

**HB 1494-FN - VERSION ADOPTED BY BOTH BODIES**

12Mar2020... 0574h

06/16/2020 1465s

2020 SESSION

20-2670

10/04

**HOUSE BILL *1494-FN***

AN ACT adopting omnibus legislation concerning workers.

SPONSORS: Rep. Schultz, Merr. 18; Rep. Schuett, Merr. 20

COMMITTEE: Executive Departments and Administration

**AMENDED ANALYSIS**

This bill:

I. Repeals the length of time the presumption of heart or lung disease is occupationally related for firefighters.

II. Establishes an occupational safety and health advisory board to advise the labor commissioner on the adoption and enforcement of occupational safety and health standards for public employees. The bill also requires public employers to provide employees with at least the level of protection provided under the federal Occupational Safety and Health Act, contingent upon federal approval of a state plan.

III. Establishes a state death benefit for a municipal or state public works employee killed in the line of duty. The bill also eliminates the offset for workers' compensation benefits applicable to group I accidental death benefit annuities in state retirement system.

IV. Requires the public employee labor relations board to certify an employee organization which receives a majority written authorization for the purpose of collective bargaining. The bill also requires a public employer to recognize such employee organization as the exclusive representative for collective bargaining.

V. Provides that an individual bargaining unit may negotiate wages, terms, and conditions specific to that bargaining unit and that an individual bargaining unit shall not be forced into impasse proceedings by the declaration of impasse by another bargaining unit.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struck through]~~.

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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**STATE OF NEW HAMPSHIRE***In the Year of Our Lord Two Thousand Twenty*

AN ACT adopting omnibus legislation concerning workers.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 Repeal. RSA 281-A:17, I(c), relative to the length of time the presumption of heart or lung disease in members of fire departments is occupationally related, is repealed.

2 New Subdivision; Safety and Health of Employees; Occupational Safety and Health Standards Advisory Board Established. Amend RSA 277 by inserting after section 38 the following new subdivision:

## Occupational Safety and Health Standards

## 277:39 Occupational Safety and Health Standards Advisory Board Established.

I. There is established an occupational safety and health standards advisory board to consult with and advise the labor commissioner on the adoption and enforcement of occupational safety and health standards for public employees.

II.(a) The advisory board shall consist of the following members:

- (1) Three representatives of public employers, appointed by the governor, one of whom shall represent state agencies, one of whom shall represent counties, and one of whom shall represent municipalities.
- (2) Three representatives of public employees, appointed by the governor, one of whom shall represent state employees, one of whom shall represent school employees, and one of whom shall represent municipal employees.
- (3) One representative of an insurance company licensed to insure workers' compensation within the state, appointed by the governor.
- (4) One representative of Keene State WorkWISE NH, appointed by that organization.
- (5) Two members of the public, appointed by the governor.
- (6) One member of the house of representatives, appointed by the speaker of the house of representatives.

(b) The legislative member shall receive mileage at the legislative rate when attending to the duties of the advisory board. The legislative member shall serve a term coterminous with his or her term in office. The remaining members shall serve 4-year terms, except that the initial appointments shall be staggered in the following manner. Three members shall be appointed for an initial term of 2 years, 3 members shall be appointed for an initial term of 3 years, and 3 members shall be appointed for an initial term of 4 years. Each member shall hold office until a successor is duly appointed and qualified. Any vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(c) The members of the advisory board shall biennially elect a chairperson from among the members. The first meeting of the advisory board shall be called by the member appointed to represent state agencies. The first meeting of the advisory board shall be held within 45 days of the effective date of this section. Six members of the advisory board shall constitute a quorum.

III. The advisory board shall:

- (a) Consult with the labor commissioner and the Region 1 Office for the Occupational Safety and Health Administration on the development and submission of a state plan for occupational safety and health standards to the United States Secretary of Labor pursuant to 29 U.S.C. section 667 and 29 C.F.R. section 1902.3.
- (b) Review state and local government employee plans from other states, including Maine, Illinois, New Jersey, Connecticut, and New York, and consult with the Occupational Safety and Health State Plan Association regarding the process for establishing and administering a state plan for New Hampshire's public employees.
- (c) Evaluate injury and illness data, recommend training and implementation of safety and health measures, monitor the effectiveness of safety and health programs, and determine where additional resources are needed to protect the safety and health of public employees.

