

RETALIATORY EMPLOYMENT DISCRIMINATION ACT

North Carolina General Statutes
Chapter 95, Article 21

AND

ADMINISTRATIVE RULES

North Carolina Administrative Code
Title 13, Chapter 19

WITH REVISIONS THROUGH AUGUST 2009



Employment Discrimination Bureau

Mailing Address:

**1101 Mail Service Center
Raleigh, North Carolina 27699-1101**

Physical Address:

**111 Hillsborough Street
Raleigh, North Carolina 27603**

(919) 807-2831 or 1-800-NC-LABOR (1-800-625-2267)

**Cherie K. Berry
Commissioner of Labor**

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Introduction

The Employment Discrimination Bureau (“EDB”) is responsible for enforcing the 1992 Retaliatory Employment Discrimination Act (“REDA”) (Chapter 95, Article 21 of the N.C. General Statutes). REDA, which was enacted following the disastrous fire in Hamlet, protects employees who in good faith engage in one of the “protected activities” enumerated in the Act. Initially, the Act protected workers’ compensation claimants and incorporated whistleblower protections from the Wage and Hour Act, the Occupational Safety and Health Act, and the Mine Safety and Health Act. Since then, additional provisions have been enacted to protect sickle cell and hemoglobin C carriers, genetic testing, national guard service, involvement in the juvenile justice system, domestic violence and workplace violence. EDB receives oversight from the Occupational Safety and Health Administration (“OSHA”) under a contract that requires the bureau to be “as efficient as” the federal agency in enforcing occupational safety and health whistleblower protections.

EDB consists of an Administrator, eight investigators and an information officer who screens potential complaints, handles public inquiries and handles assignment of cases. EDB operates as a fully functioning self-managed work team, and there has been no turnover of the investigative staff in five and one-half years. Investigators investigate the complaints filed and, if the complaint is found without merit, advise the complainant on legal recourses. If the complaint is found to be valid, EDB attempts early resolution and settlement, then conciliation through informal means before issuing a right-to-sue letter or taking legal action on behalf of the complainant. EDB receives approximately 75 REDA complaints each month. EDB has revised the process for investigating complaints over the past few years, and as a result, there has been a dramatic impact on case inventory. Historically 79 percent of REDA complaints are based on workers’ compensation claims, 11 percent on safety and health concerns, and 10 percent on wage and hour matters. EDB currently settles one of every seven REDA complaints and closes 90% of all complaints in less than 90 days.

This publication contains the REDA statutes and the Administrative Rules contained in the N.C. Administrative Code which govern these laws. It is intended to be used by employers covered under these laws, as well as employees, in order to inform them of their rights and responsibilities in employment discrimination matters. Our experience shows that most businesses and workers want to comply with the labor laws of the State, and will generally do so when they know what the laws provide. We hope the use of this publication will help build the spirit of cooperation and fairness which currently characterizes most workplaces in North Carolina. That gives our State a more effective and productive workforce with which to maintain our competitive national economic position.

We encourage and solicit public comments concerning these laws and regulations. Please direct your comments and questions to the Employment Discrimination Bureau, N.C. Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

Cherie K. Berry
Commissioner of Labor

September 2009

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N.C. GENERAL STATUTES
CHAPTER 95 – DEPARTMENT OF LABOR
ARTICLE 21 – RETALIATORY EMPLOYMENT DISCRIMINATION ACT

§ 95-240. Definitions.

The following definitions apply in this Article:

- (1) "Person" means any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency, or other entity of government.
- (2) "Retaliatory action" means the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

§ 95-241. Discrimination prohibited.

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
 - a. Chapter 97 of the General Statutes.
 - b. Article 2A or Article 16 of this Chapter.
 - c. Article 2A of Chapter 74 of the General Statutes.
 - d. G.S. 95-28.1.
 - e. Article 16 of Chapter 127A of the General Statutes.
 - f. G.S. 95-28.1A.
 - g. Article 52 of Chapter 143 of the General Statutes.
 - h. Article 5F of Chapter 90 of the General Statutes.
- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
- (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter, by Article 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter 143 of the General Statutes.
- (4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.
- (5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provision of G.S. 50B-5.5.

