

Anti-discrimination Laws: North Carolina

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A Q&A guide to state anti-discrimination law for private employers in North Carolina. This Q&A addresses North Carolina laws prohibiting discrimination, harassment and retaliation. Federal, local or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see *Anti-discrimination Laws: State Q&A Tool* (<http://us.practicallaw.com/0-505-9580>)).

OVERVIEW OF STATE ANTI-DISCRIMINATION LAW

1. What employment-related anti-discrimination laws exist in your state (include harassment and anti-retaliation laws as anti-discrimination laws)? For each anti-discrimination law, please state its citation and title (if applicable) and include information on:

- Which protected classes are covered.
- Which employers are affected (for example, size, type or any exceptions).
- Prohibited employment-related discriminatory conduct.
- Whether managers or supervisors can be held individually liable for discriminatory acts against employees.
- What entity administers and enforces the law.
- What is the statute of limitations for filing a claim.

EQUAL EMPLOYMENT PRACTICES ACT: N.C. GEN. STAT. ANN. §§ 143-422.1 TO 143-422.3

Protected Classes Covered

The Equal Employment Practices Act (EEPA) prohibits employment discrimination based on the following protected classes:

- Race.
- Religion.

- Color.
- National origin.
- Age.
- Sex.
- Handicap.

(N.C. Gen. Stat. Ann. § 143-422.2.)

Affected Employers

The EEPA covers North Carolina employers regularly employing 15 or more employees (N.C. Gen. Stat. Ann. § 143-422.2).

Prohibited Conduct

The EEPA does not specifically define which employment practices are prohibited. The statute provides that it is the state's public policy to "protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement" because of protected class membership (N.C. Gen. Stat. Ann. § 143-422.2).

Individual Supervisor Liability

The EEPA does not address individual supervisor liability.

Administration and Enforcement

The Human Relations Commission administers and enforces the EEPA. The Human Relations Commission can:

- Receive charges of discrimination from the Equal Employment Opportunity Commission (EEOC).
- Investigate and mediate charges of discrimination.

(N.C. Gen. Stat. Ann. § 143-422.3.)

The EEPA does not provide a private right of action, but it can be the basis for a claim for wrongful discharge in violation of public policy.

Statute of Limitations

The Human Relations Commission does not process employment discrimination claims. Employees must file claims with the EEOC.



Employees generally must file a complaint with the EEOC within 180 days of the alleged discriminatory act. For more information on the time limits to file a claim with the EEOC, see *Practice Note, Exhaustion of Administrative Remedies and Statutes of Limitations under Employment Discrimination Laws: Time Limits for Filing EEOC Charges* (<http://us.practicallaw.com/9-521-7561>).

Wrongful discharge claims must be brought within three years (*N.C. Gen. Stat. Ann. § 1-52(5)*).

DISCRIMINATION BASED ON SICKLE CELL TRAIT AND HEMOGLOBIN C TRAIT: N.C. GEN. STAT. ANN. § 95-28.1

Protected Classes Covered

The statute covers individuals with:

- Sickle cell trait.
- Hemoglobin C trait.

Affected Employers

All North Carolina employers are covered.

Prohibited Conduct

Employers cannot, based on protected class membership:

- Deny or refuse employment.
- Discharge from employment.

(*N.C. Gen. Stat. Ann. § 95-28.1*.)

Individual Supervisor Liability

The statute does not address individual supervisor liability.

Administration and Enforcement

The statute does not specify an administering agency.

Statute of Limitations

The statute of limitations for wrongful discharge claims is three years (*N.C. Gen. Stat. Ann. § 1-52(5)*).

DISCRIMINATION BASED ON GENETIC TESTING AND GENETIC INFORMATION: N.C. GEN. STAT. ANN. § 95-28.1A

Protected Classes Covered

The statute covers persons:

- Who have requested genetic testing or counseling services.
- About whom or whose family the employer has obtained genetic information.

(*N.C. Gen. Stat. Ann. § 95-28.1A(a)*.)

Affected Employers

All North Carolina employers are covered.

Prohibited Conduct

Employers cannot, based on protected class membership:

- Deny or refuse employment.
- Discharge from employment.

(*N.C. Gen. Stat. Ann. § 95-28.1A(a)*.)

Individual Supervisor Liability

The statute does not address individual supervisor liability.

Administration and Enforcement

The statute does not specify an administering agency.

Statute of Limitations

The statute of limitations for wrongful discharge claims is three years (*N.C. Gen. Stat. Ann. § 1-52(5)*).

