

Employee Privacy Laws: North Carolina

ALICIA A. GILLESKIE AND KIMBERLY J. KORANDO, SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL
& JERNIGAN, L.L.P., WITH PRACTICAL LAW LABOR & EMPLOYMENT

A guide to state law on employee privacy laws for private employers in North Carolina. This Q&A addresses employee privacy rights and the consequences for employers that violate these rights. Federal, local or municipal law may impose additional or different requirements.

OVERVIEW OF STATE PRIVACY LAW

1. Please list each state law relating to employee privacy (for example, employee right to privacy, access to personnel files, electronic communications, surveillance and monitoring, medical examinations, and lawful off-duty activity laws), EXCEPT state laws on background checks and drug testing. For each, please describe:

- What activity the law protects.
- Which employers are covered.
- Which employees are covered, including any exceptions for interns, independent contractors, minors or others.
- Whether the law protects employees from their co-workers' actions in addition to their supervisor's actions.
- Whether it provides for a private right of action.
- For statutes and regulations, the entity that administers the statute or regulation(s).

OFF-DUTY USE OF LAWFUL PRODUCTS: N.C. GEN. STAT. § 95-28.2

Protected Activity

Employers cannot fail or refuse to hire a prospective employee, or discharge or otherwise discriminate against any employee regarding compensation, terms, conditions, or privileges of employment because the prospective employee or the employee engages in or has engaged in the lawful use of lawful products if the activity:

- Occurs off the premises of the employer during nonworking hours.

- Does not adversely affect:
 - the employee's job performance;
 - the employee's 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).)

Employers do **not** violate this law if they:

- Restrict the lawful 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. If the restriction reasonably relates to only a particular employee or group of employees, then the restriction may only lawfully apply to them.
- Restrict the lawful use of lawful products by employees during nonworking hours if the restriction relates to the fundamental objectives of the organization.
- Discharges, disciplines, or takes any action against an employee because of the employee's failure to comply with:
 - the requirements of the employer's substance abuse prevention program; or
 - the recommendations of substance abuse prevention counselors employed or retained by the employer.

(N.C. Gen. Stat. § 95-28.2(c).)

This law also does not prohibit employers from offering, imposing, or having in effect a health, disability, or life insurance policy distinguishing between employees for the type or price of coverage based on the use or nonuse of lawful products if each of the following is met:

- Differential rates assessed employees reflect actuarially justified differences in providing employee benefits.
- The employer provides written notice to employees setting out the differential rates imposed by insurance carriers.
- The employer contributes an equal amount to the insurance carrier for each employee of the employer.

(N.C. Gen. Stat. § 95-28.2(d).)



Covered Employers

The law covers private employers with three or more regularly employed employees (*N.C. Gen. Stat. § 95-28.2(a)*).

Covered Employees

The law covers all employees and prospective employees.

Co-workers Violations

The law does not address co-worker violations.

Private Right of Action

An employee who is discharged or otherwise discriminated against, or a prospective employee who is denied employment in violation of this law, may bring a civil action within one year from the date of the alleged violation against the employer seeking any of the following:

- Any wages or benefits lost as a result of the violation.
- An order of reinstatement without loss of position, seniority or benefits.
- An order directing the employer to offer employment to the prospective employee.

(*N.C. Gen. Stat. § 95-28.2(e)*)

The court may award reasonable costs, including court costs and attorneys' fees, to the prevailing party in an action brought under the law (*N.C. Gen. Stat. § 95-28.2(f)*).

Administration

There is no administering agency.

IMMUNITY FROM CIVIL LIABILITY FOR EMPLOYERS DISCLOSING INFORMATION: N.C. GEN. STAT. § 1-539.12**Protected Activity**

Employers that disclose information about a current or former employee's job history or job performance to the employee's prospective employer on request of either the prospective employer or the employee are:

- Immune from civil liability.
- Not liable in civil damages for the disclosure or any consequences of the disclosure.

(*N.C. Gen. Stat. § 1-539.12(a)*)

Immunity does not apply when a claimant shows by a preponderance of the evidence both of the following:

- The information disclosed by the current or former employer was false.
- The employer providing the information knew or reasonably should have known that the information was false.

(*N.C. Gen. Stat. § 1-539.12(a)(1), (2)*)

"Job performance" includes:

- The employee's suitability for re-employment.
- The employee's skills, abilities, and traits as they may relate to suitability for future employment.

- The reason for a former employee's separation.

(*N.C. Gen. Stat. § 1-539.12(b)*)

Covered Employers

The law covers all employers, including any employee, agent, or other representative of the employer who is authorized to provide and who provides information under the law.

Generally, job placement services are covered but not:

- Private personnel services as defined in Section 95-47.1 of the North Carolina General Statutes.
- Job listing services as defined in Section 95-47.19 of the North Carolina General Statutes.

However, the law applies to private personnel services and job listing services only to the extent that the service:

- Conveys information derived from:
 - credit reports;
 - court records;
 - educational records; and
 - information furnished to it by the employee or prior employers.
- Identifies the source of the information.

(*N.C. Gen. Stat. § 1-539.12(c)*)

Covered Employees

The law covers all current or former employees.

Co-workers Violations

Immunity is available to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information according to the provisions of the law (*N.C. Gen. Stat. § 1-539.12(c)*).

Private Right of Action

The law provides civil immunity to liability for claims brought by employees or former employees against the employer for disclosing job history or job performance information, or both. It does not provide for a private right of action.

Administration

There is no administering agency.

PERSONS WITH DISABILITIES PROTECTION ACT: N.C. GEN. STAT. § 168A-5**Protected Activity**

Employers and employment agencies cannot require an applicant to identify himself as a person with a disability before a conditional offer of employment. However, any employer may invite an applicant to self-identify as a person with a disability to act affirmatively on the applicant's behalf. (*N.C. Gen. Stat. § 168A-5(a)(4)*.)

