

HB 1762-FN - AS INTRODUCED

2018 SESSION

18-2293

04/03

HOUSE BILL            **1762-FN**

AN ACT                relative to documentation requirements for the department of labor.

SPONSORS:            Rep. Sanborn, Hills. 41; Rep. Hennessey, Graf. 1; Rep. Seaworth, Merr. 20; Rep. Hill, Merr. 3; Rep. Cordelli, Carr. 4; Rep. Brown, Graf. 16; Rep. L. Turcotte, Straf. 4; Rep. Silber, Belk. 2; Rep. Pearl, Merr. 26; Rep. Spillane, Rock. 2; Sen. Innis, Dist 24; Sen. Sanborn, Dist 9

COMMITTEE:          Labor, Industrial and Rehabilitative Services

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ANALYSIS

This bill repeals rulemaking authority of the commissioner of the department of labor relative to youth employment and payment of wages; amends the youth employment law to allow certain youths to work with the permission of a parent or legal guardian; provides that an employer's unintentional documentation errors shall not be the basis for imposing a fine; repeals the requirement that employers maintain a written safety plan and joint loss management committee; and changes the definition of tip sharing.

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Explanation:          Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears [~~in brackets and struckthrough.~~]  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eighteen*

AN ACT relative to documentation requirements for the department of labor.

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

1 1 Legislative Findings and Purpose. The general court finds that:

2 I. There is a significant and ongoing need in this state to encourage businesses to grow and  
3 hire here, particularly small businesses which are the backbone of New Hampshire's economy.

4 II. Our current laws relating to employment tend to discourage employers from hiring with  
5 heavy handed enforcement of excessive and unnecessary laws and with costly, time consuming  
6 audits and fines.

7 III. The overall purpose of the legislation is to significantly reduce the excessive and  
8 unnecessary documentation and regulatory (red tape) burdens, both in laws and in rules, that are  
9 inhibiting employers from hiring and growing, and preventing people from working.

10 IV. It is time to change the culture of state government from one of enforcement, fees, fines,  
11 assessments, and delays, to one that encourages responsible business activity and hiring with a  
12 "how can I help you succeed?" customer service approach instead. This legislation is necessary to  
13 move us in the right direction and reset the tone and actions of government.

14 V. Making our state significantly more attractive and friendly to employers with passage of  
15 this Red Tape Reduction Act will enable our economy to flourish.

16 VI. The goals of this Red Tape Reduction Act include:

17 (a) No fines may be issued if the general intent of the law or rule was met.

18 (b) Written documentation is not required to meet the intent of the law and paperwork  
19 discrepancies will not be fined.

20 (c) Reduce limitations and allow flexibility on working hours for individuals 16 and 17  
21 years of age (if parents approve, then any hours are okay).

22 (d) Allow employees to buy company clothing.

23 (e) No need for employee signing/documenting when leaving before 2 hour minimum on  
24 their own, when correcting hours to be paid due to their clock-in errors, when receiving pay  
25 increases, etc. (verbal is okay).

26 (f) No random or targeted industry/employer audits (burden of proof on department of  
27 labor to show need for audit/investigation due to a pattern of documented complaints or known  
28 problems for that specific location of multi-site business).

29 (g) Allow tip sharing and follow federal statute.

30 (h) Expand flexibility with unpaid internships for people of all ages if both parties agree  
31 with express understanding that there is no workers' compensation, unemployment, or other

1 benefits provided.

2 (i) Reduce record keeping requirement from 4 to 3 years.

3 (j) Allow greater flexibility for the commissioner to waive penalties.

4 (k) Expand "warnings before fines" giving employers 30 days to fix errors (no fines for  
5 documentation errors).

6 (l) End future rulemaking authority of the department of labor relating to wage and  
7 hour law and child labor law, bringing all related changes in regulations before the legislature.

8 (m) No fines for not posting laws in "conspicuous" place.

9 (n) Eliminate need for written safety plan, joint loss management committee, and safety  
10 summary form.

