

APPENDIX II-C

**RULEMAKING NOTICE FORM**

**NOTE: ADDITIONAL NOTICE**  
See page one of the instructions regarding additional notice.

Notice Number \_\_\_\_\_ Rule Number Lab 803.01, Lab 803.03, and Lab 803.05

<p>1. Agency Name &amp; Address:</p> <p style="margin-left: 20px;"><b>NH Department of Labor 95 Pleasant Street Concord, NH 03301</b></p>	<p>2. RSA Authority: <u>RSA 275:54 &amp; RSA 279:15</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="margin-left: 20px;">Adoption _____</p> <p style="margin-left: 20px;">Amendment _____</p> <p style="margin-left: 20px;">Repeal _____</p> <p style="margin-left: 20px;">Readoption _____</p> <p style="margin-left: 20px;">Readoption w/amendment <u>  X  </u></p>
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5. Short Title: **Responsibilities of Employers and Their Representatives**

6. (a) Summary of what the rule says and of any proposed amendments:

**Lab 803.01 on payment of wages is being readopted with amendment to paragraph (a) and subparagraph (b)(2) to provide requirements to ensure compliance with RSA 275:43, I as adopted by Chapter 45 of the Laws of 2017 (HB 194), effective 7/11/17, and Chapter 133 of the Laws of 2018 (SB 428), effective 7/29/18. The changes to Lab 803.01 (a) correspond to the changes in the law, which allows employers to pay on a weekly and biweekly basis without the need to seek written permission from the Department of Labor.**

**Lab 803.01 (b) outlines the process for an employer who seeks to pay its employees less frequently than required by RSA 275:43, I. With the changes to the law which now allows bi-weekly pay without prior permission from the Department of Labor, a change to Lab 803.01(b)(2) to remove the word “bi-weekly” is being proposal.**

**Lab 803.03 on notification and records is being readopted with amendment to paragraph (g) to provide requirements to ensure compliance with RSA 279:27 as adopted by Chapter 312 of the Laws of 2018 (SB 318), effective 6/25/18. The changes to Lab 803.03 (g) correspond to a change in the length of time that an employer must preserve employee time records. Pursuant to the change in the law, an employer is only required to preserve records for three years. The prior law required an employer to preserve records for four years.**

**Lab 803.05 on exemptions is being readopted with amendment to paragraph (a) to clarify the requirements of “bonafide volunteers”.**

6. (b) Brief description of the groups affected:

**All individuals, businesses and political subdivisions of the state who have employees are affected by the rule**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<b>Rule</b>	<b>State Statute Implemented</b>
Lab 803.01 (a) & (b)	RSA 275: 43, I & II
Lab 803.01 (c) & (d)	RSA 275: 43, II
Lab 803.01 (e) & (f)	RSA 275: 44, I & II
Lab 803.01 (g)	RSA 279: 27 & 275: 49, I, II, VI & :50
Lab 803.03 (a) – (d)	RSA 275: 49
Lab 803.03 (e)	RSA 275: 48 & :49
Lab 803.03 (f) & (g)	RSA 279: 27, 275: 48, I & :49, VI
Lab 803.03 (h) – (j)	RSA 275: 43-a
Lab 803.05	RSA 275:42, I & 279:1, X

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Sarah Fuller, Esq.**

Title: **Hearings & Rules Administrator**

Address: **95 Pleasant Street  
Concord, NH 03301**

Phone #: **603-271-3597**

Fax#: **603-271-6149**

E-mail: **Sarah.Fuller@dol.nh.gov**

TTY/TDD Access: Relay NH 1-800-735-2964  
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **January 24, 2020**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **January 16, 2020 at 2:00 pm**

Place: **Department of Labor, 95 Pleasant Street Concord NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:215 , dated 12/3/2019

**1. Comparison of the costs of the proposed rule (s) to the existing rule (s):**

There is no difference in cost when comparing the proposed rules to the existing rules.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate. No impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:** None

**B. To State citizens and political subdivisions:** None

**C. To Independently owned businesses:** None

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**These rules do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivisions in such a way as to necessitate additional local expenditures by the political subdivisions**

PART Lab 803 RESPONSIBILITIES OF EMPLOYERS AND THEIR REPRESENTATIVES

**Readopt with amendment Lab 803.01, effective 04/11/2016 (Document # 11070), to read as follows:**

Lab 803.01 Payment of Wages.

(a) Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his or her employees, ~~within 8 days, including Sundays,~~ after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages meets the requirement provided the first payment of wages is made within 8 days, including Sunday, after expiration of the weeks in which the work is performed on a biweekly basis with designated paydays falling every fourteen (14) days) thereafter. shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. ~~Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.~~

(b) Every employer who requests permission to pay less frequently than required by RSA 275:43, I, shall supply the department with the following:

- (1) Method of payment;
- (2) Whether the employer wishes to pay ~~biweekly~~, semi-monthly or monthly;
- (3) When each pay period begins and when each pay period ends;
- (4) Designated payday;
- (5) Classification of employees;
- (6) The salary range of the employees involved; and
- (7) The employers' federal identification number.