Employers may, among other things:

- Inquire whether a person has the ability to perform the duties of the job in question.
- Require or request a person to undergo a medical examination, including a medical history, to determine the person's ability or capacity to safely and satisfactorily perform the duties of available jobs for which the person is otherwise qualified, or to aid in determining possible accommodations for a disabling condition, provided that:
 - an offer of employment has been made on the condition that the person meets the physical and mental requirements of the job with or without reasonable accommodation; and
 - the examination is required of all persons conditionally offered employment for the same position regardless of disabling condition, unless the examination is limited to determining the extent to which a person's disabling condition would interfere with his ability or capacity to safely and satisfactorily perform the duties of the job in question or the possible accommodations for a disabling condition.
- Obtain medical information or require or request a medical examination where such information or examination is to establish an employee health record.
- Administer pre-employment tests, provided that the tests:
 - measure only job-related abilities;
 - are required of all applicants for the same position unless the tests are limited to determining the extent to which the person's disabling condition would interfere with his ability to safely and satisfactorily perform the duties of the job in question or the possible accommodations for the job in question; and
 - accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the impaired sensory, manual or speaking skills of a person with a disability except when those skills are requirements of the job in question. An employer is not liable for improper testing that is administered by a state agency acting as an employment agency.

(N.C. Gen. Stat. § 168A-5(a)(5)-(8).)

Covered Employers

The law covers persons employing 15 or more full-time employees in North Carolina. It excludes a person whose only employees are hired to work as domestic or farm workers at that person's home or farm. (N.C. Gen. Stat. § 168A-3(2).)

The law also covers employment agencies. An "employment agency" is a person who regularly seeks to procure for employees opportunities to work for an employer. The person does not need to be compensated for the service to be covered. The law also covers an agent of such a person. (N.C. Gen. Stat. § 168A-3(3).)

Covered Employees

The law applies to employees who are qualified persons with a disability and applicants (N.C. Gen. Stat. § 168A-5(a)).

"Qualified persons with a disability" are persons with a disability who can satisfactorily perform the duties of the job at question either with or without a reasonable accommodation, provided that:

- The person is held to the same performance standards as similarly employed employees.
- The disabling condition does not create an unreasonable risk to the safety or health of:
 - the person with the disability;
 - other employees;
 - the employer's customers; or
 - the public.

(N.C. Gen. Stat. § 168A-3(9).)

A "person with a disability" is any person who meets one of the following:

- Has a physical or mental impairment that substantially limits one or more major life activities.
- Has a record of this type of impairment.
- Is regarded as having this type of impairment.

(N.C. Gen. Stat. § 168A-3(7a).)

Co-worker Violations

The law does not address co-worker violations.

Private Right of Action

There is a private right of action provided that the individual has not commenced federal judicial or administrative proceedings under either:

- Section 503 or Section 504 of the Vocational Rehabilitation Act of 1973, as amended, or federal regulations promulgated under those sections.
- The Americans with Disabilities Act of 1990 (ADA) as amended, or federal regulations promulgated under the ADA, involving or arising out of the facts and circumstances alleged as the discriminatory practice that is the subject of the state claim.

The state action must be brought in superior court in the county where either:

- The alleged discriminatory practice or prohibited conduct occurred.
- The plaintiff or defendant resides.

(N.C. Gen. Stat. § 168A-11(a), (c).)

The action is tried by the court without a jury. Relief is limited to:

- Declaratory relief.
- Injunctive relief including orders to hire or reinstate an aggrieved person.
- Back pay, reduced by the aggrieved party's interim earnings or amounts that were earnable with reasonable diligence by the aggrieved party. Back pay liability is limited to a maximum of two years before the filing of the action.

(N.C. Gen. Stat. § 168A-11(b), (c).)

The court has discretion to award reasonable attorneys' fees to the substantially prevailing party as part of costs (N.C. Gen. Stat. § 168A-11(d)).

Administration

There is no administering agency.

COMMUNICABLE DISEASES: N.C. GEN. STAT. § 130A-143**Protected Activity**

All information and records, whether publicly or privately maintained, that identify a person who has AIDS or who has or may have a disease or condition required to be reported by the North Carolina Commission for Public Health must be strictly confidential. The information may not be released or made public except where the release is:

- Specific medical or epidemiological information for statistical purposes where no one is identified.
- All or part of a medical record with the written consent of the person or persons identified or the person's guardian.
- For purposes of treatment, payment, research or health care operations to the extent that disclosure is permitted under Sections 164.506 and 164.512(i) of Title 45 of the Code of Federal Regulations. For purposes of this section, the terms "treatment," "payment," "research," and "health care operations" have the meaning given in Section 164.501 of Title 45 of the Code of Federal Regulations.
- Necessary to protect the public health.
- Made under subpoena or court order. However, the record must be reviewed in camera on request of the person identified in the record. In addition, the judge may, during the taking of testimony concerning the information at trial, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case.
- Made by the North Carolina Department of Health and Human Services or a local health department to a court or a law enforcement official to:
 - enforce the law; or
 - investigate a terrorist incident using nuclear, biological or chemical agents.
- To prevent or control the spread of a communicable disease or communicable condition.
- For bona fide research purposes.

(*N.C. Gen. Stat. § 130A-143.*)

Covered Employers

The law covers all employers.

Covered Employees

The law covers all employees or prospective employees.

Co-worker Violations

Employees are protected from violations of the law from co-workers or their superiors.

Private Right of Action

The law does not expressly create a private right of action. However, violation of the law is a misdemeanor punishable by imprisonment (*N.C. Gen. Stat. § 130A-25*).

Administration

There is no administering agency.

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

Employers may not require, perform or use any AIDS test to determine suitability for continued employment.

Employers may:

- Require a test for the AIDS virus infection for job applicants in pre-employment medical exams.
- Include an AIDS test as a part of an annual medical examination routinely required for all employees.

However, employers should consider the requirements of the ADA before taking the actions listed above, or taking any adverse action against an individual under this law. (*N.C. Gen. Stat. § 130A-148(i).*)

Covered Employers

All North Carolina employers are covered.

Covered Employees

All employees are covered.

Co-worker Violations

The law does not address co-worker violations.

Private Right of Action

An employee alleging a violation of this law may bring a civil action. The action must be brought in superior court in the county where either:

- The alleged discriminatory practice or prohibited conduct occurred.
- The plaintiff or defendant resides.

The action is tried by the court without a jury. Relief is limited to:

- Declaratory relief.
- Injunctive relief, including orders to hire or reinstate an aggrieved person.
- Back pay, reduced by the aggrieved party's interim earnings or amounts that were earnable with reasonable diligence by the aggrieved party. Back pay liability is limited to a maximum of two years before the filing of the action.

The court has discretion to award reasonable attorneys' fees to the substantially prevailing party as a part of costs.

The civil action must be commenced within 180 days after the date when the aggrieved person became aware or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct. (*N.C. Gen. Stat. § 130A-148(j).*)

Administration

The law does not specify an administering agency.