11 2 Public Works Design and Construction; Major Projects. Amend RSA 21-I:80, VI(a)(3)-(5) to  
12 read as follows:

13 (3) A completed work certificate, provided pursuant to RSA 281-A:4-b, that shall  
14 include the total number of employees anticipated to be employed by such contractor, subcontractor,  
15 or independent contractor on the project during the contract period, delineated by the National  
16 Council on Compensation Insurance (NCCI) classification code applicable to the scope of work to be  
17 performed; **and**

18 (4) ~~[A copy of the contractor's compliance with a current written safety program, if~~  
19 ~~applicable, as filed with the commissioner of labor under RSA 281-A:64, II and proof of an existing~~  
20 ~~joint loss management committee as required under RSA 281-A:64, III, if applicable; and~~

21 (5) The department may develop procedures to obtain the requirements in this  
22 section on an annual basis or by a prequalification procedure rather than on a project-by-project  
23 basis.

24 3 Certification of Current Workers' Compensation Coverage Required. Amend RSA 228:4-b,  
25 I(c)-(e) to read as follows:

26 (c) A completed work certificate, provided pursuant to RSA 281-A:4-b, that shall include  
27 the total number of employees anticipated to be employed by such contractor, subcontractor, or  
28 independent contractor on the project during the contract period, delineated by the National  
29 Council on Compensation Insurance (NCCI) classification code applicable to the scope of work to be  
30 performed; and

31 (d) ~~[A copy of the contractor's compliance with a current written safety program, if~~  
32 ~~applicable, as filed with the commissioner of labor under RSA 281-A:64, II and proof of an existing~~  
33 ~~joint loss management committee as required under RSA 281-A:64, III, if applicable; and~~

34 (e) The department may develop procedures to obtain the requirements in this section  
35 on an annual basis or by a prequalification procedure rather than on a project-by-project basis.

36 4 Labor Commissioner; Inspections. RSA 273:9 is repealed and reenacted to read as follows:

37 273:9 Inspections. The commissioner may visit a specific location of a manufacturing,  
38 mechanical, or mercantile establishment in the state at a reasonable time for the purpose of

1 ascertaining whether the laws with reference to employment are complied with after a pattern of  
2 documented complaints to the department or known problems for that specific location of the  
3 business has been identified within the prior 12 months.

4 5 Labor Commissioner; Civil Penalties. Amend RSA 273:11-a, II and III to read as follows:

5 II. Except as provided in paragraph III, the commissioner shall issue ~~[one]~~ **a** written  
6 warning to the employer **before imposing a fine**. The employer shall have 30 days from receipt of  
7 the warning to cure the defect causing the violation. **No fine shall be imposed on an employer if**  
8 **the violation resulted from an unintentional documentation error.**

9 III. No warning shall be issued if, in the opinion of the commissioner, the employer intends  
10 to cause harm~~[,]~~ **or** the violation poses a threat to public safety~~[, or the violation involves any of the~~  
11 ~~following:~~

12 ~~(a) Failure to pay an employee in full and on time under RSA 275:43.~~

13 ~~(b) Payment of wages by checks on a financial institution that is not convenient to the~~  
14 ~~place of employment as required by RSA 275:43, I(c).~~

15 ~~(c) Failure to pay final wages in full as required by RSA 275:44.~~

16 ~~(d) Failure to pay amounts withheld for court ordered child support to the custodial~~  
17 ~~parent.~~

18 ~~(e) Continuation of wage withholding for insurance benefits that have been cancelled.~~

19 ~~(f) Illegal withholding of wages to compensate employer for employee actions resulting~~  
20 ~~in loss or damage.~~

21 ~~(g) Failure to comply with RSA 275-A:4-a regarding undocumented workers.~~

22 ~~(h) Requiring that employees to perform any illegal activities under threat of job loss].~~

23 6 Protective Legislation; Definition of Terms. Amend the introductory paragraph in RSA 275:4,  
24 II to read as follows:

