



# **NEW HAMPSHIRE** **DEPARTMENT OF LABOR**

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SIGN UP FOR: EMAIL ALERTS

# **TOP 10 NH LABOR LAW VIOLATIONS**

1. Failure to pay all wages due for hours worked  
(RSA 275:43, Lab 803.01)
2. Record keeping  
(RSA 279:27, Lab 803.03)
3. Illegal employment of workers under 18  
(RSA 276-A, Lab 1000)
4. Failure to pay 2 hour minimum pay  
(RSA 275:43-a, Lab 803.03 (h), (i), (j))
5. Failure to provide written notice  
(RSA 275:49, Lab 803.03)

# **TOP 10 NH LABOR LAW VIOLATIONS**

6. Employment of undocumented workers prohibited  
(RSA 275-A:4-a)
7. Illegal deductions from wages  
(RSA 275:48, Lab 803.02 (b), (e),(f))
8. Failure to secure and maintain workers compensation coverage and misclassification of employees  
(RSA 275:42 I & II and RSA 281-A)
9. Failure to have a written safety plan  
(RSA 281-A:64 Lab 602.01, 602.02, 603.02, 603.03)
10. Failure to pay minimum wage  
(RSA 279:21 Lab 803.02)

# *NEW HAMPSHIRE DEPARTMENT OF LABOR*

Life Cycle of a  
New Hampshire  
Employee



# **LIFE CYCLE OF A NEW HAMPSHIRE EMPLOYEE**

- I. Workers' Compensation Coverage
- II. Notification
- III. Documentation
- IV. Citizen's Protection
- V. Recording of Hours
- VI. Safety and Health Program
- VII. Deductions
- VIII. Weekly Payment of Wages
- IX. Terminating the Employment and Relationship

# **I - WORKERS' COMPENSATION**

- Failure to secure and maintain NH Workers' Compensation insurance coverage
- Misrepresentation of workers
- Exclusion of Executive Officers
- Prime Contractor's responsibility

# **I - WORKERS' COMPENSATION**

- Filing of the First Report of Injury
- First Aid
- Job Modification
- Second Injury Fund

# **II - NOTIFICATION**

## **RSA 275:49**

- Wage Notification; at least minimum wage
  - Signed by the employee and copy maintained by the employer
  - Hourly, salary, commission, flat rate, piece rate, etc.
  
- Benefits
  - Vacation, sick, holiday
  - How it is earned, lost, and calculated at termination



# III – DOCUMENTATION

## YOUTH EMPLOYMENT RSA 276-A

16-17 year olds:

- ✓ Parental permission
- ✓ No more than 6 consecutive days
- ✓ No more than 30 hours while in school 5 days
- ✓ Night work



## **III – DOCUMENTATION**

### **YOUTH EMPLOYMENT RSA 276-A**

- ✓ No more than 40.25 hours when school is in session for 4 days
- ✓ No more than 48 hours when school is in session for 3 days or less, including school vacation weeks
- ✓ Hazardous Orders - no driving at all for 16 year olds, limited driving for 17 year olds. No roofing!

# **III – DOCUMENTATION**

## **YOUTH EMPLOYMENT RSA 276-A**

14 and 15 year olds:

- ✓ HO's - no mfg., construction, golf carts, mowing, weed whacking; no open water lifeguarding
- ✓ NH says: Not earlier than 7 am, no later than 9 pm; no more than 3 hours on school days, 23 hours on school weeks
- ✓ USDOL say: 18 hours on school weeks and 7am to 7 pm. Summer hours until 9 pm
- ✓ Non-school days can work 8 hours a day
- ✓ NH age 12 can work. USDOL say 14 year olds can work
- ✓ Can volunteer but need certificate; Unpaid interns/school to work

# *IV - CITIZENS PROTECTION*

## *RSA 275:A-4-a*

Documentation to  
show eligibility to  
work



# V - RECORDING HOURS

## RSA 279:27



- Two Hour Minimum (275:43-a)
  - Public employers are exempt
- Hourly vs Salaried
  - Time records for all except exempt salaried employees
  - All changes to time must be acknowledged by employee

# **HOW TO COMPLY WITH NHDOL SAFETY LAW RSA 281-A:64 & LAB 600 RULES**

If you employ 15 or more NH employees then you shall:

- 1.** Have a written Safety and Health Program for your employees.
- 2.** File the NHDOL Safety Summary Form only one time from the year 2011 or after.
- 3.** Meet and document quarterly Joint Loss Management Committee Meetings.