ACCESS TO MEDICAL INFORMATION UNDER WORKERS' COMPENSATION: N.C. GEN. STAT. § 97-25.6

Protected Activity

Employers in North Carolina have access to relevant employee medical information related to a workers' compensation claim as follows:

- **Medical records.** An employer is entitled to obtain the employee's medical records containing relevant medical information from the employee's health care providers without the employee's express authorization.
- **Written communications with health care providers.** An employer may communicate with the employee's authorized health care provider in writing, without the express authorization of the employee to obtain relevant medical information not available in the employee's medical records, including:
 - the diagnosis of the employee's condition;
 - the appropriate course of treatment;
 - the anticipated time that the employee will be out of work;
 - the relationship, if any, of the employee's condition to the employment;
 - any work restrictions resulting from the condition, including whether the employee can return to his employment with his employer as provided in an attached job description;
 - the kind of work for which the employee may be eligible;
 - the anticipated time the employee will be restricted; and
 - any permanent impairment as a result of the condition.
- **Oral communications with health care providers.** An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, provided that the employee is given prior notice and an opportunity to participate in the communication.
- **Additional information submitted by the employer.** An employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized health care provider and may communicate in writing with the health care provider about the additional information subject to certain notice requirements.

(N.C. Gen. Stat. § 97-25.6(c).)

"Relevant medical information" means any medical record, report, or information that is any of the following:

- Restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is sought.
- Reasonably related to the injury or disease for which the employee claims compensation.
- Related to an assessment of the employee's ability to return to work as a result of the particular injury or disease.

(N.C. Gen. Stat. § 97-25.6(b).)

Covered Employers

The law covers:

- All employers in North Carolina (N.C. Gen. Stat. § 97-2(3)).
- An employer's attorney.
- An employer's insurance carrier or third-party administrator.

(N.C. Gen. Stat. § 97-25.6(k).)

Covered Employees

The law covers the following workers' compensation claimants:

- Employees.
- An employee's legally appointed guardian.
- Any attorney representing the employee.

(N.C. Gen. Stat. § 97-25.6(k).)

Co-worker Violations

The law does not address co-worker violations.

Private Right of Action

There is no private right of action.

Administration

The North Carolina Industrial Commission (NCIC) administers this law. Employees may file a motion for protective order with the NCIC objecting to certain employer communications with a health care provider.

INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS PROHIBITED: N.C. GEN. STAT. § 15A-287

Protected Activity

Without the consent of at least one party to the communication, it is unlawful for anyone to willfully:

- Intercept, endeavor to intercept or procure another person to intercept or endeavor to intercept, any wire, oral, or electronic communication.
- Use, endeavor to use or procure another person to use or endeavor to use any electronic, mechanical or other device to intercept any oral communication when the device:
 - is affixed to or otherwise transmits a signal through a wire, cable or like connection used in wire communications; or
 - transmits communications by radio or interferes with the transmission of radio communications.
- Disclose or endeavor to disclose to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained in violation of this law.
- Use or endeavor to use the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this law.

(N.C. Gen. Stat. § 15A-287(a).)

Covered Employers

The law covers all employers.

Covered Employees

The law covers all prospective, current and former employees.

Co-worker Violations

The law does not address employer liability for co-worker violations. However, individual co-workers are individually liable for their own violations.

Private Right of Action

Any person or entity whose wire, oral or electronic communications are intercepted, disclosed or used in violation of the law, may bring a civil cause of action for:

- Actual damages, that are not less than liquidated damages and that are the higher of:
 - \$1,000; or
 - an amount computed at the rate of \$100 a day for each day of violation.
- Punitive damages.
- Reasonable attorneys' fees and other litigation costs reasonably incurred.

(*N.C. Gen. Stat. § 15A-296.*)

Administration

There is no administering agency.

PEN REGISTERS; TRAP AND TRACE DEVICES: N.C. GEN. STAT. § 15A-260**Protected Activity**

No business or entity may install or use a pen register or a trap and trace device without first obtaining a court order, except that a provider of wire or electronic communication service may use a pen register or a trap and trace device:

- Relating to the operation, maintenance or testing of a wire or electronic service or the protection of rights or property of the provider or of users from unlawful use of service.
- To record the fact that a wire or electronic communication was initiated or completed to protect providers or users.
- With consent of the user.

(*N.C. Gen. Stat. § 15A-261(a), (b).*)

Covered Employers

The law covers all employers.

Covered Employees

The law covers all prospective, current and former employees.

Co-worker Violations

The law does not address co-worker violations.

Private Right of Action

There is no private right of action.

Administration

There is no administering agency.

PROTECTION FROM SECURITY BREACHES: N.C. GEN. STAT. §§ 75-61 AND 75-65**Protected Activity**

Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form must provide notice of any security breach to affected individuals whose personal information has been accessed and acquired without authorization, where illegal use of the personal information:

- Has occurred or is reasonably likely to occur.
- Creates a material risk of harm to an individual.

(*N.C. Gen. Stat. § 75-65(a).*)

The required notification must be:

- Made without unreasonable delay.
- Consistent with the legitimate needs of law enforcement.
- Consistent with any measures necessary to:
 - determine sufficient contact information and the scope of the breach; and
 - restore the reasonable integrity, security, and confidentiality of the data system.

(*N.C. Gen. Stat. § 75-65(a).*)

Any business that maintains or possesses personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses personal information that the business does not own or license, must notify the owner or licensee of the information of any security breach immediately following discovery of it. (*N.C. Gen. Stat. § 75-65(a).*)

Under this law, good faith acquisitions of personal information by an employee or the employer's agent is not a security breach that would trigger a notice obligation, provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure (*N.C. Gen. Stat. § 75-61(14).*)

If the business provides notice to:

- An affected person, it must notify the Consumer Protection Division of the Attorney General's Office without unreasonable delay (*N.C. Gen. Stat. § 75-65(e1).*)
- More than 1,000 people at one time under the law, it must notify, without unreasonable delay:
 - the Consumer Protection Division; and
 - all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis.

(N.C. Gen. Stat. § 75-65(f).)