25 II. In this subdivision, "employee" means and includes every person who may be permitted,  
26 required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage  
27 in any employment, but shall not include any person exempted from the definition of employee as  
28 stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as  
29 part of a residential placement for individuals with developmental, acquired, or emotional  
30 disabilities, **or a person who volunteers to work for an employer for a learning or charitable**  
31 **opportunity and who explicitly agrees in writing to the absence of wages and benefits for a**  
32 **specified period of time not to exceed 6 months**, or any person who meets all of the following  
33 criteria:

34 7 Protective Legislation; Day of Rest. Amend RSA 275:33 to read as follows:

35 275:33 Day of Rest. No employer shall operate any such business on Sunday unless he or she  
36 has ~~[posted in a conspicuous place on the premises]~~ **made available to employees** a schedule  
37 containing a list of employees who are required or allowed to work on Sunday and designating the  
38 day of rest for each~~[, and shall promptly file a copy of such schedule and every change therein with~~

1 ~~the labor commissioner~~. No employee shall be required ~~[or allowed]~~ to work on the day of rest  
2 designated for him *or her*. ~~[Whoever violates this section shall be fined \$50.]~~

3 8 Required Pay. Amend RSA 275:43-a to read as follows:

4 275:43-a Required Pay.

5 *I.* On any day an employee reports to work at an employer's request, he or she shall be paid  
6 not less than 2 hours' pay at his or her regular rate of pay~~[- provided, however, that]~~. *If the*  
7 *employee chooses to leave work after reporting, the employer may, without penalty, elect*  
8 *not to pay the employee.*

9 *II.* This section shall not apply to employees of counties or municipalities or ski and  
10 snowboard instructional employees at ski resorts, provided that these employees receive other  
11 compensation that is at least equal to their rate of pay, and provided further that no employer who  
12 makes a good faith effort to notify an employee not to report to work shall be liable to pay wages  
13 under this section. However, if the employee reports to work after the employer's attempt to notify  
14 him or her has been unsuccessful or if the employer is prevented from making notification for any  
15 reason, the employee shall perform whatever duties are assigned by the employer at the time the  
16 employee reports to work.

17 9 Protective Legislation; Notification, Posting and Records. Amend RSA 275:49, I-II to read as  
18 follows:

19 *I. Verbally or in writing* notify the employees, at the time of hiring of the rate of pay, and  
20 of the day and place of payment;

21 *II. Verbally or in writing* notify his or her employees of any changes in the arrangements  
22 specified above prior to the time of such changes;

23 10 Protective Legislation; Notification, Posting, and Records. Amend RSA 275:49, VI-VII to  
24 read as follows:

25 *VI.* Make such records of the persons employed by him or her, including wage and hour  
26 records, preserve such records for ~~[such periods of time]~~ **3 years**, and make such reports therefrom  
27 to the commissioner, as ~~[the commissioner shall prescribe by regulation as necessary or appropriate]~~  
28 **are required in statute** for the enforcement of the provisions of this subdivision; and

29 *VII.* ~~[Keep posted in a place accessible to his or her]~~ **Make available to** employees the  
30 following **information**: "It is illegal in New Hampshire under both state and federal law to pay  
31 employees different wages for the same work based solely on sex. If you think that your employer  
32 has violated this provision, please contact the New Hampshire Department of Labor." This notice  
33 shall also include the address, phone number, and email address of department personnel to be  
34 contacted with complaints under this subdivision, as well as an Internet link to RSA 275:37.

35 11 Payment of Wages; Enforcement. Amend RSA 275:51, III-a to read as follows:

36 *III-a.* Records compiled pursuant to employee interviews under paragraphs II and III are  
37 not subject to disclosure by the department. The commissioner may release such information to  
38 public officials when such information is necessary to perform their duties. If the commissioner

1 determines that a person or employer has violated any provision of this subdivision [~~or any rule~~  
2 ~~adopted under this subdivision~~], that person or employer shall be provided with a report specifying  
3 the statute [~~and rules that have~~] **that has** been violated and a summary of supporting evidence.