# **SAFETY & HEALTH PROGRAM**

1. Introduction
2. Management Statement of Commitment
3. Responsibilities – Management, Supervisors, Employees, Safety Coordinator/Director
4. Joint Loss Management Committee (JLMC) – Organization, Duties & Responsibilities
5. Safety Rules & Regulations – OSHA (private sector), LAB 1400 Rules (public sector)

# **SAFETY & HEALTH PROGRAM (cont'd)**

6. Disciplinary Policy
7. Accident/Incident Reporting
8. Training Requirements for Safety & Health
9. Emergency Evacuation & Response Plans
10. Safety & Health Communications
11. Workplace Violence



**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
 PO BOX 2076  
 CONCORD, NH 03302-2076  
 FAX (603) 271-2668

**SAFETY SUMMARY FORM DATED** \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

COMPANY N.H. PHYSICAL ADDRESS: \_\_\_\_\_ CITY \_\_\_\_\_ ST \_\_\_\_\_ ZIP \_\_\_\_\_

COMPANY MAILING ADDRESS (Included in this form): \_\_\_\_\_ CITY \_\_\_\_\_ ST \_\_\_\_\_ ZIP \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_

PHONE#: \_\_\_\_\_ FAX#: \_\_\_\_\_ EMAIL: \_\_\_\_\_

NUMBER OF N. H. EMPLOYEES: \_\_\_\_\_ (This includes anyone, who at any time works, in N.H. within the year.)

North American Industry Classification CODE (NCICS): \_\_\_\_\_ FED. ID. #: \_\_\_\_\_

NATURE OF BUSINESS: \_\_\_\_\_

*Please list additional NH locations, if any, at the end of this report.*

*Answer all of the following questions. If you are not sure how a particular question applies to your company, contact NH DOL or view the supplemental instructions, a separate document available for viewing or download at <http://www.nh.gov/labor/documents/safety-summary-instructions.pdf> on the NH DOL web site.*

*"Does not apply" is not an acceptable response to any of the questions.*

- 1) List **potential** safety and health hazards of your company. (Example: burns, trips/falls, or violence, etc.)

\_\_\_\_\_

- 2) List the members of your company's joint loss management committee by name and job title. Please indicate which members represent the employer and those which represent employees and identify chairperson. There should be equal representation between management and employees or more employees than management representation.

Management Member(s)-(supervisor)      Employee Member(s)-(non-supervisory)

_____	_____
-------	-------

- 3) Specify your emergency response procedures. (Example: call manager; call 911; transport injured employee, etc.)

\_\_\_\_\_

- 4) Identify person(s) by name and title qualified to take corrective actions on safety and health hazards, conduct on-site inspections, and responsible for employees' safety training.

[Redacted]

- 5) Indicate your policy to communicate safety and health concerns with the activities of **sub-contractors or outside service providers**, when, or if utilized. (Example: are they in compliance with OSHA Regulations? Do they have workers' compensation coverage?)

[Redacted]

- 6) Summarize your disciplinary policy with regard to violations of your safety and health policies.

[Redacted]

- 7) Summarize your policy for providing adequate resources dedicated to safety including providing safety training, posting minutes of the JLMC meetings, providing access to your safety and health manual, and when required, providing personal protective equipment.