For purposes of the security breach notice provisions under Section 75-65(a) of the North Carolina Statutes, "personal information" means an individual's first name or first initial and last name in combination with any of the following identifying information:

- Social security number (SSN) or employer taxpayer identification number.
- Driver's license, state identification card or passport number.
- Checking account number.
- Savings account number.
- Credit card number.
- Debit card number.
- A Personal Identification (PIN) code, meaning a numeric or alphabetical code assigned to the cardholder of a financial transaction card (FTC) by the issuer to permit authorized electronic use of that FTC.
- Electronic identification numbers, electronic mail names or addresses, internet account numbers, or internet identification names if the information would permit access to a person's financial account or resources.
- Digital signatures.
- Any other numbers or information that can be used to access a person's financial resources.
- Biometric data.
- Fingerprints.
- Passwords if the information would permit access to a person's financial account or resources.
- Parent's legal surname before marriage if the information would permit access to a person's financial account or resources.

(N.C. Gen. Stat. §§ 75-61(10) and 76-65(a).)

However, for Section 75-65(a) "personal information" excludes:

- Publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including name, address and telephone number.
- Information made lawfully available to the general public from federal, state, or local government records.

(N.C. Gen. Stat. § 75-61(10).)

Covered Employers

The law covers all employers in North Carolina (N.C. Gen. Stat. §§ 75-65 and 132-1.10(c1)).

Covered Employees

The law covers any employee of a covered employer whose personal information is the subject of a security breach.

Co-worker Violations

Although this law does not specifically address co-worker violations, an employer must notify affected employees of any security breach covered by the law, including breaches by co-workers.

Private Right of Action

A private right of action is available if the individual is injured as a result of the violation (N.C. Gen. Stat. § 75-65(i)).

Administration

The North Carolina Attorney General enforces the law (N.C. Gen. Stat. § 75-65(j)).

SOCIAL SECURITY NUMBER PROTECTION: N.C. GEN. STAT. § 75-62

Protected Activity

Unless otherwise permitted under the statute, businesses must not:

- Intentionally communicate or otherwise make available to the general public an individual's SSN.
- Intentionally print or imbed an individual's SSN on any card required for the individual to access products or services provided by the business.
- Require an individual to transmit his SSN over the internet, unless:
 - the connection is secure; or
 - the SSN is encrypted.
- Require an individual to use his SSN to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the website.
- Print an individual's SSN on any materials that are mailed to the individual, unless state or federal law requires the SSN to be on the document mailed.
- Sell, lease, loan, trade, rent, or otherwise intentionally disclose an individual's SSN to a third party without written consent to the disclosure from the individual, when the party making the disclosure knows or with reasonable diligence would have reason to believe that the third party lacks a legitimate purpose for obtaining the individual's SSN.

(N.C. Gen. Stat. § 75-62(a).)

The law does not apply:

- When an SSN is included:
 - in an application;
 - in documents related to an enrollment process, or to establish, amend, or terminate an account, contract or policy; or
 - to confirm the accuracy of the SSN for obtaining a credit report.
- To collecting, using or releasing a SSN for internal verification or administrative purposes.
- To opening an account or providing or paying for a product or service authorized by an individual.
- To collecting, using or releasing an SSN to:
 - investigate or prevent fraud;
 - conduct background checks;
 - conduct social or scientific research;
 - collect a debt;
 - obtain a credit report from or furnish data to a consumer reporting agency under the Fair Credit Reporting Act;

- undertake a permissible purpose under the Gramm-Leach-Bliley Act; or
- locate an individual who is missing, a lost relative or due a benefit, such as a pension, insurance or unclaimed property benefit.
- To a business acting under a court order, warrant, subpoena or when otherwise required by law.
- To a business providing the SSN to a federal, state or local government entity, including a law enforcement agency, court or its agents or assigns.
- To an SSN that has been redacted.

(N.C. Gen. Stat. § 75-62(b).)

Covered Employers

The law covers any business, including employers.

Covered Employees

The law covers information about any individual, including employees.

Co-worker Violations

The law does not address co-worker violations.

Private Right of Action

A private right of action is available if the individual is injured as a result of the violation (N.C. Gen. Stat. §§ 75-1.1 and 75-62(d)).

Administration

The North Carolina Attorney General enforces this law.

DESTRUCTION OF PERSONAL INFORMATION RECORDS: N.C. GEN. STAT. § 75-64

Protected Activity

Businesses must take reasonable measures to prevent unauthorized access to or use of personal information in connection with or after the information's disposal.

Reasonable measures include:

- Implementing and monitoring compliance with policies and procedures that require:
 - burning, pulverizing or shredding papers containing personal information so that information cannot be practicably read or reconstructed; or
 - destroying or erasing electronic media and other non-paper media containing personal information so that the information cannot practicably be read or reconstructed.
- Describing procedures for adequately destroying or properly disposing personal records as official policy of the business entity.

(N.C. Gen. Stat. § 75-64(b).)

A business must conduct due diligence of third parties engaged in destroying personal information before entering into a written contract for these services, and monitor compliance of the parties. Due diligence should include:

- Reviewing an independent audit of the disposal business's operations or its compliance with this law or its equivalent.

- Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards for quality review.
- Reviewing and evaluating the disposal business's information security policies or procedures or taking other appropriate measures to determine the competency and integrity of the disposal business.

(N.C. Gen. Stat. § 75-64(c).)

Covered Employers

The law covers any business, including employers, except any:

- Bank or financial institution that is subject to and complies with the privacy and security provision of the Gramm-Leach-Bliley Act.
- Health insurer or health care facility that is subject to and complies with:
 - the standards for privacy of individually identifiable health information; and
 - the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- Any consumer reporting agency that is subject to and complies with the Fair Credit Reporting Act.

(N.C. Gen. Stat. § 75-64(e).)

Covered Employees

The law covers all businesses that conduct business in North Carolina or that maintain or possess information on any individual in North Carolina, including employees.

Co-worker Violations

No treble damages can be assessed against a business because of the acts or omissions of its nonmanagerial employees, unless the business was negligent in training, supervision or monitoring of the employees (N.C. Gen. Stat. § 75-64(f)).

Private Right of Action

A private right of action is available if an individual is injured as a result of the violation (N.C. Gen. Stat. § 75-64(f)).

Administration

The North Carolina Attorney General enforces this law.

PUBLICATION OF PERSONAL INFORMATION: N.C. GEN. STAT. § 75-66

Protected Activity

No business or individual may knowingly broadcast or publish to the public on radio, television, cable television, in a writing of any kind or on the internet, the personal information of another with actual knowledge that the person whose personal information is disclosed has previously objected to any disclosure (N.C. Gen. Stat. § 75-66(a)).