4 12 Protective Legislation; Payment of Wages. Amend RSA 275:48, V(b) to read as follows:

5 (b) "Uniform" means a garment with a company logo or fashion of distinctive design,  
6 worn by one or more employees, and serving as a means of identification or distinction. **No**  
7 **employer shall require an employee to wear a uniform unless the employer provides each**  
8 **employee with a uniform at no cost to the employee. An employee may purchase any other**  
9 **company garments or items if the employee chooses.**

10 13 Youth Employment Law; Prohibitions. RSA 276-A:4 is repealed and reenacted to read as  
11 follows:

12 276-A:4 Prohibitions.

13 I. No youth shall be employed or permitted to work in any hazardous occupation, except in  
14 an apprenticeship, vocational rehabilitation, or training program approved by the commissioner.

15 II. No youth under 16 years of age shall be employed or permitted to work without a  
16 certificate except:

17 (a) For his or her parents, grandparents, or guardian;

18 (b) At work defined in this chapter as casual;

19 (c) As farm labor; or

20 (d) With the permission of a parent or legal guardian.

21 III. No youth under 16 years of age shall be employed or permitted to work in a dangerous  
22 area in manufacturing, construction, and mining and quarrying occupations, or in woods and  
23 logging.

24 IV. No youth under 12 years of age may be employed or permitted to work except for his  
25 parents, grandparents, or guardian, or at work defined in this chapter as casual, or in the door-to-  
26 door delivery of newspapers.

27 14 Youth Employment Law; Enforcement. Amend RSA 276-A:6 to read as follows:

28 276-A:6 Enforcement. The commissioner shall have the responsibility for enforcing the  
29 provisions of this chapter. [~~Investigators and truant officers shall visit and inspect all places of~~  
30 ~~employment and cause the provisions of this chapter to be enforced as directed by the commissioner.~~  
31 ~~For this purpose they shall have the power to serve warrants.]~~

32 15 Youth Employment Law; Certain Labor. Amend RSA 276-A:11 to read as follows:

33 276-A:11 Certain Labor. In addition to the prohibitions listed in RSA 276-A:4, [~~III, IV, V, VI,~~  
34 ~~and VII~~] no youth shall be employed or permitted to work at manual or mechanical labor in any  
35 manufacturing establishment more than 10 hours in any one day, or more than 48 hours in any one  
36 week. No youth shall be employed or be permitted to work at manual or mechanical labor in any  
37 other employment, except household labor and nursing, domestic, hotel and cabin including dining  
38 and restaurant service operated in connection with such service, and boarding house labor,

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1 operating in telegraph and telephone offices and farm labor, or canning of perishable vegetables and  
2 fruit, or as a laboratory technician, more than 10- 1/4 hours in any one day, or more than 54 hours  
3 in any one week.

4 16 Youth Employment Law; Additional Prohibitions. Amend RSA 276-A:21 to read as follows:

5 276-A:21 Additional Prohibitions. The prohibitions under this subdivision shall be in addition  
6 to those prohibitions listed in RSA 276-A:4[, III, IV, V and VI].

7 17 Limitations on Youth Training and Employment. Amend RSA 276-A:23 to read as follows:

8 276-A:23 Limitations on Youth Training and Employment.

9 I. Except when enrolled in an explorer program approved by the New Hampshire  
10 department of labor [~~under rules adopted by the commissioner~~], no youth under 16 years of age  
11 shall be employed or permitted to work in firefighting.

12 II. Fire organizations shall follow the requirements of this subdivision and federal orders  
13 regulating youth employment in hazardous occupations[, ~~as referenced in rules adopted by the~~  
14 ~~commissioner,~~] when any youth is employed or permitted to work in support of firefighting at all  
15 times and in all places.

16 III. The supervising person responsible for following the requirements of this subdivision  
17 shall be the chief authority of the fire organization or his or her designee.

18 IV. Youths shall not be employed at any task or duty in support of firefighting prior to  
19 completing training pursuant to RSA 276-A:24, I.

20 V. Fire organizations shall follow the requirements of RSA 276-A:4, [VIII] and RSA 276-  
21 A:24 [~~and rules adopted by the commissioner~~] when employing or permitting 16 or 17 year old  
22 youths to work in support of firefighting.