IV. Beginning November 1, 2020, and each November 1 thereafter, the advisory board shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

## 277:40 Adoption of Occupational Safety and Health Standards.

I. Each employer, as defined in RSA 277:1-b, II, shall provide employees, as defined in RSA 277:1-b, I, at least the level of protection provided under the federal Occupational Safety and Health Act of 1970, 29 U.S.C. section 651, et seq., including standards and the provision of the general duty clause in 29 U.S.C. section 654.

II. The labor commissioner, in consultation with the advisory board established in RSA 277:39, shall adopt rules under RSA 541-A relative to the protections required under this section.

3 Contingency. RSA 277:40, as inserted by section 2 of this act, shall take effect on the date the labor commissioner certifies to the director of legislative services that the Occupational Safety and Health Administration has approved a state plan for the protection of public employees pursuant to the Occupational Safety and Health Act of 1970.

4 Death Benefit; Employees Killed in the Line of Duty; Public Works Employee Added. Amend the section heading and paragraphs I through the introductory paragraph of III of RSA 21-I:29-a to read as follows:

21-I:29-a Death Benefit for ~~[Police Officer or Firefighter]~~ **Employees** Killed in Line of Duty.

I. In this section:

- (a) "Adult child" means a child, whether by blood or adoption, of the police officer, firefighter, emergency medical technician, ~~[or]~~ rescue squad member, **or public works employee** age 18 or older at the time of death of such police officer, firefighter, emergency medical technician, ~~[or]~~ rescue squad member, **or public works employee** and who does not meet the definition of a dependent child.

(b) "Dependent child" means a child, whether by blood or adoption, of the police officer, firefighter, emergency medical technician, ~~or~~ rescue squad member, **or public works employee** who:

(1) Is under the age of 25 and was dependent on the earnings of the police officer, firefighter, emergency medical technician, ~~or~~ rescue squad member, **or public works employee** at the time of death. For the purposes of this subparagraph, a child is not considered dependent if the child provides more than half of his or her own support, is married, or is legally adopted by another; or

(2) Is any age and is physically or mentally incapacitated and was dependent on the earnings of the police officer, firefighter, emergency medical technician, ~~or~~ rescue squad member, **or public works employee** at the time of death.

(c) "Family" means the surviving spouse of the police officer, firefighter, emergency medical technician, ~~or~~ rescue squad member, **or public works employee** who was wholly or partially dependent, in fact, upon the earnings of the police officer, firefighter, emergency medical technician, rescue squad member, **or public works employee** or, if there is no surviving spouse, the surviving dependent child or dependent children, of such police officer ~~or~~, firefighter, **emergency medical technician, rescue squad member, or public works employee** or, if there is no surviving dependent child, a surviving person qualifying as a common-law spouse pursuant to RSA 457:39, or if there is no surviving common-law spouse, the surviving adult child or adult children, or if there is no surviving adult child or adult children, the surviving parent or parents of such police officer, firefighter, emergency medical technician, ~~or~~ rescue squad member, **or public works employee**.

(d) "Emergency medical technician" means all levels of emergency medical technician, including emergency medical responders, emergency medical technicians, advanced emergency medical technicians, and paramedics, whether auxiliary, intermittent, special, part-time, volunteer, call, or reserve, who is employed by a city, town, village district, or precinct within the state of New Hampshire, or any emergency medical technician who is a volunteer for or employed by a nonprofit corporation in New Hampshire, or any emergency medical technician employed by a New Hampshire licensed private ambulance service while in the performance of emergency medical services pursuant to RSA 153-A:2, VI either under contract or agreement with a city, town, village, or precinct.

(e) "Firefighter" means any firefighter, including auxiliary, intermittent, special, part-time, volunteer, call, or reserve firefighters who are employed by a city, town, village district, or precinct within the state of New Hampshire, any firefighter employed by the state of New Hampshire, or any firefighter who is a volunteer for or employed by a non-profit corporation which is the primary provider of fire protection for all or part of a New Hampshire municipality.