"Personal information" means an individual's first name or first initial and last name in combination with any of the following identifying information:

- SSN or employer taxpayer identification number.
- Driver's license, state identification card or passport number.
- Checking account number.
- Savings account number.
- Credit card number.
- Debit card number.
- A PIN, meaning a numeric or alphabetical code assigned to the cardholder of an FTC by the issuer to permit authorized electronic use of that FTC.
- Digital signatures.
- Any other numbers or information that can be used to access a person's financial resources.
- Biometric data.
- Fingerprints.
- Passwords.

(*N.C. Gen. Stat. § 75-66(c).*)

Nothing in this law:

- Limits the requirements or obligations under any other section of the Identity Theft Protection Act (*N.C. Gen. Stat. §§ 75-60 to 75-66*).
- Applies to the collection, use or release of personal information for a purpose permitted, authorized or required by any federal, state or local law, regulation or ordinance.
- Applies to data integration efforts to implement the state's business intelligence strategy as provided by law or under contract.

(*N.C. Gen. Stat. § 75-66(d).*)

Covered Employers

The law covers private employers, except entities subject to federal requirements under the HIPAA (*N.C. Gen. Stat. § 75-66(b)*).

Covered Employees

The law covers any individual, including employees.

Co-worker Violations

The law does not address co-worker violations.

Private Right of Action

A private right of action is available if an individual's property or person is injured by a violation of this law.

Administration

The North Carolina Attorney General enforces this law.

PERSONNEL FILES

2. For any law in *Question 1* regarding employer maintenance of personnel files, please describe:

- What constitutes a personnel file in your jurisdiction.
- Which records employers must maintain and for how long.
- Any records that must be kept separately.
- Any records that should not be included in an employee's personnel file.
- How records must be maintained (for example, in digital or paper form, or in locked drawers or rooms).
- Any requirements or prohibitions regarding destruction of record

DEFINITION OF PERSONNEL FILE

None of the laws listed in *Question 1* provide a definition of personnel files.

REQUIRED RECORDS AND MAINTENANCE PERIOD

North Carolina law does not address this issue. Specific laws governing certain aspects of employment, including the North Carolina Wage and Hour Act, Occupational Safety and Health Act and Workers Compensation Act, require that certain records be maintained for certain periods of time. However, none of these laws require that those records be maintained in the personnel file.

SEPARATE RECORDS

North Carolina law does not address this issue.

EXCLUSIONS FROM PERSONNEL FILES

North Carolina law does not address this issue.

HOW TO MAINTAIN RECORDS

North Carolina law does not address this issue.

DESTRUCTION OF RECORDS

North Carolina employers must properly destroy records containing personal information when they are no longer needed (see *Question 1: Destruction of Personal Information Records*).

3. For any law in *Question 1* regarding employer access to personnel files, please describe:

- Who may access the files, such as employees, applicants and former employees.
- Whether individuals may copy the files or only inspect them.
- When access must be granted (and whether it must be granted within a set period of time).
- Any limitations on access.

There is no North Carolina law regarding employee access to personnel files.

MEDICAL OR OTHER TEST RESULTS

4. For any law in Question 1 that protects employees from medical examinations, including AIDS/HIV tests, or other tests, such as psychological or personality tests, please describe any limitations on access to test results or the protection of records.

PERSONS WITH DISABILITIES PROTECTION ACT: N.C. GEN. STAT. § 168A-5

Employers and employment agencies cannot require an applicant to identify himself as a person with a disability before a conditional offer of employment. However, any employer may invite an applicant to self-identify as a person with a disability to act affirmatively on the applicant's behalf. (*N.C. Gen. Stat. § 168A-5(a)(4).*)

Employers may, among other actions:

- Inquire whether a person has the ability to perform the duties of the job in question.
- Require or request a person to undergo a medical examination, including a medical history, to determine the person's ability or capacity to safely and satisfactorily perform the duties of available jobs for which the person is otherwise qualified, or to aid in determining possible accommodations for a disabling condition, provided that:
 - an offer of employment has been made on the condition that the person meets the physical and mental requirements of the job with or without reasonable accommodation; and
 - the examination, is required of all persons conditionally offered employment for the same person regardless of disabling condition, unless the examination is limited to determining the extent to which a person's disabling condition would interfere with his ability or capacity to safely and satisfactorily perform the duties of the job in question or the possible accommodations for a disabling condition.
- Obtain medical information or to require or request a medical examination where such information or examination is to establish an employee health record.
- Administer pre-employment tests, provided that the tests:
 - measure only job-related abilities;
 - are required of all applicants for the same position, unless the tests are limited to determining the extent to which the person's disabling condition would interfere with his ability to safely and satisfactorily perform the duties of the job in question or the possible accommodations for the job in question; and
 - accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the impaired sensory, manual or speaking skills of a person with a disability except when those skills are requirements of the job in question. An employer must not be liable for improper testing that is administered by a state agency acting as an employment agency.

(*N.C. Gen. Stat. § 168A-5(b).*)

COMMUNICABLE DISEASES: N.C. GEN. STAT. § 130A-143

All information and records, whether publicly or privately maintained, that identify a person who has AIDS or who has or may have a disease or condition required to be reported by the North Carolina Commission for Public Health must be strictly confidential. The information may not be released or made public except where the release is:

- All or part of the medical record with the written consent of the person or persons identified or their guardian.
- For purposes of treatment, payment, research or health care operations to the extent that disclosure is permitted under Sections 164.506 and 164.512(i) of Title 45 of the Code of Federal Regulations.
- Made under subpoena or court order. However, the record must be reviewed in camera on request of the person identified in the record. In addition, the judge may, during the taking of testimony concerning the information at trial, exclude from the courtroom all persons except:
 - the officers of the court;
 - the parties; and
 - those engaged in the trial of the case.

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

See *Communicable Diseases*.

ACCESS TO MEDICAL INFORMATION UNDER WORKERS' COMPENSATION: N.C. GEN. STAT. § 97-25.6

Employers have access to relevant employee medical information related to a workers' compensation claim as follows:

- **Medical records.** An employer may obtain the employee's medical records containing relevant medical information from the employee's health care providers without the employee's express authorization.
- **Written communications with health care providers.** An employer may communicate with the employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records, including:
 - the diagnosis of the employee's condition;
 - the appropriate course of treatment;
 - the anticipated time that the employee will be out of work;
 - the relationship, if any, of the employee's condition to the employment;
 - any work restrictions resulting from the condition, including whether the employee can return to his employment with his employer as provided in an attached job description;
 - the kind of work for which the employee may be eligible;
 - the anticipated time the employee will be restricted; and
 - any permanent impairment as a result of the condition.