DISCRIMINATION BASED ON LAWFUL USE OF LAWFUL PRODUCTS DURING NON-WORKING HOURS: N.C. GEN. STAT. ANN. § 95-28.2

Protected Classes Covered

The statute protects employees and prospective employees who engage in or have engaged in lawful use of lawful products if the activity:

- Occurs off the employer's premises during non-working hours.
- Does not adversely affect the employee's or prospective employee's:
 - job performance; or
 - ability to fulfill the responsibilities of the position or the safety of other employees.

(*N.C. Gen. Stat. Ann. § 95-28.2(b)*.)

Affected Employers

The statute covers all North Carolina employers with three or more regularly employed employees (*N.C. Gen. Stat. Ann. § 95-28.2(a)*).

Prohibited Conduct

Employers cannot, based on protected activity:

- Fail or refuse to hire a prospective employee.
- Discharge an employee.
- Otherwise discriminate against any employee regarding:
 - compensation;
 - terms;
 - conditions; or
 - privileges of employment.

(*N.C. Gen. Stat. Ann. § 95-28.2(b)*.)

Individual Supervisor Liability

The statute does not address individual supervisor liability.

Administration and Enforcement

The statute does not specify an administering agency.

Statute of Limitations

Claims must be brought within one year from the date of the alleged violation (*N.C. Gen. Stat. Ann. § 95-28.2(e)*).

DISCRIMINATION BASED ON AIDS OR HIV STATUS: N.C. GEN. STAT. ANN. § 130A-148(I)

Protected Classes Covered

The statute protects employees who have HIV/AIDS (*N.C. Gen. Stat. Ann. § 130A-148(i)*).

Affected Employers

All North Carolina employers are covered.

Prohibited Conduct

In determining suitability for continued employment, employers must not:

- Require, perform or use any AIDS test.
- Discriminate against any person based on their AIDS or HIV status.

Employers may:

- Require a test for AIDS for job applicants in pre-employment medical exams.
- Deny employment to an applicant based solely on a confirmed positive test for AIDS.
- Include an AIDS test as part of an annual medical examination routinely required of all employees.
- Take action, including reassignment or termination, if:
 - the continuation of an infected employee's work tasks would pose a significant risk to the health of the employee, co-workers or the public; or
 - the employee is unable to perform the normally assigned duties of the job.

(N.C. Gen. Stat. Ann. § 130A-148(i).)

However, employers should consider the requirements of the Americans with Disabilities Act (ADA) before taking any adverse action against an individual in accordance with this statute. For more information on the Americans with Disabilities Act, see *Practice Note, Disability Discrimination under the ADA* (<http://us.practicallaw.com/4-508-1008>).

Individual Supervisor Liability

The statute does not address individual supervisor liability.

Administration and Enforcement

The statute does not specify an administering agency.

Statute of Limitations

Civil actions must be brought within 180 days after the date the aggrieved person became aware of, or should have become aware of, the alleged discriminatory practice or conduct (N.C. Gen. Stat. Ann. § 130A-148(j)).

HAZARDOUS CHEMICALS RIGHT TO KNOW ACT: N.C. GEN. STAT. ANN. §§ 95-173 TO 95-221**Protected Classes Covered**

The statute protects employees who have:

- Assisted the Commissioner of Labor or the Fire Chief with an inspection regarding hazardous chemicals.
- Testified, or are about to testify, in a proceeding regarding hazardous chemicals.
- Requested information from the employer regarding chemicals used or stored at the employer's facility (N.C. Gen. Stat. Ann. § 95-208).

(N.C. Gen. Stat. Ann. § 95-196.)

Affected Employers

All North Carolina employers are covered.

Prohibited Conduct

Employers cannot, based on protected conduct:

- Discharge an employee.
- Otherwise discipline or discriminate against an employee.

(N.C. Gen. Stat. Ann. § 95-196.)

Individual Supervisor Liability

The statute does not address individual supervisor liability.

Administration and Enforcement

The statute does not specify an administering agency.

Statute of Limitations

Wrongful discharge claims must be brought within three years (N.C. Gen. Stat. Ann. § 1-52(5)).

JURY SERVICE DISCRIMINATION: N.C. GEN. STAT. ANN. § 9-32**Protected Classes Covered**

The statute protects employees who have been called for jury duty or are serving as a grand or petit juror (N.C. Gen. Stat. Ann. § 9-32(a)).

Affected Employers

All North Carolina employers are covered.

Prohibited Conduct

An employer cannot, based on protected conduct:

- Discharge an employee.
- Demote an employee.

(N.C. Gen. Stat. Ann. § 9-32(a).)

Individual Supervisor Liability

The statute does not address individual supervisor liability.

Administration and Enforcement

The statute does not specify an administering agency.

Statute of Limitations

Civil actions must be brought within one year (N.C. Gen. Stat. Ann. § 1-54).