[Redacted]

[Redacted]

Person completing the form

[Redacted]

Date

**ADDITIONAL NH COMPANY LOCATIONS**  
(common owner and same industry type)

NAME	STREET	CITY	FED ID NO.	NO. of EMP.
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

**NHDOL PRIVATE SECTOR EXAMPLE ONLY**

**Joint Loss Management Committee (otherwise known as JLMC or Safety Committee)  
Meeting Minutes**

**Entity Name:**

**Date of Meeting & Start Time:**

**JLMC Representatives (Name & Title):**

<i>Management Representatives</i>	<i>Employee Representatives (Non-Supervisory)</i>

*Lab 603.02: Must have equal numbers of employer and employee representatives or more employee than management representatives.*

**Committee Purpose:** The purpose of a JLMC is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health in each workplace.

**Meeting Discussions (Examples):**

<i>1. Reviewed previous month's injury reports (if applicable)</i>
<i>2. Are there any injuries, illnesses, or near misses to discuss?</i>
<i>3. Review of any Workplace Safety Concerns/Trainings/Inspections</i>
<i>4. Review of Safety Program Manual</i>
<i>5. Safety &amp; Health Training for JLMC Members:</i> <ul style="list-style-type: none"><li><i>o Review of Applicable OSHA Laws &amp; Rules and Chap Lab 600</i></li></ul>
<i>6. Review of any workplace Safety Accomplishments</i>
<i>7. Health &amp; Safety Topic: Discussion- Ergonomics in the Office</i>
<i>8. Health &amp; Safety Topic: Recommended Changes</i>

**Chap Lab 603.03: Action Plan, Assigned Duties, & Responsibilities:**

*Schedule next quarterly meeting, post JLMC meeting minutes for employee review, chairperson elections (if applicable), annual safety inspection, relay policy statement, goals, and objectives to all employees, identify and schedule employee/job specific safety training, review employee suggestion box, attend safety training on (date)*

