



# **NORTH CAROLINA**

## **QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW**

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*Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.*

## At-Will Employment

North Carolina is an at-will-employment state, which means that an employer may end the employment relationship at any time and for any reason as long as it is not an otherwise unlawful reason. [Kurtzman v. Applied Analytical Industries, Inc., 347 N.C. 329, 331, 493 S.E.2d 420, 423 \(1997\)](#). However, there are three recognized exceptions: (1) the existence of an employment contract for a definite term; (2) a termination that is in violation of state or federal anti-discrimination law; and (3) a termination that is in violation of state public policy. [Gillis v. Montgomery Cty. Sheriff's Dep't, 191 N.C. App. 377, 380, 663 S.E.2d 447, 449-50 \(2008\)](#).

There is no specific list of what actions constitute a violation of public policy. [Ridenhour v. International Business Machines Corp., 512 S.E.2d 774, 778 \(1999\)](#). That said, under the public policy exception, an employee may not be terminated for refusing to violate the law at the employer's request, for engaging in a legally protected activity such as utilizing workers' compensation benefits, or based on an activity by the employer contrary to law or public policy. [Ridenhour v. International Business Machines Corp., 512 S.E.2d 774, 778 \(1999\)](#).

## Immigration Verification

Private employers with 25 or more employees must use E-Verify to verify a person's work authorization and retain the verification record during the person's employment and for one year thereafter. [N.C. Gen. Stat. §§ 64-25, 64-26](#).

North Carolina state agencies, departments, institutions, community colleges, and local education agencies must also use E-Verify no later than the third working day after the hire. [25 N.C. Admin. Code 1H.0636](#).

## Drug Testing

Employers opting to utilize drug testing must follow testing requirements defined by North Carolina statutes and [North Carolina Department of Labor](#) regulations, although such provisions do not apply to employers required to test by the federal Department of Transportation or Nuclear Regulatory Commission. [N.C. Gen. Stat. Ann. § 95-230 to 95-235](#) The employer must pay all reasonable expenses associated with all drug tests; however, the prospective or current employee must pay all reasonable costs associated with the retest process for positive results, including chain of custody, shipping, and retesting costs. [13 N.C. Admin. Code 20.0601-0602](#).

Employers are subject to civil penalties for violations of the controlled substance examination regulations. [N.C. Gen. Stat. § 95-234](#).

The statutes and regulations do not address alcohol testing.  
[N.C. Gen. Stat. §§ 95-231 et seq.; 13 N.C. Admin. Code §§ 20.0101](#).

## Medical Testing

Employers may condition employment offers on medical examination results or records obtained pre-employment, but such exams must be conducted in a nondiscriminatory manner. [29 CFR § 1630.14\(b\)\(3\)](#). Employers with 25 or more employees may not require applicants to pay for medical examinations or records as a condition of the initial act of hiring. [N.C. Gen. Stat. § 14-357.1](#).

## Paid Leave

Generally, North Carolina employers may – but are not required to – give employees paid vacation or sick leave ([www.labor.nc.gov/promised-wage](http://www.labor.nc.gov/promised-wage)).

## Jury Duty Leave

It is unlawful for an employer to discharge or demote an employee because they have been called for jury duty or are serving as a grand or petit juror. [N.C. Gen. Stat. § 9-32\(a\)](#).

The statute also establishes a civil action for “reasonable damages” sustained by a discharged or demoted employee and entitlement to reinstatement to the former position. The employee bears the burden of proof in such actions. [N.C. Gen. Stat. § 9-32\(b\)](#). The statute of limitations for these actions is one year. [N.C. Gen. Stat. § 9-32\(c\)](#).

North Carolina state law does not require an employer to provide jury duty pay. (<https://www.labor.nc.gov/workplace-rights>).

### **Voting Leave**

North Carolina state law does not require employers to provide employees with leave or time off to vote.

### **Parental Leave**

North Carolina state law requires employers to provide limited parental leave of four hours per year in order for an employee to attend or otherwise be involved in his or her child’s school. This leave is applicable to parents, guardians, and persons standing in *loco parentis* for a school-aged child. The leave is subject to the following conditions: (1) the leave shall be at a mutually agreed upon time between the employer and the employee; (2) the employer may require an employee to provide the employer with a written request for the leave at least 48 hours before the time desired for the leave; and (3) the employer may require that the employee furnish written verification from the child’s school that the employee attended or was otherwise involved at that school during the time of the leave. [N.C. Gen. Stat. § 95-28.3](#).