For more information on jury duty leave, see *State Q&A, Leave Laws: North Carolina* (<http://us.practicallaw.com/6-506-8553>).

MILITARY SERVICE DISCRIMINATION: N.C. GEN. STAT. ANN. § 127A-202.1**Protected Classes Covered**

The statute protects members of the North Carolina National Guard and those who have applied for membership (N.C. Gen. Stat. Ann. § 127A-202.1(b)).

Affected Employers

All North Carolina employers are covered.

Prohibited Conduct

Employers cannot, based on protected activity:

- Deny initial employment.
- Deny reemployment.
- Deny retention in employment.
- Deny promotion.
- Deny any employment benefits.

(*N.C. Gen. Stat. Ann. § 127A-202.1(b).*)

Individual Supervisor Liability

The statute does not address individual supervisor liability.

Administration and Enforcement

The Commissioner of Labor enforces this statute (*N.C. Gen. Stat. Ann. § 127A-202.1(e).*)

Statute of Limitations

The statute of limitations for wrongful discharge claims is three years (*N.C. Gen. Stat. Ann. § 1-52(5).*)

For more information on military leave, see *State Q&A, Leave Laws: North Carolina* (<http://us.practicallaw.com/6-506-8553>).

OVERVIEW OF STATE DISABILITY DISCRIMINATION LAW**2. If there is a state law prohibiting disability discrimination, please provide the following information:**

- Who is considered disabled under the law?
- Does the law recognize temporary disabilities?
- Does the law recognize "regarded as" discrimination?
- Does the law protect alcohol and illegal drug users, and if so, to what extent?
- Does the law require reasonable accommodation of persons with disabilities?
- How does a person request reasonable accommodation and how must an employer respond?
- Please provide a brief overview of accommodations that courts in your jurisdiction have found to be reasonable versus not reasonable.

PERSONS WITH DISABILITIES PROTECTION ACT: N.C. GEN. STAT. ANN. §§ 168A-1 TO 168A-12

The North Carolina Persons with Disabilities Protections Act (PDPA) prohibits disability discrimination. The PDPA applies to employers employing 15 or more full-time employees within North Carolina (*N.C. Gen. Stat. Ann. § 168A-3(2)*). Plaintiffs cannot bring both a federal Americans with Disabilities Act of 1990 (ADA) claim and a PDPA claim simultaneously (*N.C. Gen. Stat. Ann. § 168A-11(c)*).

DISABILITY DEFINITION

A "person with a disability" is a person who has at least one of the following:

- A physical or mental impairment which substantially limits one or more major life activities.
- A record of this impairment.
- Is regarded as having this impairment.

(*N.C. Gen. Stat. Ann. § 168A-3(7a).*)

A "qualified person with a disability" is a person with a disability who can satisfactorily perform the duties of the job, with or without reasonable accommodation (*N.C. Gen. Stat. Ann. § 168A-3(9)*).

TEMPORARY DISABILITIES

Temporary impairments generally are not considered to be disabilities under the PDPA (*N.C. Gen. Stat. Ann. § 168A-3(7a)(a)*).

"REGARDED AS" DISCRIMINATION

The PDPA covers employees regarded as having an impairment (*N.C. Gen. Stat. Ann. § 168A-3(7a)*).

ALCOHOL AND ILLEGAL DRUG USERS

The PDPA does not cover individuals with active alcoholism or drug addiction or abuse (*N.C. Gen. Stat. Ann. § 168A-3(7a)(a)*).

DUTY TO PROVIDE REASONABLE ACCOMMODATION

Once a qualified person with a disability has requested an accommodation, or if a potential accommodation is obvious under the circumstances, an employer must:

- Investigate whether there are reasonable accommodations that can be made.
- Make reasonable accommodations.

(*N.C. Gen. Stat. Ann. § 168A-4(b).*)

REQUESTING REASONABLE ACCOMMODATION

An employee seeking accommodation must:

- Inform the employer of the disabling condition.
- Submit any necessary medical documents.
- Make suggestions for possible accommodations.
- Cooperate in any ensuing discussions and evaluations aimed at determining possible accommodations.

(*N.C. Gen. Stat. Ann. § 168A-4(a).*)

REASONABLENESS OF ACCOMMODATION

Reasonable accommodations may include physical changes in the workplace, including:

- Making facilities accessible.
- Modifying equipment and providing mechanical aids to assist in operating equipment.

- Making reasonable changes to job duties to enable the employee to satisfactorily perform those duties.

