

LEGISLATIVE COMMITTEE MINUTES

SB211

Bill as Introduced

SB 211 - AS INTRODUCED

2022 SESSION

22-2954
04/08

SENATE BILL **211**

AN ACT relative to an injured employee's right to reinstatement to a former position for purposes of workers' compensation.

SPONSORS: Sen. D'Allesandro, Dist 20

COMMITTEE: Commerce

ANALYSIS

This bill adds an exception to an employee's right to reinstatement to his or her position based on the employer's need to fill the position where a temporary replacement is not available or practical.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to an injured employee's right to reinstatement to a former position for purposes of workers' compensation.

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

1 1 New Subparagraph; Workers' Compensation; Reinstatement of Employee Sustaining
2 Compensable Injuries. Amend RSA 281-A:25-a, II(a) by inserting after subparagraph (3) the
3 following new subparagraph:

4 (4) The employer determines that the employee's position must be filled, and a
5 replacement on a temporary basis is either not available or practical.

6 2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

SENATE CALENDAR NOTICE
Commerce

Sen Harold French, Chair
Sen Bill Gannon, Vice Chair
Sen Jeb Bradley, Member
Sen Donna Soucy, Member
Sen Kevin Cavanaugh, Member

Date: January 20, 2022

HEARINGS

Tuesday	02/08/2022	
(Day)	(Date)	
Commerce	State House 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m. SB 203	relative to the state minimum hourly rate.	
9:15 a.m. SB 210	relative to the sale of manufactured housing parks.	
9:30 a.m. SB 211	relative to an injured employee's right to reinstatement to a former position for purposes of workers' compensation.	
9:45 a.m. SB 214	relative to conflicts of interest and contract powers of condominium unit owners' associations.	

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 203

Sen. Soucy
Sen. Sherman
Sen. D'Allesandro
Rep. Sullivan

Sen. Whitley
Sen. Perkins Kwoka
Sen. Kahn

Sen. Rosenwald
Sen. Cavanaugh
Rep. Schultz

Sen. Watters
Sen. Prentiss
Rep. Soucy

SB 210

Sen. Bradley
Sen. Gannon
Sen. Daniels
Rep. L. Sanborn

Sen. Hennessey
Sen. Avard
Sen. Soucy
Rep. Potucek

Sen. Birdsell
Sen. Giuda
Rep. Osborne

Sen. Gray
Sen. Carson
Rep. Doucette

SB 211

Sen. D'Allesandro

SB 214

Sen. Sherman

Sen. Watters

Sen. Carson

Rep. Vann

Aaron Jones 271-4063

Harold F. French
Chairman

**AMENDED
SENATE CALENDAR NOTICE
Commerce**

Sen Harold French, Chair
Sen Bill Gannon, Vice Chair
Sen Jeb Bradley, Member
Sen Donna Soucy, Member
Sen Kevin Cavanaugh, Member

Date: January 20, 2022

HEARINGS

	Tuesday	02/08/2022
	(Day)	(Date)
Commerce		State House 100
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		9:00 a.m.
		(Time)
9:00 a.m. SB 203	relative to the state minimum hourly rate.	
9:15 a.m. SB 210	relative to the sale of manufactured housing parks.	
9:30 a.m. SB 385-FN	relative to financial exploitation of vulnerable adults.	
9:45 a.m. SB 214	relative to conflicts of interest and contract powers of condominium unit owners' associations.	

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 203

Sen. Soucy	Sen. Whitley	Sen. Rosenwald	Sen. Watters
Sen. Sherman	Sen. Perkins Kwoka	Sen. Cavanaugh	Sen. Prentiss
Sen. D'Allesandro	Sen. Kahn	Rep. Schultz	Rep. Soucy
Rep. Sullivan			

SB 210

Sen. Bradley	Sen. Hennessey	Sen. Birdsell	Sen. Gray
Sen. Gannon	Sen. Avard	Sen. Giuda	Sen. Carson
Sen. Daniels	Sen. Soucy	Rep. Osborne	Rep. Doucette
Rep. L. Sanborn	Rep. Potucek		

SB 214

Sen. Sherman	Sen. Watters	Sen. Carson	Rep. Vann
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SB 385-FN

Sen. Bradley	Sen. Hennessey	Sen. Rosenwald	Sen. Gray
Sen. Watters	Sen. Avard	Sen. Soucy	Sen. Birdsell
Sen. Carson	Sen. Sherman	Sen. Cavanaugh	Sen. Gannon
Sen. Prentiss	Sen. Giuda	Rep. Hunt	Rep. Osborne
Rep. Potucek	Rep. Bartlett		

Aaron Jones 271-4063

Harold F. French
Chairman

Senate Commerce Committee

Aaron Jones 271-4063

SB 211, relative to an injured employee's right to reinstatement to a former position for purposes of workers' compensation.

