead to civil penalties of up to \$1,000 per day per occurrence. Penalties can be assessed as a result of an inspection, or for failure to file the required Safety Summary Form with Department every other year. The stated policy of the New Hampshire Department of Labor is to give employers every opportunity to come into compliance before assessing a penalty. If a violation is found during an onsite inspection, the NH Department of Labor inspector will generally permit an employer 2 weeks to correct the problem. Likewise, the Department of Labor often notifies employers of their delinquency in failing to file the Summary Statement Form, but this advance notice is not required. If no response is received a civil penalty may follow.

If you have questions regarding the issues discussed in this e-alert, or how best to achieve compliance under the provisions of RSA 281-A:64, please do not hesitate to contact any of the lawyers in Devine Millimet's Labor and Employment Practice Group.

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