Wage and Hour Act

Minimum Wage: $7.25 per hour (effective 7/24/09)

Employers in North Carolina are required to pay the higher of the minimum wage rate established by state or federal laws. The federal minimum wage increased to $7.25 per hour effective July 24, 2009; therefore, employers in North Carolina are required to pay their employees at least $7.25 per hour.

An employer may pay as little as $2.13 per hour to tipped employees so long as each employee receives enough in tips to make up the difference between the wages paid and the minimum wage. Employees must be allowed to keep all tips, except that pooling is permitted if no employee’s tips are reduced more than 15%. The employer must keep an accurate and complete record of tips as certified by each employee monthly or for each pay period. Without these records, the employer may not be allowed the tip credit.

Certain full-time students may be paid 90% of the minimum wage, rounded to the lowest nickel.

Overtime

Time and one-half must be paid to all employees after 40 hours of work in any one workweek with some exceptions. The state overtime provisions specifically do not apply to certain types of employees and do not apply to employers that are designated as exempt under the FLSA. Exemptions may be found in NCGS § 95-25.14.

Youth Employment

Rules for all youths under 18 years old are: Youth employment certificates are required. To obtain a YEC, please visit our website at www.labor.nc.gov.

Hazardous or Detrimental Occupations: State and federal labor laws protect youth workers by making it illegal for employers to hire them in dangerous jobs. For example, non-agricultural workers under 18 years of age may not operate a forklift; operate many types of power equipment such as meat slicers, circular saws, band saws, bakery machinery or woodworking machines; work as an electrician or electrician’s helper; or work from any height above 10 feet, including the use of ladders and scaffolds. Certain exemptions apply for Supervised Practice Youth Internships. For a complete list of prohibited jobs, please visit our website at www.labor.nc.gov.

Additional rules for 16- and 17-year-olds are: Work is not permitted in manufacturing, mining or construction, or with power-driven machinery, or on the premises of a business holding an ABC permit for the on-premises sale or consumption of alcoholic beverages; except that youths at least 14 years of age may work on the outside grounds of the premises with written consent from a parent or guardian as long as the youth is not involved with the preparation, serving, dispensing or sale of alcoholic beverages.

Additional rules for 14- and 15-year-olds are:
Work where can be performed: Retail businesses, food service establishments, service stations and offices of other businesses. Work is not permitted in manufacturing, mining or construction, or with power-driven machinery, or on the premises of a business holding an ABC permit for the on-premises sale or consumption of alcoholic beverages; except that youths at least 14 years of age may work on the outside grounds of the premises with written consent from a parent or guardian as long as the youth is not involved with the preparation, serving, dispensing or sale of alcoholic beverages. The wage payment provisions apply to all private-sector employers doing business in North Carolina. The wage payment provisions do not apply to any federal, state or local agency or instrumentality of government.

Complaints

The department’s Wage and Hour Bureau investigates complaints and mediates wage and hour disputes if they are due to the employer. The state of North Carolina may bring civil or criminal actions against the employer for violations of the law. The employer may also sue the employer for back wages. The court may award attorney’s fees, costs, liquidated damages and interest.

Anyone having a question about the Wage and Hour Act may call:

1-800-NC-LABOR (1-800-625-2267)

Employee Classification


Any employee who believes that he or she has been misclassified as an independent contractor by his or her employer may report the suspected misclassification to the N.C. Industrial Commission’s Employer Classification Section by phone, email, or fax. When filing a complaint, please provide the physical location, mailing address, and if available, the telephone number and email address for the employer suspected of employee misclassification:

Employee Classification Section
N.C. Industrial Commission
1253 Mail Service Center
Raleigh, N.C. 27696-4174
Email: emp.classification@nc.gov
Phone: 919-807-2582
Fax: 919-751-0282

Employment at Will

North Carolina is an employment-at-will state. The term “employment-at-will” simply means that unless there is a specific law to protect employees or an employment contract providing otherwise, then an employer can treat its employees as it sees fit and the employer can discharge an employee at the will of the employer for any reason or no reason at all.

Right-to-Work Laws

North Carolina is a “right-to-work” state. Right-to-work applies to collective bargaining or labor unions. The right of persons to work cannot be denied or reduced in any way because they are either members of a labor union (including labor organization or labor association) or chose not to be a member of any such labor union. An employer cannot require any person, as a condition of employment or continuation of employment, to pay any dues or fees for any company or labor union. Also, an employer cannot require an employee as a condition of employment with a labor union whereby (1) non-union members are denied the right to work for the employer, (2) membership is made a condition of employment or continuation of employment, or (3) the labor union acquires an employment monopoly in any enterprise.

Retaliatory Employment Discrimination

The department’s Retaliatory Employment Discrimination Bureau investigates complaints filed by employees against their employers for alleged violations of the N.C. Retaliatory Employment Discrimination Act (REDA). Under REDA, an employer may not retaliate against an employee for engaging in REDA-protected activities, such as filing a claim or initiating an inquiry, related to certain rights under the following:

• Workers’ Compensation Claims
• Wage and Hour Complaints
• Occupational Safety and Health Complaints
• Mine Safety and Health Complaints
• Genetic Testing Discrimination
• Sickle Cell or Hemoglobin C Carriers Discrimination
• N.C. National Guard Service Discrimination
• Participation in the Juvenile Justice System
• Exercising Rights Under Domestic Violence Laws
• Pesticide Regulation Complaints
• Drug Paraphernalia Complaints

Employees who believe they have been retaliated against in their employment because of activities under the above statutes, or employees who have questions about the application of REDA, may call:

1-800-NC-LABOR (1-800-625-2267)

A REDA complaint must be filed with the bureau within 180 days of the date of retaliation.
**OSH Notice to Employees**

**Safety and Health**

**N.C. Department of Labor Responsibilities**

The state of North Carolina has a federally approved program to administer the Occupational Safety and Health Act in North Carolina. This program is administered by the N.C. Department of Labor, Occupational Safety and Health (OSH) Division.