(*N.C. Gen. Stat. Ann. § 168A-3(10).*)

An accommodation is not reasonable if it would impose an undue hardship on the employer. The PDPA specifically provides that an employer is not required to:

- Hire one or more additional employees to enable the person with a disability to be employed.
- Reassign job duties to other employees without assigning additional duties to the employee with a disability to compensate for those duties reassigned.
- Reassign job duties to other employees where the reassignment would increase the skill, effort or responsibility required of other employees.
- Alter or deviate from bona fide seniority policies or practices.
- Provide personal aids or devices, including:
 - eye glasses;
 - hearing aids; or
 - prostheses.

(*N.C. Gen. Stat. Ann. § 168A-3(10).*)

OVERVIEW OF STATE SEXUAL HARASSMENT LAW

3. If there is a state law prohibiting workplace harassment, please provide the following information:

- Which protected classes are protected from harassment?
- Is sexual harassment prohibited and if so, how is sexual harassment defined?
- If sexual harassment is prohibited, are both quid pro quo and hostile work environment harassment prohibited?
- Is same-sex sexual harassment prohibited?
- Is an employer subject to vicarious liability for sexual harassment by its managers, supervisors or other employees?
- Is an employer subject to vicarious liability for sexual harassment by non-employees?

There is no North Carolina law governing workplace sexual harassment in the private sector.

Although beyond the scope of this Q&A, North Carolina prohibits local board of education members and employees from retaliating against employees who report sexual harassment (*N.C. Gen. Stat. Ann. § 115C-335.5*).

OVERVIEW OF STATE ANTI-RETALIATION LAW

4. Is there a state law prohibiting retaliation in your jurisdiction? If so, please include information on:

- What specific acts are protected, if any.
- How is retaliation defined?
- Whether an employer can be subject to vicarious liability for retaliatory conduct by an employee.
- Whether filing a workers' compensation claim in your jurisdiction is protected from retaliation.

RETALIATORY EMPLOYMENT DISCRIMINATION ACT: N.C. GEN. STAT. ANN. §§ 95-240 TO 95-245

The Retaliatory Employment Discrimination Act (REDA) prohibits retaliation (*N.C. Gen. Stat. Ann. § 95-241*).

PROTECTED ACTS

Employees who in good faith take or threaten to take action under the following North Carolina laws are protected from discrimination and retaliation:

- The Workers' Compensation Act (*N.C. Gen. Stat. Ann. §§ 97-1 to 97-101.1*).
- The Wage and Hour Act (*N.C. Gen. Stat. Ann. §§ 95-25.1 to 95-25.25*).
- The Occupational Safety and Health Act (*N.C. Gen. Stat. Ann. §§ 95-126 to 95-160*).
- The Mine Safety and Health Act (*N.C. Gen. Stat. Ann. §§ 74-24.1 to 74-24.20*).
- Prohibitions against discrimination based on sickle cell or hemoglobin C trait (*N.C. Gen. Stat. Ann. § 95-28.1*).
- National Guard Reemployment Rights (*N.C. Gen. Stat. Ann. §§ 127A-201 to 127A-203*).
- Prohibitions against discrimination based on genetic testing or counselling (*N.C. Gen. Stat. Ann. § 95-28.1A*).
- The North Carolina Pesticide Law (*N.C. Gen. Stat. Ann. §§ 143-434 to 143-470.1*).
- The Drug Paraphernalia Control Act of 2009 (*N.C. Gen. Stat. Ann. §§ 90-113.80 to 90-113.84*).
- Provisions regarding parents of delinquent or undisciplined juveniles (*N.C. Gen. Stat. Ann. §§ 7B-2700 to 7B-2706*).
- Provisions regarding domestic violence (*N.C. Gen. Stat. Ann. §§ 50B-1 to 50B-9*).

(*N.C. Gen. Stat. Ann. § 95-241(a)(1).*)

DEFINING RETALIATION

Retaliatory actions include:

- Discharge.
- Suspension.
- Demotion.
- Retaliatory relocation.

- Other adverse actions taken regarding:
 - terms;
 - conditions;
 - privileges; and
 - benefits of employment.

(N.C. Gen. Stat. Ann. § 95-240(2).)

VICARIOUS LIABILITY

An employer may be subject to liability under REDA for the actions of its employees.

WORKERS' COMPENSATION CLAIMS

Employers may not discriminate or retaliate against employees who file workers' compensation claims (N.C. Gen. Stat. Ann. § 95-241(a)(1)).

STATE PROTECTED CLASSES PARAGRAPH

5. Please provide a list of all state-specific protected classes in paragraph form that could be inserted into an employment-related agreement or policy in your jurisdiction.

Race, religion, color, national origin, age, sex, handicap, possession of sickle cell or hemoglobin C trait, genetic testing and information, HIV or AIDS status, lawful use of lawful products, testimony or assistance with hazardous chemicals proceedings or investigations, jury service, North Carolina National Guard service, engaging in activities protected by the North Carolina Retaliatory Employment Discrimination Act.

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