- **Oral communications with health care providers.** An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, provided that the employee is given prior notice and an opportunity to participate in the communication.
- **Additional information submitted by the employer.** An employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized health care provider and may communicate in writing with the health care provider about the additional information subject to certain notice requirements.

(N.C. Gen. Stat. § 97-25.6(c).)

"Relevant medical information" means any medical record, report, or information that is any of the following:

- Restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is sought.
- Reasonably related to the injury or disease for which the employee claims compensation.
- Related to an assessment of the employee's ability to return to work as a result of the particular injury or disease.

(N.C. Gen. Stat. § 97-25.6(b).)

EMPLOYEE ELECTRONIC COMMUNICATIONS

5. For any law in Question 1 that governs the monitoring or recording of employees' electronic communications, please describe what monitoring or recording is permitted or prohibited in each of the following mediums:

- Telephone.
- Internet.
- E-mail.
- Other.

INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS PROHIBITED: N.C. GEN. STAT. § 15A-287

Without the consent of at least one party to the communication, it is unlawful for anyone to willfully:

- Intercept, endeavor to intercept or procure another person to intercept or endeavor to intercept, any wire or electronic communication.
- Disclose or endeavor to disclose to any other person the contents of any wire or electronic communication, knowing or having reason to know that the information was obtained in violation of the law.
- Use or endeavor to use the contents of any wire communication, knowing or having reason to know that the information was obtained through interception in violation of the law.

(N.C. Gen. Stat. § 15A-287(a).)

This law extends to telephone, internet, e-mail and personal communications.

SEARCHES, SURVEILLANCE AND BIOMETRIC INFORMATION

6. For any law in Question 1 that governs searches and surveillance, please describe:

- Any limits on employer searches (such as searches in common areas or individual offices).
- What kind of surveillance, tracking or monitoring of workplaces or employees is permitted (such as GPS or video, or surveillance of an employee's computer or phone usage) and whether there are any limitations on the areas that can be monitored or recorded.
- Any limits on the use of biometric information (such as fingerprints, retina or voiceprint scans used for identification).

WORKPLACE SEARCHES

North Carolina does not have a separate law governing workplace searches. Workplace searches are dealt with as an invasion of privacy (see Question 12).

SURVEILLANCE AND TRACKING

Pen Registers; Trap and Trace Devices: N.C. Gen. Stat. § 15A-260

No business or entity may install or use a pen register or a trap and trace device without first obtaining a court order (N.C. Gen. Stat. § 15A-261(a); see Question 1: Pen Registers; Trap and Trace Devices).

BIOMETRIC INFORMATION

North Carolina law does not expressly address limiting the use of biometric information. However, this information is personal information protected by the Protection from Security Breaches law (N.C. Gen. Stat. §§ 75-61 and 75-65; see Question 1: Protection from Security Breaches).

NOTICE TO EMPLOYEES

7. For each privacy law listed in response to Question 1, what obligations does an employer have to inform its employees of their rights?

Although North Carolina employers must post the North Carolina Labor Laws and North Carolina Workers' Compensation posters, none of these required postings specifically address privacy-related aspects of the covered laws.

OFF-DUTY USE OF LAWFUL PRODUCTS: N.C. GEN. STAT. § 95-28.2

The law does not address notice to employees.

IMMUNITY FROM CIVIL LIABILITY FOR EMPLOYERS DISCLOSING INFORMATION: N.C. GEN. STAT. § 1-539.12

The law does not address notice to employees.

PERSONS WITH DISABILITIES PROTECTION ACT: N.C. GEN. STAT. § 168A-5

The law does not address notice to employees.

COMMUNICABLE DISEASES: N.C. GEN. STAT. § 130A-143

The law does not address notice to employees.

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

The law does not address notice to employees.

ACCESS TO MEDICAL INFORMATION UNDER WORKERS' COMPENSATION: N.C. GEN. STAT. § 97-25.6

Employers must provide an employee with notice:

- Of a request for medical records from an employee's health care providers. The employer must also provide the employee with a copy of any records received, within 30 days of receipt.
- Of any written communication with a health care provider seeking other relevant medical information not contained in medical records. The employer must also provide a copy of the health care provider's response within ten days of receipt by the employer.
- Before any oral communication with an employee's health care provider to obtain information not in medical records, not available through written communication and not otherwise available to the employer. The employer must also:
 - give the employee an opportunity to participate in the oral communication at mutually convenient time for the employer, employee and health care provider.
 - provide the employee with a summary of the oral communication within ten business days.
- That the employer intends to communicate additional information about the employee to the employee's health care provider. The notice must include the employer's proposed written communication to the health care provider and the additional information being submitted.

(N.C. Gen. Stat. § 97-25.6(c), (d).)

INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS PROHIBITED: N.C. GEN. STAT. § 15A-287

The law does not address notice to employees.

PEN REGISTERS; TRAP AND TRACE DEVICES: N.C. GEN. STAT. § 15A-260

The law does not address notice to employees.

PROTECTION FROM SECURITY BREACHES: N.C. GEN. STAT. §§ 75-61 AND 75-65

Notice must be given to individuals whose personal information has been accessed and acquired without authorization in circumstances that qualify as a security breach under the law (see *Question 1: Protection from Security Breaches*).

SOCIAL SECURITY NUMBER PROTECTION: N.C. GEN. STAT. § 75-66

The law does not address notice to employees.

DESTRUCTION OF PERSONAL INFORMATION RECORDS: N.C. GEN. STAT. § 75-64

The law does not address notice to employees.

PUBLICATION OF PERSONAL INFORMATION: N.C. GEN. STAT. § 75-66

The law does not address notice to employees.

CONSEQUENCES FOR VIOLATION

8. For each privacy law listed in response to Question 1, what are possible consequences for employers that violate the law?