An employer must provide leave to an employee whose child is under the jurisdiction of the juvenile courts to comply with a court order requiring the parent to attend a court appearance, a parental responsibility class, or a medical, surgical, psychiatric, or psychological evaluation or treatment. [N.C. Gen. Stat. § 7B-2705](#).

### **Domestic Violence Leave**

North Carolina prohibits employers from discharging, demoting, denying a promotion to, or disciplining an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under the state’s domestic violence statutes. “Reasonable time off” is not defined by the statute. Absent emergency circumstances, the employee should follow the employer’s normal leave policy, and the employer may require documentation as to the emergency prevented in advance for compliance or may require other documentation supporting the workplace absence. [N.C. Gen. Stat. Ann. § 50B-5.5](#).

### **Smoking/Substance Use Laws**

Employers may not discriminate against any person for the lawful use of lawful products during nonworking hours, as long as the use occurs off the employer’s premises during nonworking hours and does not adversely affect job performance, the ability to properly fulfill the responsibilities of the position in question, or the safety of other employees. [N.C. Gen. Stat. § 95-28.2\(b\)](#).

However, an employer may “restrict the use of lawful products by employees during nonworking hours if the restriction relates to a bona fide occupational requirement and is reasonably related to the employment activities.” [N.C. Gen. Stat. § 95-28.2\(c\)\(1\)](#). Employers may also restrict the lawful use during nonworking hours if the restriction “relates to the fundamental objectives of the organization.” [N.C. Gen. Stat. § 95-28.2\(c\)\(2\)](#). The employer may also discharge, discipline, or take action due to noncompliance with the employer’s substance abuse-prevention program or the recommendations of substance abuse-prevention counselors who are employed or retained by the employee. [N.C. Gen. Stat. § 95-28.2\(c\)\(3\)](#).

### **Break Time to Express Milk**

North Carolina has not enacted legislation addressing breaks for purposes of nursing or breast milk expression, though must follow the federal Fair Labor Standards Act (FLSA) requirement that employers provide reasonable break time for an employee to express breast milk for a nursing child for one year after the child’s birth each time the employee has a need to express the milk. The [FLSA](#) requires employers to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

## Meal/Rest Breaks

North Carolina has not enacted legislation regulating or establishing meal breaks or rest periods for private employers with the exception of certain meal and rest breaks required for employees under the age of 16.

## Minimum Wage, Overtime, and Wage Recordkeeping

The applicable minimum wage is \$7.25 per hour. N.C. Gen. Stat. § 95-25.3.

An employer may pay tipped employees \$2.13 per hour under the FLSA as long as the employee's tips bring the total hourly wage up to the state minimum wage.

Provisions governing overtime pay can be found at N.C. Gen. Stat. § 95-25.4. Generally, if an employee works more than 40 hours, they must be compensated at a rate of one and one-half times the regular rate of pay at which they are employed. Agricultural employees, among others, are exempt from the overtime pay requirements. N.C. Gen. Stat. § 95-25.14.

Every employer must make and keep a record containing particular employee information, including the employee's name, home address, and job title, among other pieces of information. 13 N.C. Admin. Code 12.0801. Employers also must make and keep a record containing wage and pay data for a period of not less than three years. 13 N.C. Admin. Code 12.0802.

## Final Payments

North Carolina law provides that employees whose employment is discontinued for any reason shall be paid all wages due on or before the next regular payday either through the regular pay methods or, if the employee makes a written request, by trackable mail.

Wages based on bonuses, commissions, or other forms of calculation shall be paid on the first regular payday after the amount becomes calculable when a separation occurs.

Wages may not be forfeited unless an employee has been notified in accordance with N.C. Gen. Stat. 95-25.13 of the employer's policy or practice which results in forfeiture. Employees who are not notified are not subject to such loss or forfeiture. N.C. Gen. Stat. § 95-25.7.

## Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. Unemployment benefits are administered by the Division of Employment Security and additional information regarding the benefits may be accessed at [des.nc.gov/](https://des.nc.gov/).

## Workers' Compensation

North Carolina's Workers' Compensation Act, is administered by the North Carolina Industrial Commission. Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Act. N.C. Gen. Stat. § 97-2(6). Under the Act, a workplace injury must be immediately, or as soon as practicably, reported in writing to the employer. N.C. Gen. Stat. § 97-22. Failing to report an injury in a timely manner may result in a denial of benefits.

