

New Hampshire

Are mandatory arbitration provisions recognized in your state? If so, are there any limitations to its enforcement?

Yes, New Hampshire generally recognizes mandatory arbitration provisions.ⁱ Unlike many states, the New Hampshire arbitration statute is not based on either the Uniform Arbitration Act or the Revised Uniform Arbitration Act, and instead is based in part on the Federal Arbitration Act (“FAA”). RSA 542:1-11, governs arbitration in New Hampshire, including applications to stay or compel arbitration. The statute presumptively deems any written arbitration agreement valid, enforceable, and irrevocable except where there are grounds for the revocation of any contract.ⁱⁱ However, the statute does not apply to a written arbitration agreement between an employer and employees or a union unless the agreement specifically provides for the application of the New Hampshire arbitration statute.ⁱⁱⁱ

To be enforceable under New Hampshire law, an arbitration agreement must be in writing.^{iv} State courts apply the traditional principles of contract formation and interpretation to determine whether the parties have a valid arbitration agreement.^v Once a court determines that there is a valid arbitration agreement, it will then consider whether the agreement covers the parties’ dispute.^{vi} The court presumes arbitrability unless it cannot discern any interpretation of the agreement that covers the dispute.^{vii} If the court cannot read the contract in any way that covers the parties’ dispute, the court will not compel arbitration.^{viii}

Parties may waive their rights to arbitration under a contract.^{ix} A waiver can be inferred from a course of conduct that is inconsistent with the notion that they treated the arbitration provision as in effect, or any conduct that might be reasonably construed as showing that they did not intend to avail themselves of such provision.^x “A waiver requires a finding of an actual intention to forego a known right.”^{xi}

What is your state’s law, if any, regarding gift cards, subscription services and loyalty programs?

I. Gift Cards

In New Hampshire, a gift certificate of less than \$250.00 value, or store credits that were issued for merchandise credit, regardless of when it was issued, cannot have an expiration date.^{xii} Gift certificates of \$250.00 or more expire when they become abandoned property, currently after 5 years.^{xiii} If this type of large value gift certificate goes unused for more than 5 years, the business is required to turn that money over to the State as “abandoned property.”^{xiv} Exceptions apply to season passes or to gift certificates which were given away for promotional purposes or were not paid for.^{xv}

II. Subscription Services/Loyalty Programs

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New Hampshire

New Hampshire does not have any laws on subscription services or loyalty programs.

ⁱ R.S.A. § 642:1.

ⁱⁱ *Id.*

ⁱⁱⁱ *Id.*; *Appeal of International Assoc. of Firefighters, AFL-CIO Local 1088*, 123 N.H. 404, 426 (1983).

^{iv} R.S.A. § 542:3.

^v See *Aetna Life & Cas. Co. v. Martin*, 134 N.H. 90, 93 (1991); *Demers Nursing Home v. R.C. Foss & Son*, 122 N.H. 757, 760 (1982).

^{vi} R.S.A. § 542:2.

^{vii} See *John A. Cookson Co. v. New Hampshire Ball Bearings, Inc.*, 147 N.H. 352, 355-56 (2001).

^{viii} See *Dunn Sons, Inc., v. Paragon Homes of New England, Inc.*, 110 NH 215, 218-219 (1970).

^{ix} *Logic Associates, Inc. v. Time Share Corp.*, 124 N.H. 565, 571 (1984).

^x *Id.*

^{xi} *Id.*

^{xii} R.S.A. § 358-A:2(XIII). This does not apply to season passes. *Id.*

^{xiii} R.S.A. § 471-C:2(I).

^{xiv} R.S.A. § 471-C:16.

^{xv} *Id.*