OFF-DUTY USE OF LAWFUL PRODUCTS: N.C. GEN. STAT. § 95-28.2

An employee who is discharged or otherwise discriminated against, or a prospective employee who is denied employment in violation of this law, may bring a civil action within one year from the date of the alleged violation against the employer seeking any of the following:

- Any wages or benefits lost as a result of the violation.
- An order of reinstatement without loss of position, seniority or benefits.
- An order directing the employer to offer employment to the prospective employee.

(N.C. Gen. Stat. § 95-28.2(e).)

IMMUNITY FROM CIVIL LIABILITY FOR EMPLOYERS DISCLOSING INFORMATION: N.C. GEN. STAT. § 1-539.12

Employers that disclose information about a current or former employee's job history or job performance to the employee's prospective employer on request of either the prospective employer or the employee are:

- Immune from civil liability.
- Not liable in civil damages for the disclosure or any consequences of the disclosure.

(N.C. Gen. Stat. § 1-539.12(a).)

Immunity does not apply when a claimant shows by a preponderance of the evidence both of the following:

- The information disclosed by the current or former employer was false.
- The employer providing the information knew or reasonably should have known that the information was false.

(N.C. Gen. Stat. § 1-539.12(a)(1), (2).)

PERSONS WITH DISABILITIES PROTECTION ACT: N.C. GEN. STAT. § 168A-5

An aggrieved person may bring a civil action for relief, which may include:

- Declaratory relief.
- Injunctive relief, including orders to hire or reinstate an aggrieved person.
- Back pay, reduced by the aggrieved party's interim earnings or amounts that were earnable with reasonable diligence by the aggrieved party. Back pay is limited to a maximum of two years before the filing of the action.

The court has discretion to award reasonable attorneys' fees to the substantially prevailing party as part of costs. (N.C. Gen. Stat. § 168A-11.)

COMMUNICABLE DISEASES: N.C. GEN. STAT. § 130A-143

An employer that violates this law is guilty of a misdemeanor punishable by imprisonment.

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

An aggrieved person may bring a civil action for relief, which may include:

- Declaratory relief.
- Injunctive relief, including order to hire or reinstate an aggrieved person.
- Back pay, reduced by the aggrieved party's interim earnings or amounts that were earnable with reasonable diligence by the aggrieved party. Back pay is limited to a maximum of two years before the filing of the action.

The court has discretion to award reasonable attorneys' fees to the substantially prevailing party as part of costs. (*N.C. Gen. Stat. § 130A-148(i).*)

ACCESS TO MEDICAL INFORMATION UNDER WORKERS' COMPENSATION: N.C. GEN. STAT. § 97-25.6

There are no consequences provided for a violation of this law.

INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS PROHIBITED: N.C. GEN. STAT. § 15A-287

A person who violates this law is guilty of a Class H felony.

A person or entity whose wire, oral or electronic communications are intercepted, disclosed or used in violation of the law, may bring a civil cause of action for:

- Actual damages, that are not less than liquidated damages, and that are the higher of:
 - \$1,000; or
 - an amount computed at the rate of \$100 a day for each day of violation.
- Punitive damages.
- Reasonable attorneys' fees and other litigation costs reasonably incurred.

(*N.C. Gen. Stat. §§ 15A-287(a) and 15A-296.*)

PEN REGISTERS; TRAP AND TRACE DEVICES: N.C. GEN. STAT. § 15A-260

A person who willfully and knowingly violates this law is guilty of a Class 1 misdemeanor.

PROTECTION FROM SECURITY BREACHES: N.C. GEN. STAT. §§ 75-61 AND 75-65

A violation of this law is a violation of Section 75-1.1 of the North Carolina General Statutes.

A court, has discretion to impose a civil penalty of up to \$5,000 for each violation in any action brought by the Attorney General:

- In which the defendant is found to have violated Section 75-1.1 and performed the acts or practices knowing they violated of a statute.
- Under Chapter 75 of the North Carolina General Statutes and it is shown that an action or practice was specifically prohibited by a court order when committed.

(*N.C. Gen. Stat. § 75-15.2.*)

To determine the amount of the civil penalty, the court considers all relevant circumstances, including:

- The extent of the harm caused by the conduct.
- The nature and persistence of the conduct.
- The length of time over which the conduct occurred.
- The assets, liabilities, and net worth of the person who violated the statute, whether corporate or individual.
- Any corrective action taken by the defendant.

The clear proceeds of penalties assessed are remitted to the Civil Penalty and Forfeiture Fund. (*N.C. Gen. Stat. § 75-15.2.*)

A private right of action is also available only if the individual is injured as a result of the violation (*N.C. Gen. Stat. § 75-65(i)*). An action must be commenced within four years after the cause of action accrues (*N.C. Gen. Stat. § 75-16.2*). Employers that violate the the law, causing injury to an employee may be subject to:

- Damages. However, any damages assessed against a business because of the acts or omissions of its nonmanagerial employees must not be trebled unless the business was negligent in training, supervising or monitoring those employees
- Reasonable attorneys' fees.

(*N.C. Gen. Stat. §§ 75-16 and 75-16.1.*)

SOCIAL SECURITY NUMBER PROTECTION: N.C. GEN. STAT. § 75-66

A violation of this law is a violation of Section 75-1.1 of the North Carolina General Statutes (for possible consequences, see *Protection of Security Breaches*).

DESTRUCTION OF PERSONAL INFORMATION RECORDS: N.C. GEN. STAT. § 75-64

A violation of this law is a violation of Section 75-1.1 of the North Carolina General Statutes (for possible consequences, see *Protection of Security Breaches*).

PUBLICATION OF PERSONAL INFORMATION: N.C. GEN. STAT. § 75-66

In a civil lawsuit, the court may award a person injured by a violation of this law the following relief:

- Damages, that are the higher of:
 - \$500 up to \$5,000; or
 - three times the amount of actual damages.
- Injunction.
- Reasonable attorneys' fees.

(*N.C. Gen. Stat. § 1-539.2C.*)

CONSENT

9. For each privacy law listed in response to Question 1, is employee consent required? If not, will employee consent protect the employer from liability?

OFF-DUTY USE OF LAWFUL PRODUCTS: N.C. GEN. STAT. § 95-28.2

Employee consent is not required nor will it protect the employer from liability.

IMMUNITY FROM CIVIL LIABILITY FOR EMPLOYERS DISCLOSING INFORMATION: N.C. GEN. STAT. § 1-539.12

Employee consent is not required. The employee's consent to disclose the information likely would be held to protect the employer from liability.