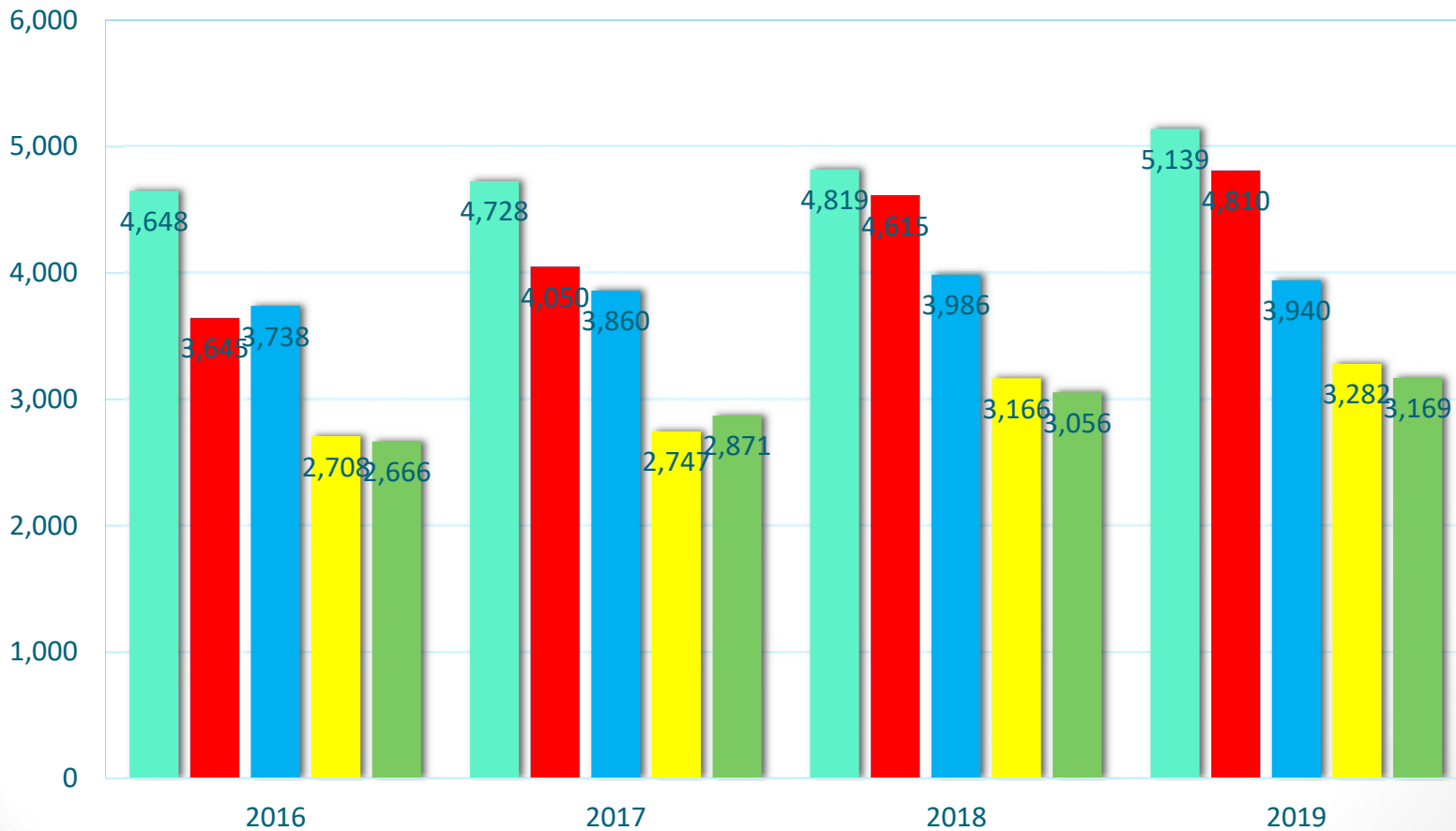
**Review from Previous Meetings:**

*Were there things in your to-do from the last meeting? Were they taken care of? Have major safety hazards been communicated to all employees for caution purposes? Examples: broken stairs, loose railings, etc.*

Applicable NHDOL Statutes: [RSA 281-A:64](#), & [Administrative Rule Lab 600: Safety Programs and Joint Loss Management Committees](#)

# NH DOL BIENNIAL REPORT INJURIES BY BODY PARTS

Finger Other Multiples Lower Back Hand Knee



# **NHDOL BENNIAL REPORT**

## **INJURIES BY CAUSE**

<b>CAUSES</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
1. Slip or Fall	8,038	9,493	10,251	10,445
2. Lifting Action	7,025	7,012	7,162	7,343
3. Person	2,995	3,676	4,317	5,041
4. Hit by Object	3,889	4,038	4,154	4,619
5. Other	4,070	3,478	3,981	4,274
6. Sharp Object	2,298	2,026	2,345	2,523
7. Tool	1,891	1,967	2,152	2,137
8. Non Applicable	1,318	1,368	1,459	1,691
9. Repetitious	1,050	1,044	1,048	1,086
10. Motor Vehicle Accident	729	828	812	915

# **WHY INVEST IN WORKPLACE SAFETY ?**

A written safety program with the help of a Joint Loss Management Committee will:

1. Reduce fatalities, injuries and illnesses
2. Increase productivity and financial performance
3. Reduce absenteeism and turnover
4. Raise employee morale
5. Reduce direct and indirect costs

# **FATALITIES, INJURIES AND ILLNESSES WILL INCREASE YOUR DIRECT COSTS**

Examples of Direct Costs:

- Medical expenses
- Worker's Compensation premiums increase
- Compensation to injured employees for time away from work
- Repair or replacement of damaged equipment, buildings, and other items

# **FATALITIES, INJURIES AND ILLNESSES WILL INCREASE YOUR INDIRECT COSTS**

## Examples of Indirect Costs:

- Time lost by a supervisor to help injured worker, investigate incident, prepare reports, and adjust work for staffing
- Damage to tools, equipment, materials or property
- Losses due to late or unfilled orders, loss of bonuses or payment of penalties
- Losses resulting from less than full productivity of injured workers upon return to work
- Loss of profit because of lost work time and idle machines