(c) Permission shall be granted pursuant to RSA 275:43, IV on a case by case basis provided the following terms and conditions are met:

- (1) The information supplied pursuant to Lab 803.01(b), above, is complete;
- (2) The designated payday is on a regular schedule which is no less frequent than monthly;
- (3) The employer has no history of wage and hour violations; and
- (4) The employees of the employer making such request will not endure financial hardship by a decrease in pay frequency.

(d) If permission is granted pursuant to Lab 803.01(c) above, the permission shall be valid for an indefinite period of time, provided that:

- (1) No complaints are received from the employees involved;
- (2) Payroll is regularly satisfied on the designated payday;
- (3) The information provided pursuant to Lab 803.01(b) does not change; and
- (4) The employer remains in compliance with all New Hampshire labor laws.

(c) Pursuant to RSA 275:44, I and II, every employer who discharges an employee shall pay all wages owed within 72 hours either by physically giving payment to the employee or by mailing the payment to the employee, at the discretion of the employee. The employer shall pay in full the wages of an employee who quits no later than the next regular payday, except when he or she will not permit the employee to work the period of notice, in which event he or she shall make payment within 72 hours.

(f) Every employer shall pay without condition and within the time set forth in Lab 803.01 (a), and (e) all wages or parts thereof conceded by him or her to be due.

(g) In determining what wages are owed and in making payment thereof, the employer shall:

- (1) Pay wages based upon required records of hours worked per RSA 279:27 and RSA 275:49, VI, and in accordance with written or verbal agreements between the parties per RSA 275:49, I-III; and
- (2) Require no release as a condition of payment per RSA 275:50, although a receipt may be requested.

**Readopt with amendment Lab 803.03, effective 04/11/2016 (Document # 11070), to read as follows:**

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.

(c) Pursuant to RSA 275:49, IV, every employer shall make available to his or her employees in a written statement information regarding the deductions allowed in RSA 275:48.

(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 bonafide 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.

(g) Pursuant to RSA 279:27 and RSA 275:49, VI, every employer shall keep a record of hours worked by all of its employees except for employees who are exempt under 29 U.S.C. section 213 (a) of the Fair Labor Standards Act. Said records shall be preserved and stored for a period of no less than 3.4 years.

(h) RSA 275:43-a shall not apply to employees who report to work and then request to leave on the basis of illness, personal or family emergency provided that a written explanation, initialed by the employee is entered on the employee's time slip or card.

(i) RSA 275:43-a shall not apply to employees who are hired for positions with duties that consistently require that they will work less than 2 hours per work day and report to work with the understanding that they will work less than 2 hours per work day, provided that the employees are notified in writing, upon hire.

(j) RSA 275:43-a shall not apply to health care employees of community based outreach services providers who voluntarily make schedule changes to meet the needs of the physically or mentally infirm clients they serve and who sign a statement upon hire stating that they understand this job requirement.

**Readopt with amendment Lab 803.05, effective 04/11/2016 (Document # 11070), to read as follows:**

Lab 803.05 Exemption. The term "employee" as it applies to RSA 275:42, II and RSA 279:1, X shall not apply to the following:

(a) Bonafide volunteers:

- (1) When such volunteers are performing work for public, charitable, or religious facilities and where such volunteer duties do not necessarily or traditionally lead to paid employment; or;
- (2) When such activities are exempt under 29 CFR Ch. V Section 553:100-106, WH Publication 1297 "Employment Relationship" of the Fair Labor Standards Act;
- ~~(3) Where such bonafide volunteers do not displace a paid employee; and~~
- ~~(4) Where such volunteer duties do not necessarily or traditionally lead to paid employment;~~

(b) Inmates of a county or state correctional facility under RSA 651 who are required to work and perform services for which no significant remuneration is provided;

(c) An individual performing community service work under a court order or the provisions of a court diversion program;

(d) An applicant for employment who is filling out paperwork, participating in pre-screening examinations or interviews;

(e) A student participating in a non paid work based activity approved by the New Hampshire department of labor in accordance with Lab 805;

(f) An operator of a booth located within a salon or barbershop who operates independently of the salon or barbershop and who possesses a shop license as required by RSA 313-A: 17; and

(g) Elected public officials, of counties or municipalities.

**Appendix I**

<b>Rule</b>	<b>State Statute Implemented</b>
Lab 803.01 (a) & (b)	RSA 275: 43, I & II
Lab 803.01 (c) & (d)	RSA 275: 43, II
Lab 803.01 (e) & (f)	RSA 275: 44, I & II
Lab 803.01 (g)	RSA 279: 27 & 275: 49, I, II, VI & :50
Lab 803.03 (a) – (d)	RSA 275: 49
Lab 803.03 (e)	RSA 275: 48 & :49
Lab 803.03 (f) & (g)	RSA 279: 27, 275: 48, I & :49, VI
Lab 803.03 (h) – (j)	RSA 275: 43-a
Lab 803.05	RSA 275:42, I & 279:1, X