(b) It shall not be a violation of this Article for a person to discharge or take any other unfavorable action with respect to an employee who has engaged in protected activity as set forth under this Article if the person proves by the greater weight of the evidence that it would have taken the same unfavorable action in the absence of the protected activity of the employee. (1991 (Reg. Sess., 1992), c. 1021, s. 1; 1993, c. 423, s. 1; 1997-153, s. 7; 1997-350, s. 3; 1998-202, s. 7; 1999-423, s. 4; 2004-186, s. 18.2; 2008-212, s. 1; 2009-205, s.2.)

§ 95-242. Complaint; investigation; conciliation.

(a) An employee allegedly aggrieved by a violation of G.S. 95-241 may file a written complaint with the Commissioner of Labor alleging the violation. The complaint shall be filed within 180 days of the alleged violation. Within 20 days following receipt of the complaint, the Commissioner shall forward a copy of the complaint to the person alleged to have committed the violation and shall initiate an investigation. If the Commissioner determines after the investigation that there is not reasonable cause to believe that the allegation is true, the Commissioner shall dismiss the complaint, promptly notify the employee and the respondent, and issue a right-to-sue letter to the employee that will enable the employee to bring a civil action pursuant to G.S. 95-243. If the Commissioner determines after investigation that there is reasonable cause to believe that the allegation is true, the Commissioner shall attempt to eliminate the alleged violation by informal methods which may consist of conference, conciliation, and persuasion. The Commissioner shall make a determination as soon as possible and, in any event, not later than 90 days after the filing of the complaint.

(b) If the Commissioner is unable to resolve the alleged violation through the informal methods, the Commissioner shall notify the parties in writing that conciliation efforts have failed. The Commissioner shall then either file a civil action on behalf of the employee pursuant to G.S. 95-243 or issue a right-to-sue letter to the employee enabling the employee to bring a civil action pursuant to G.S. 95-243.

(c) An employee may make a written request to the Commissioner for a right-to-sue letter after 180 days following the filing of a complaint if the Commissioner has not issued a notice of conciliation failure and has not commenced an action pursuant to G.S. 95-242.

(d) Nothing said or done during the use of the informal methods described in subsection (a) of this section may be made public by the Commissioner or used as evidence in a subsequent proceeding under this Article without the written consent of the persons concerned.

(e) The Commissioner's files and the Commissioner's other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are open or pending in the trial court division.

(f) In making inspections and investigations under this Article, the Commissioner or his duly authorized agents may, in addition to exercising the authority granted in G.S. 95-4, issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel reimbursement requirements of the State. In the case of failure or refusal of any person to obey a subpoena under this Article, the district court judge or superior court judge of the county in which the inspection or investigation is conducted shall, upon the application of the Commissioner, have jurisdiction to issue an order requiring compliance. (1991 (Reg. Sess., 1992), c. 1021, s. 1; 1993, c. 423, s. 2.)

§ 95-243. Civil action.

(a) An employee who has been issued a right-to-sue letter or the Commissioner of Labor may commence a civil action in the superior court of the county where the violation occurred, where the complainant resides, or where the respondent resides or has his principal place of business.

(b) A civil action under this section shall be commenced by an employee within 90 days of the date upon which the right-to-sue letter was issued or by the Commissioner within 90 days of the date on which the Commissioner notifies the parties in writing that conciliation efforts have failed.

(c) The employee or the Commissioner may seek and the court may award any or all of the following types of relief:

- (1) An injunction to enjoin continued violation of this Article.
- (2) Reinstatement of the employee to the same position held before the retaliatory action or discrimination or to an equivalent position.
- (3) Reinstatement of full fringe benefits and seniority rights.
- (4) Compensation for lost wages, lost benefits, and other economic losses that were proximately caused by the retaliatory action or discrimination.

If in an action under this Article the court finds that the employee was injured by a willful violation of G.S. 95-241, the court shall treble the amount awarded under subdivision (4) of this subsection.

The court may award to the plaintiff and assess against the defendant the reasonable costs and expenses, including attorneys' fees, of the plaintiff in bringing an action pursuant to this section. If the court determines that the plaintiff's action is frivolous, it may award to the defendant and assess against the plaintiff the reasonable costs and expenses, including attorneys' fees, of the defendant in defending the action brought pursuant to this section.

(d) Parties to a civil action brought pursuant to this section shall have the right to a jury trial as provided under G.S. 1A-1, Rules of Civil Procedure.

(e) An employee may only bring an action under this section when he has been issued a right-to-sue letter by the Commissioner. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

§ 95-244. Effect of Article on other rights.