The OSH Division has the following responsibilities and powers:

- **Inspections**—The OSHA Division conducts workplace inspections that can be triggered by complaints, accidents or because the workplace has been randomly selected for an inspection.
- **Citations**—Following an inspection, the employer may be cited for one or more violations of the OSHA standards. The employer will be given a timetable to correct the violation to avoid further action.
- **Penalties**—An employer can be fined up to $7,000 for each “serious” violation. Serious violations that involve injury to a person under 18 years of age could result in fines up to $14,000 per violation. An additional maximum $7,000 penalty can be assessed for each day an employer fails to correct or abate a violation after the allotted time to do so has passed.
- **OSHA Standards**—The division adopts all federally mandated OSHA standards verbatim or can rewrite them to meet state conditions, as long as the new version is at least as strict as the federal standard.
- **OSH Division**

A copy of any specific standard adopted by the OSH Division is available free of charge. The entire “General Industry” or “Construction Industry” standards are available for a nominal cost by calling 1-800-625-2267 or 919-707-7876.

**Employer Rights and Responsibilities**

Public and private sector employers have a “general duty” to provide their employees with workplaces that are free of recognized hazards likely to cause serious injury or death. Employers must comply with the OSHA safety and health standards adopted by the Labor Department.

- **Inspections**—An employer has the legal right to refuse to allow an inspector to enter the workplace without an administrative inspection warrant. If this occurs, the inspector will obtain a warrant to conduct the inspection. The employer has the right to accompany the inspector during the physical inspection.
- **Penalties**—It is illegal to retaliate in any way against an employee for raising a health or safety concern, filing a complaint, reporting a work-related injury or illness, or assisting an inspector. The department will investigate and may prosecute employers who take such action.
- **Citations**—If an OSHA inspection results in one or more citations, the employer is required to promptly and prominently display the citation(s) at or near the place where the violation allegedly occurred. It must remain posted for three working days or until the violation has been corrected or abated, whichever is longer.
- **Complaints**—An employer has a right to make a complaint regarding workplace conditions he or she believes are unsafe, unhealthy or in violation of OSHA standards. An employer inspector is an employee’s workplace. Employers have a right to point out unsafe or unhealthy conditions and to free answer any questions asked by the inspector. The employer may request that his or her name be kept confidential.
- **Citations**—If any OSHA inspection results in one or more citations, the employer is required to promptly and prominently display the citation(s) at or near the place where the violation allegedly occurred. It must remain posted for three working days or until the violation has been corrected or abated, whichever is longer.
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- **Complaints**—An employer has a right to point out unsafe or unhealthy conditions and to freely answer any questions asked by the inspector. The employer may request that his or her name be kept confidential.

**Employee Rights and Responsibilities**

Public and private sector employees must comply with occupational safety and health standards, rules, regulations, and those orders issued under other federal statutes that relate to their own actions and conduct.

- **Complaints**—An employee has a right to make a complaint regarding workplace conditions he or she believes are unsafe, unhealthy or in violation of OSHA standards. An employee inspector is an employee’s workplace. Employers have a right to point out unsafe or unhealthy conditions and to freely answer any questions asked by the inspector. The employer may request that his or her name be kept confidential.
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**Other OSHA Information**

- **Federal Monitoring**—The OSHA Division is monitored by the U.S. Department of Labor. Federal authorities ensure that continued state administration is merited. Any person who has a complaint about the state’s administration of OSHA may contact the Regional Office of the U.S. Department of Labor, 61 Forsyth St., Suite 6750, Atlanta, GA 30303.
- **Additional Information or Questions**—Anyone having a question about any of the above information may write or call:
  
  N.C. Department of Labor Occupational Safety and Health Division 1101 Mail Service Center Raleigh, NC 27699-1101 Phone: 1-800-625-2267 Fax: 919-707-7964 E-mail: ask.osh@labor.nc.gov

**Unemployment Insurance**

NCDOL does not handle matters relating to unemployment insurance. If you would like information about unemployment insurance policies or procedures, please contact the Department of Commerce, Division of Employment Security, P.O. Box 25903, Raleigh, NC 27611-5903, 1-888-737-0259; www.ncesc.com.

**N.C. Workers’ Compensation Notice to Injured Workers and Employers (Form 17)**

NCDOL does not handle matters relating to workers’ compensation. If you would like information about workers’ compensation policies or procedures, please contact the N.C. Industrial Commission at N.C. Industrial Commission, 4340 Mail Service Center, Raleigh, NC 27699-4340, 919-807-2500; www.ic.nc.gov. Form 17 must be prominently posted and must be printed in the same colors and format that appear on the Industrial Commission website. To download and print the current version of Form 17, visit www.ic.nc.gov.

**Wage and Hour Notice to Employees and OSH Notice to Employees must be posted together.**

Josh Dobson Commissioner of Labor

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