

It's the Law: Employment Law and Personnel Policies



**New Hampshire Library Trustees
Association**

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You Are an Employer



- As trustee, you not only have the responsibility of preserving and maintaining the library's tangible resources, you also have the stewardship of the services the library provides through its staff
- Staff development is important
- Good employment policies can assist in staff development
- Awareness of the law is key to developing and maintaining a great library staff

Statutory Considerations



- RSA 202-A:15 Public Librarian; Qualification and Tenure
 - The librarian shall have education of sufficient breadth and depth to give leadership in the use of books and related materials.
 - The librarian shall be appointed by the board of library trustees for a term of office agreed to at the time of employment and until a successor is appointed and qualified.

Statutory Considerations



- **RSA 202-A:17 Employees; Removal**
 - No employee of a public library shall be discharged or removed from office except by the library trustees for malfeasance, misfeasance, or inefficiency in office, or incapacity or unfitness to perform the employee's duties.

Statutory Considerations



- RSA 202-A:17 Employees; Removal
 - Prior to discharge or removal of any such employee, a statement of the grounds and reasons therefor shall be prepared by the library trustees, and signed by a majority of the board and
 - notice thereof shall be given to the employee not less than 15 days nor more than 30 days prior to the effective date of such discharge or removal

Statutory Considerations



- **RSA 202-A:17 Employees; Removal**
 - Upon receipt of said notice and within 30 days thereafter, but not otherwise, the employee may request a public hearing. If such a request is made, the library trustees shall hold a public hearing on such discharge or removal.
 - The hearing shall be held not more than 30 days after receipt of the request for the hearing, and if the trustees, upon due hearing, shall find good cause for discharge or removal of the employee, they shall order the employee's discharge or removal from office.

Statutory Considerations



- **RSA 202-A:17**
 - There shall be no change in salary of such employee during the proceedings for discharge or removal nor until the final effective date of the order for discharge or removal.
 - The provisions of this section shall apply to the employees of any public library except in a case where the city or town has personnel rules and regulations which apply to such employees and which make provision for a public hearing in the case of such discharge or removal

Town of Littleton v. Taylor



- Only reported decision of the New Hampshire Supreme Court that interprets a library employee's status and RSA 202-A.
- **Held:** Librarian's simultaneous employment as librarian and service as town selectman did not violate statute prohibiting full-time town employee from being selectman; librarian was employee of the library and not of the town since neither the town's board of selectman, nor the town manager, had authority to assign her duties, and, although the trial court stated that she was the library "for the Town," employment as librarian of the public library did not automatically equate to employment by the town.

Teamsters Local 633 v. Town of Conway



- Various Town of Conway employees were seeking to have a bargaining unit certified
- The unit included “assistant librarians” as well as a number of town employees
- Held: assistant librarians were employees of the library trustees and not the town, and, because they did not have a common employer with the rest of the unit, they could not be included

Wrongful Termination



- Applies to at-will employment
- Employee may leave at any time, for any reason or no reason, employer may terminated at any time for any reason or no reason
- It does not apply to library employees, who are not at-will under RSA 202-A:17.
- However, should be aware of some of the issues that have arisen in the wrongful termination context

Wrongful Termination



- Two-part test:
 - Plaintiff must show that the defendant was motivated by bad faith, malice or retaliation in terminating plaintiff's employment
 - Plaintiff must demonstrate that he was discharged because he performed an act that public policy would encourage, or refused to do something that public policy would condemn

NH: Unfair Labor Practices



- RSA 273-A:5 Unfair Labor Practices Prohibited
 - (a) to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter
 - ✦ Those rights include right to organize and right to collectively bargain
 - ✦ Cannot discipline or intimidate
 - ✦ Specific rules for what activities employers can engage in when discouraging employees to organize – some persuasive actions are allowed

NH Whistleblowers' Protection Act



- RSA 275-E
 - Applies to library employees
 - Provides protection to employees in two circumstances:
 - ✦ Reporting of violations
 - ✦ Refusal to engage in illegal activity
 - Protects employees against:
 - ✦ Harassment, abuse, intimidation, discharge, threats, discrimination regarding compensation, terms, conditions, location, or privileges of employment

NH Whistleblowers' Protection Act



- Employee activity covered by WPA:
 - In good faith, reports or causes to be reported, verbally or in writing, what the employee has reasonable cause to believe is a violation of any law or rule adopted under state or federal law
 - Objects to or refuses to participate in any activity that the employee, in good faith, believes is a violation of the law; or
 - Participates in good faith, verbally or in writing, in an investigation, hearing, or inquiry conducted by any governmental entity, including a court action, which concerns allegations that the employer has violated any law or rule adopted under the state or federal law.

NH Whistleblowers' Protection Act



- 3-year statute of limitations for employee to bring civil suit
- Court may order reinstatement and back-pay, as well as reasonable attorney's fees and costs, to the prevailing party
- Remedies for actions short of termination may be sought under the statute
- Additional protection for public employees who files complaint under reasonable belief involves gross mismanagement or waste of public funds, property, or manpower, or evidences an abuse of authority or danger to public health and safety

Personnel Policies



- You should have them – sets forth guidelines and expectations for both employer and employee
- They should be reviewed regularly and updated as necessary, to reflect both changes in the work environment and culture as well as the law
- They should be written in plain language and should be effectively communicated to employees (orientation, provide copy, etc.)

Policies to Consider



- Anti-discrimination
- Social media use
- Internet use
- IT equipment use
- Expectations of employee conduct – mandatory and aspirational
- Anti-nepotism
- Benefits, including leave and vacation/ETO, health
- Wage and hour

Policies continued



- Performance evaluations
- Work week and work schedule, holidays
- Tuition reimbursement/continuing education/conferences
- Pay period
- Disciplinary procedures
- Safety procedures
- Travel