Nothing in this Article shall be deemed to diminish the rights or remedies of any employee under any collective bargaining agreement, employment contract, other statutory rights or remedies, or at common law. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

§ 95-245. Rules.

The Commissioner may adopt rules needed to implement this Article pursuant to the provisions of Chapter 150B of the General Statutes. (1993, c. 423, s. 3.)

§§ 95-246 through 95-249. Reserved for future codification purposes.

N.C. GENERAL STATUTES

CHAPTER 50B – DOMESTIC VIOLENCE

(This Section became effective August 12, 2004, and applies to actions that occur on or after that date.)

§ 50B-5.5. Employment discrimination unlawful.

(a) No employer shall discharge, demote, deny a promotion, or discipline an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under this Chapter. An employee who is absent from the workplace shall follow the employer's usual time-off policy or procedure, including advance notice to the employer, when required by the employer's usual procedures, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying in advance with the employer's usual time-off policy or procedure, or any other information available to the employee which supports the employee's reason for being absent from the workplace.

(b) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to the Article. (2004-186, s. 18.1.)

N.C. GENERAL STATUTES

CHAPTER 95 – DEPARTMENT OF LABOR

ARTICLE 23 – WORKPLACE VIOLENCE PREVENTION

(This Article becomes effective December 1, 2004, and applies to actions that give rise to civil no-contact orders issued under this act on or after that date.)

§ 95-270. Employment discrimination unlawful.

(a) No employer shall discharge, demote, deny a promotion, or discipline an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under Chapter 50B or Chapter 50C. An employee who is absent from the workplace shall follow the employer's usual time-off policy or procedure, including advance notice to the employer, when required by the employer's usual procedures, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying in advance with the employer's usual time-off policy or procedure, or any other information available to the employee which supports the employee's reason for being absent from the workplace.

(b) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to the Article. (2004-165, s.1.)

N.C. ADMINISTRATIVE CODE
TITLE 13 – DEPARTMENT OF LABOR
CHAPTER 19 – RETALIATORY EMPLOYMENT DISCRIMINATION ACT RULES

SECTION .0100 - GENERAL PROVISIONS

13 NCAC 19 .0101 WORKPLACE RETALIATORY DISCRIMINATION OFFICE

The main office of the Workplace Retaliatory Discrimination (WORD) Office, which administers the provisions of Article 21 of G.S. 95, the Retaliatory Employment Discrimination Act (REDA), is maintained in the Raleigh office of the Department of Labor (the Department) at the Old Revenue Building, 2 South Salisbury Street, Raleigh, North Carolina. The WORD Office maintains branch offices in Greensboro and Charlotte, North Carolina. The mailing address of the main office is:

Workplace Retaliatory Discrimination Office
North Carolina Department of Labor
4 West Edenton Street
Raleigh, North Carolina 27601

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999;
Amended Eff. September 1, 1999.*

13 NCAC 19 .0102 FORMS

Copies of current forms used by the WORD Office are available from the Raleigh office.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

SECTION .0200 – DEFINITIONS

13 NCAC 19 .0201 DEFINITIONS

The following definitions are applicable throughout this Chapter:

- (1) "Complainant" is a person allegedly aggrieved by a violation of G.S. 95-241, who files a written complaint with the WORD Office.
- (2) "Employee" means those individuals protected from discrimination or retaliation by G.S. 95-241, and includes but is not limited to those individuals defined as employees in G.S. 97-2(2), G.S. 95-25.2(4), G.S. 95-127(9), miners as defined in G.S. 74-24.2, temporary, leased, or loaned employees, former employees, jointly employed employees, common law employees, and applicants.
- (3) "Interview" as used in these Rules includes privately speaking with an employee or witness on company time on the company premises.
- (4) "Open or pending in the trial court division" as set forth in G.S. 95-242(e) means the period beginning with the filing of a written complaint with the Department and ends with either the Commissioner's receipt of a final determination by the

trial court on the Commissioner's civil action or closure of the file according to these Rules, whichever occurs later.