(f) "Killed in the line of duty" means a death of a police officer, firefighter, emergency medical technician, ~~or~~ rescue squad member, **or public works employee** while in the performance of his or her duties as a result of incident, accident, or violence causing death or injuries which are the direct or proximate cause of death. "Incident" shall include any death that is determined to be occupationally related by the worker's compensation insurance carrier, a self-insured worker's compensation plan, or by the labor commissioner for workers' compensation purposes pursuant to RSA 281-A.

(g) "Police officer" means any law enforcement officer with the power of arrest, including auxiliary, intermittent, special, part-time, or reserve police officers, or sheriffs and their deputies who are employed by a city, town, village district, county, or precinct within the state of New Hampshire, police officers employed by the university system of New Hampshire, court security officers and bailiffs, and any state law enforcement officer employed by the state of New Hampshire who has power of arrest as determined by state law.

(h) "**Public works employee**" means any municipal or state public works or highway employee who has the responsibility to work in hazardous locations, or as a first responder, or in conjunction with emergency first responders in construction zones, highway traffic areas, and other locations where the public works or highway employee is exposed to risk of injury or fatality from construction hazards, highway traffic volume and speed, nighttime responses, environmental issues, weather, or other hazardous conditions.

(i) "Rescue squad member" means any member of a rescue squad formed for the purposes of responding to a state of emergency as declared by the governor or as part of a search and rescue effort under the supervision of the fish and game department to recover a lost person.

II. In addition to any other benefits provided under this chapter, the state treasurer shall pay a \$100,000 death benefit to the family of a police officer, firefighter, emergency medical technician, ~~or~~ rescue squad member, **or public works employee** killed in the line of duty.

Payment to a dependent child under the age of 18 shall be made to the child's trustee for the benefit of the child. The governor, with the consent of the executive council, is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. The commissioner of safety, upon notice from the family or chief of department of any firefighter, police officer, emergency medical technician, ~~or~~ rescue squad member, **or public works employee** who may be entitled to a line-of-duty death benefit or upon the commissioner's own initiative, shall obtain the available records related to the circumstances, cause, and manner of such death and the decedent's status as a firefighter, police officer, emergency medical technician, ~~or~~ rescue squad member, **or public works employee**

may cause further inquiry to be made, and shall make a determination of whether the death qualifies as a line-of-duty death and who is entitled to the death benefit. The determination shall be made within 180 days of the determination of the cause and manner of death by the office of the chief medical examiner, or within 180 days from the date the commissioner received notice from the family or chief of department of the firefighter, police officer, emergency medical technician, ~~[or]~~ rescue squad member, **or public works employee** whichever is later. For deaths that are not reviewed by the office of the chief medical examiner, the determination shall be made within 180 days of a determination that the decedent qualifies for a workers' compensation death benefit by a worker's compensation carrier, self-insured worker's compensation plan, or the labor commissioner pursuant to RSA 281-A, or within 180 days from the date the commissioner received notice from the family or chief of department of the firefighter, police officer, emergency medical technician, ~~[or]~~ rescue squad member, **or public works employee** whichever is later.

5 Retirement System; Accidental Death Benefits; Workers' Compensation Offset. Amend RSA 100-A:8, III and IV to read as follows:  
 III. Workers' Compensation. ~~[Notwithstanding the foregoing provisions of this section and except for payments made under RSA 281-A:37, any amounts which may be paid or payable under the provisions of any workers' compensation or similar law on account of the death of any member shall, in such manner as the board of trustees shall determine, be offset against and payable in lieu of any state annuity payable under the provisions of this section on account of the same death. Any amounts offset above shall not include compensation received to pay hospital or medical bills under any private annuity or disability insurance plan.]~~

IV. ~~The offset provisions of paragraph III shall not apply in the case of a group II member who dies as the natural and proximate result of injuries received while in the performance of his duty. In this case]~~ Any amounts paid or payable under the provisions of any workers' compensation or similar law on account of the death of the member shall not be offset against or payable in lieu of any state annuity payable under the provisions of this section on account of the same death.