23 18 Employee Leasing Companies. Amend RSA 277-B:9, II(f) to read as follows:

24 (f) Providing a safe workplace to the employees free of all hazards in compliance with  
25 the Occupational Safety and Health Act of 1970 and regulations or any similar law. [~~This shall~~  
26 ~~include sole responsibility for compliance with the requirements of RSA 281 A:64 and similar~~  
27 ~~requirements or regulations.~~]

28 19 Minimum Wage Law; Definitions. Amend RSA 279:1, XIV to read as follows:

29 XIV. "Tip sharing" means [~~the practice by which a directly tipped employee gives a portion~~  
30 ~~of his or her tips to another worker who participated in providing service to customers]~~ ***an***  
31 ***agreement among employees such as wait staff, bellhops, counter service personnel,***  
32 ***bussers, and bartenders, who customarily and regularly receive tips for providing service***  
33 ***to customers to share such tips among themselves. A tip sharing arrangement shall not***  
34 ***include employees who do not customarily and regularly receive tips such as dishwashers,***  
35 ***chefs, cooks, and custodial staff.***

36 20 Minimum Wage Law; Tip Pooling and Sharing. Amend RSA 279:26-b to read as follows:

37 279:26-b Tip Pooling and Sharing.

38 I. Tips are wages and shall be the property of the employee receiving the tip and shall be

1 retained by the employee, unless the employee [~~voluntarily and without coercion from his or her~~  
 2 ~~employer agrees to participate~~] **is participating** in a tip pooling or tip sharing arrangement. **The**  
 3 **requirement that an employee retain all tips shall not preclude a valid tip pooling or tip**  
 4 **sharing arrangement among employees who customarily and regularly receive tips, such**  
 5 **as waiters, waitresses, bellhops, counter personnel who serve customers, bussers, and**  
 6 **service bartenders.**

7 II. No employer is precluded from administering a valid tip pooling or tip sharing  
 8 arrangement [~~at the request of the employee~~] **on behalf of employees**, including suggesting  
 9 reasonable and customary practices, and mediating disputes between employees regarding a valid  
 10 tip pooling or tip sharing arrangement.

11 III. Nothing shall preclude employee participants in a tip pool from agreeing [~~voluntarily~~  
 12 ~~and without coercion,~~] to provide a portion of the common pool to other employees, regardless of job  
 13 category, who participated in providing service to customers.

14 21 Employer's Records; Records of Hours and Wages. Amend RSA 279:27 to read as follows:

15 279:27 Records of Hours and Wages. Every employer of employees shall keep a true and  
 16 accurate record of the hours worked by each, wages paid to each, and classification of employment  
 17 when necessary, and shall furnish to the commissioner or the commissioner's authorized  
 18 representative upon demand a sworn statement of the same. **Employers shall retain employee**  
 19 **records for 3 years and such** records [~~shall~~] **may** be open to inspection by the commissioner or  
 20 the authorized representative at any reasonable time, **provided that a pattern of documented**  
 21 **complaints to the department of labor for the employees of a specific location of the**  
 22 **business has been identified within the prior 12 months.** [~~Every employer subject to a~~  
 23 ~~statutory minimum wage shall keep a copy of such statutory minimum wage posted in a~~  
 24 ~~conspicuous place in every establishment in which employees are employed. Employers shall be~~  
 25 ~~furnished copies of posters on request without charge.~~]

26 22 Workers' Compensation; Definitions. Amend RSA 281-A:2, VIII(a) to read as follows:

27 (a) A person, partnership, association, corporation, or legal representative of a person,  
 28 partnership, association, or corporation who employs one or more persons whether in one or more  
 29 trades, businesses, professions, or occupations and whether in one or more locations. In  
 30 determining the number of persons employed, there shall be included persons whose contract of  
 31 employment was entered into outside the state if such persons are actually employed on work in  
 32 this state. For the purpose of determining the number of persons employed, executive officers  
 33 elected or appointed and empowered in accordance with the charter and bylaws of a corporation and  
 34 limited liability company members and managers designated in accordance with a limited liability  
 35 company agreement shall not be considered to be employees, except that any executive officers or  
 36 limited liability company members and managers in excess of 3 shall be counted as employees and  
 37 except that there shall be no such exclusion in determining employer status for the purposes of RSA  
 38 281-A:23-b (alternative work opportunities)[,] **and** RSA 281-A:25-a (reinstatement) [~~and RSA 281-~~



1 ~~A:64 (safety)]~~.

