

North Carolina

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

A. Wrongful Termination

North Carolina law declares as state public policy the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex, or handicap by employers that regularly employ 15 or more employees. In March 2016, the state enacted House Bill 2 to preempt local ordinances governing wage payment, employment conditions, and public accommodations, and to amend all existing North Carolina statutes, ordinances, and regulations with respect to bathrooms and changing facilities in public schools and agencies, and public accommodations generally. Notably, HB 2 also removed the provision permitting a private right of action under the state's fair employment practices law and vested sole authority in the state's Human Relations Commission to investigate and prosecute charges of discrimination. This amendment restores an employee's right to bring a civil action in state court for discriminatory discharge.

N.C. Gen. Stat. § 143-422.3 and N.C. Gen. Stat. § 1-54 (Effective Date 07/18/2016).

B. National Guard Reemployment Rights

Under current law, members of the North Carolina National Guard are entitled to reemployment rights upon release from state duty. The new law extends these reemployment rights to all members of the National Guard of any state. Employers and prospective employers are prohibited from discriminating or retaliating against members of the National Guard of any state who perform, apply to perform, or who have an obligation to perform service in the National Guard of any state. The prohibitions include denying members initial employment, reemployment, retention in employment, promotion, or any benefit based on their membership or application for membership in the National Guard. However, employers are not required to pay salary or wages to members of the National Guard during periods of active service.

N.C. Gen. Stat. § 127A-201 (Effective Date 10/01/2015).

II. Pre-Employment Inquiry Guidelines

No new laws or regulations enacted in 2015 or 2016.

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

North Carolina has enacted the Public Facilities Privacy and Security Act to amend the North Carolina Equal Employment Practices Act (the "NCEEPA"). The new law nullifies all local ordinances concerning wages, employment and public accommodations. The new law also adds a new equal access to public accommodations requirement to North Carolina law that prohibits

discrimination based on biological sex, among other categories, in places of public accommodation.

The new law requires all government entities to designate multiple-occupancy bathrooms and changing facilities (i.e., restrooms, locker rooms, or other facilities where more than one person may be undressing) for use by people based on their biological sex. The law defines “biological sex” as the gender listed on a person’s birth certificate. Notably, the restroom and changing facility regulations do not apply to or affect private businesses. As a result, private companies with operations in North Carolina are free to implement their own policies that permit employees, customers, and third parties access to restrooms and locker or dressing rooms that correspond to their gender identity or expression. If, however, a private company voluntarily designates a restroom for use based on biological sex pursuant to the new law, such a policy will not give rise to a claim of discrimination under North Carolina state law. Such policy may, however, run afoul of federal law as to this issue.

The new law expressly provides that no person may bring any civil action based upon the public policy expressed [in the NCEEPA]. Accordingly, North Carolina employees are limited to bringing claims of race, age, gender, and religious discrimination under federal laws, such as Title VII and the ADEA. Employees may still file suit in North Carolina state court based on other state statutes containing recognized public policies like the North Carolina Wage and Hour Act.

The law took effect immediately and applies to any action commenced, any municipal regulation adopted, and any contract entered into on or after March 24, 2016. Thus, some local ordinances already in effect, including those in Charlotte, Raleigh, Chapel Hill, and several other counties and cities, are now void.

N.C. Gen. Stat. § 115C-521.2, N.C. Gen. Stat. § 143-760, N.C. Gen. Stat. § 143-422.10, N.C. Gen. Stat. § 143-422.11, N.C. Gen. Stat. § 143-422.12, and N.C. Gen. Stat. § 143-422.13, N.C. Gen. Stat. § 115C-47, 95-25.1, N.C. Gen. Stat. § 153A-449(a), N.C. Gen. Stat. § 160A-20.1(a), N.C. Gen. Stat. § 143-422.2, and N.C. Gen. Stat. § 143.422.3 (Effective Date 03/23/2016).

V. Drug Testing

No new laws or regulations enacted in 2015 or 2016.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

No new laws or regulations enacted in 2015 or 2016.

VIII. Workers’ Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous

The North Carolina Division of Employment Security maintains a separate account for each employer in North Carolina enrolled in the state’s unemployment assistance program. When a business is sold or otherwise acquired by another entity, the account will transfer to the new entity unless: (a) there is no common ownership between the predecessor and the successor; and (b) the successor acquired the assets in a bankruptcy sale.

The amendments provide that if a successor employer has “continuity of control” with an existing business, the new employer will take over the account of the existing business. Continuity of control exists where one or more persons or entities that control the existing business remain in control under the new employer. Such control may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract allow direction of the internal affairs or conduct of the business enterprise. Control is not affected by changes in the form of a business enterprise, reorganization of a business enterprise, or expansion of a business enterprise.

N.C. Gen. Stat. § 96-11.7 and N.C. Gen. Stat. § 96-4 (Effective Date 05/11/2016).