Hearing Date: February 1, 2022

Time Opened: 11:35 a.m.

Time Closed: 12:06 p.m.

Members of the Committee Present: Senators French, Gannon, Bradley, Soucy and Cavanaugh

Members of the Committee Absent : None

Bill Analysis: This bill adds an exception to an employee's right to reinstatement to his or her position based on the employer's need to fill the position where a temporary replacement is not available or practical.

Sponsors:

Sen. D'Allesandro

Who supports the bill: Senator Lou D'Allesandro, John Sullivan, Wendy Hunt (Greater Nashua Chamber of Commerce), Glenn Brackett (NH AFL-CIO), Gary Abbott (Associated General Contractors of NH)

Who opposes the bill: Jared O'Connor, Jerry O'Neil, Marissa Chase (NH Association for Justice)

Who is neutral on the bill: Danielle Albert (NH DOL)

Summary of testimony presented in support:

Senator Lou D'Allesandro

- Senator D'Allesandro submitted written testimony to the Committee from John Sullivan.
- Currently, employers are having difficulty finding employees. This bill would add an exemption to an employee's right to reinstatement to their position based on an employer's need to fill a position wherein a temporary replacement is not available or practical.
- Employers face an undue hardship when an employee has been on an extended leave. During that time, an employer may also face retention problems.
- Certain jobs require a particular specificity, such as being a sheet metal worker, which can be difficult to fill.

- In 1993 or 1994, Senator D'Allesandro believed similar compromise legislation had been filed; however, he was unable to find out more about it.

Summary of testimony presented in opposition:

Jared O'Connor

- Under existing law, an injured worker has the right to reinstatement upon request if their position is available, even if it has been temporarily filled.
 - This obligation is only applicable to larger employers. Employers with 5 or fewer employees are exempt from this requirement.
- An injured worker's right to reinstatement can be terminated under three circumstances.
 - First, their treating doctor has determined they are unable to return to their job.
 - Second, they have accepted a job with a different employer.
 - Finally, 18 months elapsed from the date of their injury.
- This bill would provide an employer with the ability to unilaterally terminate a worker's right to reinstatement.
- Attorney O'Connor said this raised concerns because it would be an employer-sided standard that would be subject to abuse. Additionally, a replacement would be rarely practicable.
- The right to reinstatement has existed and worked for over 30 years.
- From his experience, there have been very few disputes between employers and employees that have reached the Department of Labor.
- An employer's inability to fill a position is a slight burden; however, it is a slight burden on an employee who is required to be out of work and receiving only 60% of their wages.
- In most instances, the burden on an employer does not last for 18 months. Typically, Attorney O'Connor stated that a worker does receive treatment and they are back to work in a month, or they are seriously injured and it is clear they cannot return.
- These types of cases are rarely litigated; however, Attorney O'Connor believed this bill would incentive injured employees to pursue litigation. If an employer is found to have inappropriately terminated an employee's right to reinstatement, then under existing law, they are entitled to receive full wages directly from their employer. This would not foster cooperation, which the current system was designed to do.
- Under the existing system, workers' compensation litigation is between an insurer and an injured worker, whereas an employer is on the sideline. This bill would change that dynamic.
- Attorney O'Connor concluded that it would be disruptive to implement this new employer-sided termination.