PERSONS WITH DISABILITIES PROTECTION ACT: N.C. GEN. STAT. § 168A-5

Employee consent is not required nor will it protect the employer from liability.

COMMUNICABLE DISEASES: N.C. GEN. STAT. § 130A-143

Employee consent is not required. However, written consent of the individual to release the information protects the employer from liability.

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

The law does not address consent.

ACCESS TO MEDICAL INFORMATION UNDER WORKERS' COMPENSATION: N.C. GEN. STAT. § 97-25.6

Employee consent is not required.

INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS PROHIBITED: N.C. GEN. STAT. § 15A-287

Employee consent protects the employer from liability.

PEN REGISTERS; TRAP AND TRACE DEVICES: N.C. GEN. STAT. § 15A-260

Court orders are required for pen registers and trap and trace devices.

PROTECTION FROM SECURITY BREACHES: N.C. GEN. STAT. §§ 75-61 AND 75-65

Consent to access and acquire information protects the employer from liability.

SOCIAL SECURITY NUMBER PROTECTION: N.C. GEN. STAT. § 75-66

The law does not address an employer's obligation to obtain consent from employees.

DESTRUCTION OF PERSONAL INFORMATION RECORDS: N.C. GEN. STAT. § 75-64

The law does not address an employer's obligation to obtain consent from employees.

PUBLICATION OF PERSONAL INFORMATION: N.C. GEN. STAT. § 75-66

The employee's consent to disclose information likely would be held to protect the employer from liability.

RECORDKEEPING

10. What are the recordkeeping obligations for each privacy law listed in response to Question 1?

OFF-DUTY USE OF LAWFUL PRODUCTS: N.C. GEN. STAT. § 95-28.2

The law does not address recordkeeping obligations.

IMMUNITY FROM CIVIL LIABILITY FOR EMPLOYERS DISCLOSING INFORMATION: N.C. GEN. STAT. § 1-539.12

The law does not address recordkeeping obligations. However, best practice for employers wishing to extend immunity to the employer's individual agents is to document the authority of the individual agents to disclose the information in question.

PERSONS WITH DISABILITIES PROTECTION ACT: N.C. GEN. STAT. § 168A-5

The law does not address recordkeeping obligations.

COMMUNICABLE DISEASES: N.C. GEN. STAT. § 130A-143

The law does not address recordkeeping obligations.

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

The law does not address recordkeeping obligations.

ACCESS TO MEDICAL INFORMATION UNDER WORKERS' COMPENSATION: N.C. GEN. STAT. § 97-25.6

The law does not address recordkeeping obligations.

INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS PROHIBITED: N.C. GEN. STAT. § 15A-287

The law does not address recordkeeping obligations.

PEN REGISTERS; TRAP AND TRACE DEVICES: N.C. GEN. STAT. § 15A-260

The law does not address recordkeeping obligations.

PROTECTION FROM SECURITY BREACHES: N.C. GEN. STAT. §§ 75-61 AND 75-65

The law does not address recordkeeping obligations.

SOCIAL SECURITY NUMBER PROTECTION: N.C. GEN. STAT. § 75-66

The law does not address recordkeeping obligations.

DESTRUCTION OF PERSONAL INFORMATION RECORDS: N.C. GEN. STAT. § 75-64

The law does not address recordkeeping obligations.

PUBLICATION OF PERSONAL INFORMATION: N.C. GEN. STAT. § 75-66

The law does not address recordkeeping obligations.

EMPLOYEES' LAWFUL, OFF-DUTY ACTIVITY

11. To the extent not described in Question 1, please state whether an employee's lawful, off-duty use of or activity in any of the following is protected and describe any limits to the protections:

- Tobacco use or use of other consumable goods.
- Online activities, including posting on social media sites.
- Other activities, including gun ownership or political activities.

TOBACCO OR CONSUMABLE GOODS USE

An employee's lawful, off-duty use of tobacco or consumable goods is subject to the limitations set out in *Question 7: Off-duty Use of Lawful Products*.

ONLINE ACTIVITIES

North Carolina law has not addressed whether an employee's lawful, off-duty online activities are protected.

OTHER ACTIVITIES

The North Carolina courts have not addressed the scope of protection for lawful use of lawful products.

INVASION OF PRIVACY CLAIMS

12. For invasion of privacy claims in your jurisdiction, please describe:

- The elements of an invasion of privacy claim, or factors relevant to the analysis.
- Affirmative or other defenses available to the employer.
- Examples of circumstances in which employees have been found to have a reasonable expectation of privacy in the workplace.

CLAIM ELEMENTS

North Carolina recognizes the tort of intrusion into seclusion; however, it has not had the opportunity to consider a case involving intrusions that occur in the workplace. Typically, a person who intentionally intrudes, physically or otherwise, on the solitude or seclusion of another or his private affairs or concerns, is subject to liability for invasion of another's privacy, if the intrusion would be highly offensive to a reasonable person (*Smith v. Jack Eckerd Corp.*, 400 S.E.2d 99, 100 (N.C. Ct. App. 1991) (quoting *Restatement (Second) of Torts* § 652B)).

EMPLOYER DEFENSES

If North Carolina courts do recognize a claim for intrusion in the workplace, it is possible that both notice of intrusion or consent would be viable employer defenses.

REASONABLE EXPECTATION OF PRIVACY

North Carolina courts have held that individuals have a reasonable expectation of privacy in the acts of dressing, showering, and going to bed in the privacy of their own homes and may be protected from home invasion through hidden surveillance cameras installed to record these activities. The courts declined to find a requisite intrusion into seclusion in store employees rubbing a scanner on a store customer and her purse (*Smith*, 400 S.E.2d at 100).

OTHER EMPLOYEE PRIVACY LAWS

13. Please list and briefly describe any additional employment-related workplace privacy laws not previously addressed.

North Carolina recognizes invasion of privacy claims for the misappropriation of a photographic likeness and intrusion into seclusion (*Miller v. Brooks*, 472 S.E.2d 350 (N.C. Ct. App. 1996), review denied, 483 S.E.2d 172 (N.C. 1997)). However, courts in North Carolina do not recognize the false light and public disclosure of private facts claims (*Hall v. Post*, 372 S.E.2d 711 (N.C. 1988)). North Carolina courts have not yet considered whether to extend an invasion of privacy claim to intrusions in the workplace.

ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at practicallaw.com. For more information or to schedule training, call **888.529.6397** or e-mail training.practicallaw@thomsonreuters.com.