The North Carolina Retaliatory Employment Discrimination Act prohibits discrimination or the taking of retaliatory action (discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment) against an employee because they in good faith do, or threaten, to take certain actions enumerated in the Act, including the filing of a claim under the Act.



## Child Labor

Children less than 14 years of age: Work is generally not permitted for children under 14 years of age except when working for the child's parents, participating in the home delivery of newspapers, or modeling or acting in a movie or theater production (<https://www.labor.nc.gov/workplace-rights/youth-employment-rules/work-hour-limitations-youths>).

Children 14 to 15 years of age: Work may be performed in retail businesses, food service establishments, service stations, and offices of other businesses. Children in this age range are not permitted to work in manufacturing, mining, on construction sites, with power-driven machinery, on the premise of a business holding an ABC permit for the on-premises sale or consumption of alcoholic beverages, or in hazardous or detrimental occupations as defined by the U.S. Department of Labor (<https://www.labor.nc.gov/workplace-rights/youth-employment-rules/work-hour-limitations-youths>).

Children 16 to 17 years of age: Work in hazardous/detrimental occupations as defined by the Department of Labor is not permitted (<https://www.labor.nc.gov/workplace-rights/youth-employment-rules/hazardous-and-detrimental-occupations-youths>).

The various restrictions for places of work dealing with minors, as well as restrictions on the hours of the day the minor may work, may be found at [N.C. Gen. Stat. Ann. § 95-25.5](#).

## Gun Laws

North Carolina has not enacted a "parking lot law" allowing employees to maintain firearms in their vehicles except in certain circumstances primarily related to law enforcement/court personnel. The state also provides an exception to the concealed handgun permit law that allows all private premises, such as an employer, to prohibit the carrying of a concealed handgun by posting a conspicuous notice or via the statement of a person in legal possession or control of the premises. [N.C. Gen. Stat. § 14-415.11\(c\)\(8\)](#).

## Additional Laws and Regulations

### Retaliatory Employment Discrimination Act

This North Carolina act prohibits discrimination or taking of retaliatory action (discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment) against an employee who in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to enumerated statutes such as the Workers' Compensation Act, Wage and Hour Act, Occupational Safety and Health Act of North Carolina, and others listed at [www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/other-protected-activities-under-reda](http://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/other-protected-activities-under-reda). [N.C. Gen. Stat. § 95-241](#).

### Equal Employment Practices Act (EEOA)

North Carolina's EEOA provides that it is the public policy of the state to "protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religion, color, national origin, age, sex, or handicap by employers which regularly employ 15 or more employees." The state's Human Relations Commission in the Civil Rights Division of the Office of Administrative Hearings has the authority to receive, investigate, and conciliate EEOC charges. [N.C. Gen. Stat. § 143-422.1 et seq.](#)

### Persons with Disabilities Protection Act

North Carolina prohibits employers with 15 or more full-time employees within the state (but not domestic or farm workers at the employer's home or farm) from failing to hire, failing to promote, discharging, or otherwise discriminating against qualified persons with a disability due to his or her disability. An employer also cannot require an applicant to identify whether he or she is disabled prior to a conditional offer of employment. [N.C. Gen. Stat. § 143-422.2](#).

Employers are not required to make accommodations that would impose undue hardship. Undue hardship is determined through various facts, such as the nature and cost of the accommodations, financial resources of the facility, number of employees and type of operations, and effect on expenses, financial resources, and operations. [N.C. Gen. Stat. § 168A-3 et seq.](#)

### **Genetic Information and Medical Status Issues**

North Carolina prohibits discrimination in employment on the basis that an applicant or employer possesses sickle cell or hemoglobin C trait, that a person has requested genetic testing or counseling services, or due to genetic information being obtained concerning the person or a member of the person's family. [N.C. Gen. Stat. §§ 95-28.1, 95-28.1A.](#)

The state also prohibits discrimination in continued employment on the basis of HIV status and prohibits HIV testing for determining suitability for continued employment. However, the statute's protections are limited. Employers can test for HIV in pre-employment and annual medical screens and are not prohibited from denying employment to an applicant based on a positive HIV test or making a reassignment or terminating employment if the HIV-positive status would pose a significant risk to the employee, the public, or coworkers or if the person could not perform normally assigned duties. [N.C. Gen. Stat. § 130A-148.](#)