- **Senator Soucy** asked if this law would change the other 3 rights currently given to an employee. The 18 months, for example, would potentially be in question because an employer could terminate after only 3 months.
 - **Attorney O'Connor** replied sure. For example, an iron worker who may have fractured their hip could have a determination made by a doctor that they will never be able to return to work. Subsequently, their right to reinstatement would be over; thus, an employer could immediately hire someone on a permanent basis. If another factor were introduced, which would allow an employer to terminate, then they could decide to do it whenever. He believed this bill would encourage litigation because an injured worker would have the option of bringing their employer before the Department of Labor on the basis of whether it had been practicable to fill their position.
- **Senator Soucy** wondered if this would discourage communication between employers and employees about their potential to recover.
 - **Attorney O'Connor** thought it would. Under the existing system, an employee is encouraged to stay in touch with their employer to let them know about their restrictions, whether they need an accommodation, or if they can return full-time.

Jerry O'Neil

- Under previous law, an employer had no responsibility to keep an injured worker's job available and/or accommodate them for their return back to work.
- From his experience, the previous law impacted employees through lost income and jobs. Any benefits the employee or their family were entitled to disappeared with that job. Once an employee had been terminated, it was difficult to find a new employer. New employers had no commitment or responsibility for an injury or accommodating an employee to get them back to work.
- Under the existing law, an employee can still be terminated. If an employee can recover sufficiently, however, then they have the right to be reinstated.
- In the 1990s, Attorney O'Neil said the cost of the system was out of control. As a result, a deal was reached between employers, unions, and workers' compensation carriers. This deal included the right to reinstatement, temporary alternative duty, and managed care. The burden on small employers was considered; thus, not all employees were entitled to reinstatement. Further, all employees exchanged 6 and 2/3rds of their compensation benefits to receive the right of reinstatement.
- Unlike the old system, there have not been a lot of hearings because the process does require communication.
- If this bill were passed, there would be a return to the old system, which would place all injured employees at risk of being terminated by a subjective standard. Further, employees would receive nothing in return; therefore, Attorney O'Neil believed it would be fair to return to them their 6 and 2/3rds benefit.

- The existing system has worked fairly and effectively because there is more communication, less animosity, and fewer litigation issues. In addition, costs are kept down for insurers because an employer is given a separate notice at a reinstatement hearing to get their own lawyer.

Neutral Information Presented:

***Danielle Albert, Director of the Workers' Compensation Division, NH
Department of Labor***

- Reinstatement is available to an injured worker under the workers' compensation law.
- This benefit does provide a mechanism by permitting an injured worker to return to their job of injury following a compensable work injury.
- This benefit is unique in two ways.
 - First, it is between an employer and an employee, not an insurance carrier.
 - Second, a vehicle is created wherein employees and employers continue to communicate with each other over the course of a worker's injury.
- The Department does provide technical guidance to an injured worker on the requirements of reinstatement, how they can ask for this benefit, and what to do if a dispute does arise.
- The Department's interaction with disputes is limited; however, they do provide a mechanism where disputes can be litigated and determined.
- There are no reporting requirements for this benefit, so the Department is unaware of when it is provided until both parties contact them.
- Director Albert raised concerns that there could be conflict and confusion relative to what makes a position available. In Section 1 of RSA 281-A:25-a, there is already a definition of what is considered available.
- **Senator Cavanaugh** asked if an employer must hold something for a certain amount of time.
 - **Director Albert** wanted to clarify if Senator Cavanaugh were asking in the context of workers' compensation.
 - **Senator Cavanaugh** responded that was correct.
 - **Director Albert** said a timeframe has been built in. In Section 2 of the statute, the benefit is available to an injured worker for 18 months from the date of injury. If that timeframe is exceeded, then a benefit may cease.
- **Senator Cavanaugh** wondered if an employer could let an employee with extensive injuries go after 19 months.
 - **Director Albert** said current statute and workers' compensation provisions do not have requirements that an employer must terminate an employee. The right to reinstatement is time limited, so it would cease to exist. Other benefits, such as temporary alternative duty, would be

available to an injured employee if an employer did not take actions or steps to terminate their relationship. Director Albert hoped an employee would not be terminated in 18 months; however, she reiterated that an employee does lose the right to reinstatement at that point.