2 23 Workers' Compensation; Reports of the Commissioner. Amend RSA 281-A:61, II to read as  
3 follows:

4 II. The commissioner shall make a workplace safety and injury report, which shall be  
5 submitted with the report required under paragraph I, to the governor and the legislature. The  
6 report shall provide statistical information pertaining to the nature, character, and severity of  
7 industrial accidents, injuries, and illnesses in New Hampshire and information pertaining to the  
8 department's and employers' efforts in the area of safety promotion and accident prevention. This  
9 report shall include, but not be limited to, the types and frequency of reported injuries; the job  
10 classifications from which such injuries have been reported; ~~[a report of employer compliance with~~  
11 ~~RSA 281-A:64; the annual listing of best and worst performers as prepared by the commissioner~~  
12 ~~under the provisions of RSA 281-A:64;]~~ a report of all departmental activities required under RSA  
13 281-A:65; specific recommendations for improved workplace safety promotion and injury prevention;  
14 and any other such information and recommendations pertaining to workplace injuries and injury  
15 prevention as the commissioner deems appropriate.

16 24 Repeal. The following are repealed:

17 I. RSA 275:54, relative to the rulemaking authority of the commissioner of labor regarding  
18 payment of wages.

19 II. RSA 276-A:5, relative to youth employment certificates.

20 III. RSA 276-A:8, relative to rulemaking by the commissioner of the department of labor  
21 regarding youth employment.

22 IV. RSA 276-A:13, relative to youth night work.

23 V. RSA 276-A:14, relative to a special agreement for youth night work.

24 VI. RSA 276-A:20, relative to posting of notice of meal breaks permitted to youth employees  
25 and maximum allowed hours for youth employment.

26 VII. RSA 276-A:22, relative to evidence of violations of youth employment in certain jobs.

27 VIII. RSA 281-A:60, I(k), relative to guidelines for employer safety programs.

28 IX. RSA 281-A:60, I(o), relative to employer safety inspections.

29 X. RSA 281-A:64, relative to safety provisions and the administrative penalty.

30 XI. RSA 281-A:64-a, relative to the safety incentive program and loss management  
31 consultants.

32 25 Effective Date. This act shall take effect 60 days after its passage.

**HB 1762-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to documentation requirements for the department of labor.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2019	FY 2020	FY 2021	FY 2022
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<b>Expenditures</b>	\$0	\$0	\$0	\$0
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

**METHODOLOGY:**

The Department of Labor states this bill would decrease state general fund revenue from civil penalties by an indeterminable amount as these revenues vary each year and future assessments cannot be predicted. For the penalty revenue affected by this legislation, the Department reviewed the amounts collected over the previous three fiscal years to determine what the impact of the proposed changes would have been in those years.

FY 2015

Warnings for all before imposing a fine (Amendment to RSA 273:11-a, II)	\$87,025
Sections with new warnings (Amendment to RSA 273:11-a, III)	\$238,740
Penalties attributable to repealed sections	<u>\$88,915</u>
Total	\$414,680

FY 2016

Warnings for all before imposing a fine (Amendment to RSA 273:11-a, II)	\$168,375
Sections with new warnings (Amendment to RSA 273:11-a, III)	\$282,906
Penalties attributable to repealed sections	<u>\$218,785</u>
Total	\$670,066

FY 2017

Warnings for all before imposing a fine (Amendment to RSA 273:11-a, II)	\$124,200
Sections with new warnings (Amendment to RSA 273:11-a, III)	\$268,181
Penalties attributable to repealed sections	<u>\$121,877</u>
Total	\$514,258

Since all inspections would require additional follow up inspections, there would be a decrease in worker efficiency or the number of entities inspected within a year.

**AGENCIES CONTACTED:**

Department of Labor