6 New Paragraph; Public Employer Labor Relations; Elections. Amend RSA 273-A:10 by inserting after paragraph IX the following new paragraph:

X. The board shall certify, and the public employer shall recognize as the exclusive representative, an employee organization which has received a written majority authorization for the purpose of collective bargaining for all of the employees in the bargaining unit.

7 Bargaining by State Employees. Amend RSA 273-A:9, I to read as follows:

I. All cost items and terms and conditions of employment affecting state employees in the classified system generally shall be negotiated by the state, represented by the governor as chief executive, with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units. Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units by the governor. ***Nothing in this chapter shall be construed to limit an individual bargaining unit from negotiating wages, terms, and conditions specific to that bargaining unit, nor shall any bargaining unit be forced into impasse proceedings due to the declaration of impasse by another bargaining unit.***

8 Effective Date.

I. RSA 277:40, as inserted by section 2 of this act, shall take effect as provided in section 3 of this act.

II. The remainder of this act shall take effect upon its passage.

LBAO  
 20-2670  
 Amended 6/17/20

### HB 1494-FN- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENT #2020-1465s)

AN ACT adopting omnibus legislation concerning workers.

**FISCAL IMPACT:**    ☒ [ X ] State                      ☒ [ X ] County                      ☒ [ X ] Local                      ☐ [ ] None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
<b>Appropriation</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Fire and EMS
	Fund and Various Governmental Funds and Federal Funds.			

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

This bill repeals the length of time limitation on the presumption that heart or lung disease is occupationally related for firefighters.

The Department of Safety indicates this change would increase the potential for continuation of current claims being paid and make new claims possible. The costs related to the increased claims cannot be determined, but would impact state, county and local expenditures for workers compensation.

The New Hampshire Municipal Association indicates this bill would lead to more claims for workers' compensation and increased workers' compensation rates for municipalities. The Association has no information that could be used to estimate the potential increase in municipal expenditures. There would be no impact on municipal revenues.

The Department of Labor does not anticipate the bill would impact state, county or local revenues. The Department assumes extension of the presumption that heart or lung disease in firefighters is occupationally related could lead to additional expenditures, particularly at the county and local levels, for workers' compensation premiums and coverage. Such costs cannot be determined because there is no way to predict the increase in claims.

This bill establishes an occupational safety and health advisory board to advise the labor commissioner on the adoption and enforcement of occupational safety and health standards for public employees. The bill also requires public employers to provide employees with at least the level of protection provided under the federal Occupational Safety and Health Act contingent upon federal approval of a state plan.

The Department of Labor assumes upon approval of the state plan and reimbursement requests to the federal government, the bill result in an indeterminable increase in federal funds for operation of the OSHA state plan. Under OSHA regulations, a state plan partner is entitled to submit for federal funding to carry out the plan. Based on its initial research, the Department indicates possibly 50% of the costs of carrying out the plan could be reimbursed by federal funds. The Department states the federal funds are not automatic and assumes Congress would have to appropriate the funds. Currently, the Department receives no federal funding. Upon receiving federal funds the Department would have to take on additional obligations to be compliant with federal guidelines and would incur additional costs. The Department anticipates it would need additional staff, however it is unclear what additional staff would be needed. Any staffing plan would likely be developed in conjunction with submission of the state plan to OSHA. In addition, there could be additional State expenditures to enhance safeguards and safety measures in order meet the OSHA requirements. There has not been an analysis of the gaps between existing state safety requirements and the OSHA standards. If OSHA standards require safety enhancements, the enhancements could result in additional costs. This indeterminable increase in costs would likely impact counties and municipalities. The Department does not expect such costs would be funded by the federal government. The Department does not anticipate the bill would impact county or local revenues.

This bill expands the eligibility of a \$100,000 line-of-duty death benefit for municipal or state public works heavy equipment operators killed in the line of duty. To the extent an eligible individual is determined to have been killed in the line of duty, general fund appropriations and expenditures would increase.

The bill also eliminates any offset for workers' compensation benefits applicable to the New Hampshire Retirement System accidental death benefits, which currently applies only to Group I employees. The New Hampshire Retirement System indicates there is no fiscal impact on employer rates as a result of this bill.

**AGENCIES CONTACTED:**

New Hampshire Municipal Association and Departments of Safety and Labor and New Hampshire Retirement System