AJ

Date Hearing Report completed: February 4, 2022

Speakers

Senate Remote Testify

Commerce Committee Testify List for Bill SB211 on 2022-02-01

Support: 3 Oppose: 0

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Hunt, Wendy	A Member of the Public	Greater Nashua Chamber of Commerce members	Support
Brackett, Glenn	A Lobbyist	NH AFL-CIO	Support
Abbott, Gary	A Lobbyist	Associated General Contractors of NH	Support

Testimony

Good morning,

Workers Compensation

I am here today as a small business executive to offer my support for adding language in the Workers Compensation Act that would potentially allow for a business to permanently replace an injured worker under certain conditions.

There are times in a small business where tasks still need to be accomplished even when an employee is out on Workers Compensation. A larger operation may be able to shift tasks around and absorb the workload of the employee who is out for an extended period, but it becomes very challenging to absorb those same tasks for a small business and its employees.

The tasks associated with an injured employee are left to the small business employees to try and absorb which is not feasible due to their own workload and work schedule. A temporary worker is not easy to find especially for critical tasks due to the training and specialization of the work requirements. This is especially true in the current pandemic environment.

Our small business would do everything possible to hold a job for an employee who is out on Workers Compensation. Unfortunately, being out for an extended period puts undue hardship on the current employees as they become "burnt out" and some leave which creates other hiring and retention challenges for the small business.

Having the ability to fill a position that is critical to the operation, coupled with not being able to find a temporary replacement or it is not practical for the business requirement, will provide small business some needed relief.

The ability of the small business to respond in helping to complete required tasks and assist current employees so they do not become overburdened and leave the business, is critical to our success.

Thank you very much.

Regards,



John G. Sullivan

Chief Administrative and HR Officer

Bayberry Services

Voting Sheets

Senate Commerce Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB 211

Hearing date: 2/1/22

Executive Session date: 2/10/22

Motion of: IS Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: CONSENT Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: SEN. FRENCH

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Thursday, February 10, 2022

THE COMMITTEE ON Commerce

to which was referred **SB 211**

AN ACT

relative to an injured employee's right to
reinstatement to a former position for purposes of
workers' compensation.

Having considered the same, the committee recommends that the Bill

BE REFERRED TO INTERIM STUDY

BY A VOTE OF: 5-0

Senator Harold French
For the Committee

This bill would have added an exemption to an employee's right to reinstatement to their position based on an employer's need to fill a position wherein a temporary replacement is not available or practical. The Committee felt this bill was too broad and it would disrupt the existing workers' compensation system, which has been in place for over 30 years. Currently, an injured worker's right to reinstatement can be terminated under three circumstances: a treating doctor could determine they are unable to return to their job; a worker could accept a job with a different employer; or 18 months could elapse since the date of the injury.

Aaron Jones 271-4063

FOR THE CONSENT CALENDAR

COMMERCE

SB 211, relative to an injured employee's right to reinstatement to a former position for purposes of workers' compensation.

Interim Study, Vote 5-0.

Senator Harold French for the committee.

This bill would have added an exemption to an employee's right to reinstatement to their position based on an employer's need to fill a position wherein a temporary replacement is not available or practical. The Committee felt this bill was too broad and it would disrupt the existing workers' compensation system, which has been in place for over 30 years. Currently, an injured worker's right to reinstatement can be terminated under three circumstances: a treating doctor could determine they are unable to return to their job; a worker could accept a job with a different employer; or 18 months could elapse since the date of the injury.

Docket of SB211

Docket Abbreviations

Bill Title: relative to an injured employee's right to reinstatement to a former position for purposes of workers' compensation.

Official Docket of **SB211**:

Date	Body	Description
12/14/2021	S	To Be Introduced 01/05/2022 and Referred to Commerce; SJ 1
1/20/2022	S	Hearing: 02/01/2022, Room 101, LOB, 09:30 am; SC 4
2/10/2022	S	Committee Report: Referred to Interim Study, 02/16/2022; Vote 5-0; CC; SC 7
2/16/2022	S	Refer to Interim Study, MA, VV; 02/16/2022; SJ 3

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 211

Senate Committee: Commerce

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
- Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
- N/A Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # _____ ___ - amendment # _____
 ___ - amendment # _____ ___ - amendment # _____

- Executive Session Sheet
- Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____
 ___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

- ___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- ___ Enrolled Bill Amendment(s)
- ___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house
 ___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Aaron Jones
Committee Aide

7/8/22
Date

Senate Clerk's Office AK