# How to Determine Total Cost of an Employee Injury

Direct Cost	Cost Multiplier
\$0 - \$2,999	4.5
\$3,000 - \$4,999	1.6
\$5,000 - \$9,999	1.2
\$10,000 or more	1.1

- Indirect cost = direct cost X cost multiplier
- Cost multiplier depends on size of direct cost
- Total cost = Direct cost + Indirect Cost

✓ Example:

The Insurance Claim Cost = \$12,000

Indirect cost \$12,000 X 1.1 = \$13,200

Total cost \$12,000 + \$13,200 = \$25,200

**TAKE A BREAK**

# VII - DEDUCTIONS

## RSA 275:48

All allowed deductions are in the law  
Example:

- ✓ Accidental overpayment – no more than 20% of gross wages each pay period for repayment
- ✓ Insurance benefit lapse - employer responsible for failed obligation and deducted premiums



# **VIII - PAYMENT OF WAGES**

## **RSA 275:43**

- Permission to pay other than weekly/biweekly
- Payment options: check, direct deposit, or pay cards
- Paying all wages due:
  - Short breaks and meal periods
  - Rounding
  - Late pays/errors in pay
- No fee to cash payroll check; convenient to business

# **VIII - PAYMENT OF WAGES**

## **RSA 275:43**

### **SALARIED EMPLOYEES - RSA 275:43b**

■ Paid same salary each pay period regardless of quality or quantity of work

#### **UNLESS**

✓ No work performed at all, or disciplinary suspension with or without pay in accordance with Fair Labor Standards Act

✓ Bereavement Leave

✓ Family and Medical Leave Act

✓ If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period

✓ Hired after the beginning of a pay period or terminates of their own accord or terminated for cause

✓ Offset any amount received by a salaried employee for jury duty, witness fees, or military pay

# **IX - TERMINATING AN EMPLOYEE**

## **RSA 275:44 / RSA 275:45**

### **SALARY vs HOURLY**

- Discharge – 72 hours
- Quit – next regular payday except: if employee gives at least one pay period notice, then within 72 hours
- When suspended for labor dispute or laid off for any reason, wages should be paid in full not later than next regular payday through regular pay channels or by mail, if requested
- In the case of a dispute over the amount of wages due, employer shall pay without condition and within the set time by this subdivision, all wages due



# FAIR LABOR STANDARDS ACT



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

[dol.gov/whd](https://dol.gov/whd)  
1-866-487-9243

# FLSA Enforcement



- Carried out by the Wage and Hour Division in the U.S. and territories
- If violations found, the Wage and Hour Division secures agreement to comply in future, supervises voluntary payment of back pay as applicable



**FACT SHEET:**  
[Visits to  
Employers](#)



# Overtime

1½

Covered, non-exempt employees must receive one and one-half times their regular rate of pay for all hours worked over forty in a workweek

- All time that is hours worked must be counted when determining overtime hours worked.



# Overtime



- Compliance determined by workweek
- Each workweek stands alone
- Workweek is 7 consecutive 24-hour periods (168 hours)

# Overtime

## Regular Rate

- Determined by dividing total earnings in workweek by total number of hours worked in workweek

$$\text{Total Compensation} \div \text{Total Hours Worked} = \text{RR}$$

- *Regular Rate* may not be less than the applicable minimum wage
- *Total earnings include commissions, certain bonuses, and cost of room, board, and other facilities provided primarily for the employee's benefit*

# Overtime

## Regular Rate and Premium Pay for OT Hours

- **STEP 1:** Total compensation paid in a workweek (minus statutory exclusions) divided by total hours worked in the workweek

$$\text{Total Compensation} \div \text{Total Hours} = \text{RR}$$

- **STEP 2:**  $\text{RR} \times .5 = \text{Half-time Premium Pay per OT Hour}$
- **STEP 3:** (Half-time) Premium Pay Rate  $\times$  Overtime Hours in the Workweek = Overtime Compensation Due



# Overtime

## Exercise: Production Bonus

<b>Hourly Rate:</b>	\$12.00	$48H \times \$12 =$	\$576
<b>Bonus per week:</b>	\$100.00	$\$576 + \$100 =$	\$676
<b>Hours worked:</b>	48	$\$676 \div 48H =$	\$14.08 <b>RR</b>
		$\$14.08 \times .5 =$	\$7.04
		$\$7.04 \times 8H =$	\$56.32 <b>OT</b>
<b>• Total compensation for week:</b>		$\$676 + \$56.32 =$	\$732.32

# Overtime

## Exclusions from the *Regular Rate*

- Gifts, *discretionary* bonuses
- Payments for time not worked
- Reimbursements for expenses
- Profit sharing plans, stock options
- Retirement and insurance plan contributions
- Overtime premium payments

# Exemptions

## Exemptions

There are numerous exemptions from the minimum wage and/or overtime standards of the FLSA

One of the most common FLSA minimum wage and overtime exemptions is often called the “**541**,” “**white collar**” or “**EAP**” exemption

# Overtime

## Three Tests for the “White Collar” Exemptions

**1. Salary Basis**

**2. Salary Level**

**3. Job Duties**



**FACT SHEET:**  
Blue Collar Workers



# Overtime

## Salary Level Test

For most employees the minimum salary level required for exemption is **\$684.00 per week.**

# New Overtime Rule

## Nondiscretionary Bonuses

- Nondiscretionary bonuses and incentive payments (including commissions) are forms of compensation promised in advance to employees (e.g., bonuses for meeting set production goals, retention bonuses, and commission payments based on a fixed formula).
- May be used to satisfy up to 10% of the standard salary and special salary levels.
  - Minimum of 90% (approx. \$616 per week) of standard salary level must be paid as a weekly salary.
- Bonuses must be paid on an annual or more frequent basis.

# New Overtime Rule

## Catch-Up Payments

- If an employee does not earn enough from nondiscretionary bonuses, commissions, or incentive payments to meet the standard salary level in the 52-week period – an employer may make a “catch-up” payment within one pay period after the end of the 52-week period.
- Any such “catch-up” payment will count only toward the prior 52-weeks salary amount and not toward the salary amount during the period in which it is paid.

# **New Overtime Rule**

## **Example Catch-Up Payments**

**1/2/2020 – 12/30/2020**

**January – June**

\$616 per week + \$1,300 bonus

**July – December**

\$616 per week + \$2,000 bonus

**Catch-Up Payment**

\$236

# New Overtime Rule

## Example Catch-Up Payments

### Minimum Salary Level

\$684 per week = \$35,568 per year

### Employer Paid

\$616 per week = 90% of standard salary level

\$616 X 52 weeks = \$32,032

Jun Bonus \$1300 + Dec Bonus \$2000 = \$35,332

Total paid = **\$35,332** is **\$236 less** than the minimum amount of \$35,568 required per year

# Salary Basis Test

- An exempt employee must regularly receive a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- If employer chooses to use nondiscretionary bonuses and incentive payments to meet the standard salary level, the employee must be paid at least 90% of the standard salary level for any week in which the employee performs **any** work

# Duties Tests

## No Changes

- The Final Rule did not make any changes to the Duties Tests

# Executive Duties

## No Changes

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight



# Administrative Duties

## No Changes

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

# Professional Duties

## No Changes

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

**OR**

- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

# Computer-Related Occupations

**To qualify for the computer employee exemption, an employee, such as a computer analyst, programmer, or software engineer, must receive either:**

- A guaranteed salary or fee of \$684 per week or more, or
- An hourly rate of not less than \$27.63 per hour and
- Their primary duty must be in design, development, or creation of computer systems, systems analysis etc. (as defined in the regulations).

# Compliance Assistance

- **Steven McKinney**, *Community Outreach & Resource Planning Specialist*
- PHONE: 603-606-3125
- E-mail: [Mckinney.steven@dol.gov](mailto:Mckinney.steven@dol.gov)
- Web: [www.dol.gov/whd](http://www.dol.gov/whd)

# Wage and Hour Division

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