- (5) "Protected activity" or "activity" shall mean and include all the actions set forth in G.S. 95-241(a) and G.S. 127A-111.
- (6) "Respondent" is a person, as defined in G.S. 95-240(1), against whom a REDA complaint is filed.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

SECTION .0300 - INITIATION OF COMPLAINTS

13 NCAC 19 .0301 CONTENTS OF COMPLAINT

- (a) A complaint filed by or on behalf of a complainant must contain the following information:
 - (1) Name and address of the complainant;
 - (2) Name and address of the respondent, or other information which sufficiently identifies the respondent;
 - (3) Description of protected activity, trait or status covered by REDA;
 - (4) Description of alleged retaliatory or discriminatory action;
 - (5) Approximate date of alleged retaliatory or discriminatory action; and
 - (6) Signature of complainant either on complaint form or on supporting documentation allowing the complaint to be filed on behalf of complainant.
- (b) The complaint may be amended as needed to meet these requirements.
- (c) Complaints and amendments may be filed on a WORD form or other document containing the information in Paragraph (a) of this Rule.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

13 NCAC 19 .0302 FILING OF COMPLAINTS

- (a) A complaint is filed when it is received by the WORD Office. The complaint, faxed complaint, amendments, written authorizations, and faxed authorizations must be received by the WORD Office within 180 days of the alleged violation.
- (b) A complaint may be filed by facsimile as long as a signed paper copy is received by the WORD Office within 10 calendar days of transmittal of the fax. If a signed paper copy of the complaint is not received as set forth in this Rule, the faxed complaint is subject to administrative closing as set out in these Rules.
- (c) If a complaint is filed by anyone other than the complainant, including an attorney, the WORD Office must receive a written authorization, dated and signed by the complainant allowing such person to file the complaint on the complainant's behalf. The written authorization must be received by the WORD Office within 10 calendar days of receipt of the complaint. Such complaints not followed by written authorization are subject to administrative closing as set out in these Rules.
- (d) A written authorization may be filed by facsimile as long as a signed paper copy is received by the WORD Office within 10 calendar days of transmittal of the fax. If a signed paper copy of

the written authorization is not received as set forth in this Rule, the complaint is subject to administrative closing as set out in these Rules.

(e) Computation of time for filing and other deadlines shall be in accordance with G.S. 1A-1, Rule 6(a).

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

SECTION .0400 - CONDUCT OF INVESTIGATIONS

13 NCAC 19 .0401 INVESTIGATION

(a) The Commissioner may, in addition to other actions, interview witnesses, examine and obtain copies of documents, and visit workplaces in determining whether or not there is reasonable cause to believe that the allegations of the complaint are true.

(b) The respondent has 30 days from notification of the complaint to respond to the allegations of the complaint. The respondent's failure to timely respond shall not prevent the investigation from proceeding to a determination.

(c) The complainant shall cooperate during the course of the investigation. Cooperation shall include, but is not limited to:

- (1) notifying the WORD Office, as soon as possible, of changes in address, name or telephone number;
- (2) providing all information requested by the investigator in the time and manner specified by the investigator;
- (3) attending meetings or conferences scheduled by the investigator;
- (4) meeting reasonable deadlines established by the investigator;
- (5) returning required forms; and
- (6) returning telephone calls.

Failure to cooperate may result in dismissal of the complaint pursuant to Rule .0603 of this Chapter.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

13 NCAC 19 .0402 INTERVIEWS

(a) All witnesses shall be interviewed in private, except as provided in Paragraphs (b) and (c) of this Rule.

(b) Witnesses may be accompanied by their own attorney, representative, or interpreter.

(c) Witnesses whose statements can legally bind a respondent may be accompanied by that respondent's attorney.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

SECTION .0500 - RIGHT-TO-SUE LETTERS

13 NCAC 19 .0501 RIGHT-TO-SUE LETTERS

A right-to-sue letter may be requested by the complainant after a determination of reasonable cause to believe that the allegations of the complaint are true and notice of conciliation failure. The request may be granted unless the Commissioner intends to file a civil action pursuant to G.S. 95-243. If the request for a right-to-sue letter is granted, the case shall be closed.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

13 NCAC 19 .0502 REQUESTS FOR RIGHT-TO-SUE LETTERS

Requests for right-to-sue letters made under G.S. 95-242(c) shall not be accepted until 180 days after the filing of the complaint.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

SECTION .0600 - CLOSING OF CASES

13 NCAC 19 .0601 ADMINISTRATIVE CLOSINGS

A complaint may be administratively closed without investigation if it does not contain the information specified in Rule .0301 of this Chapter. In the event that the case is administratively closed, the intended respondent shall not be notified and the complainant shall not receive a right-to-sue letter.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

13 NCAC 19 .0602 WITHDRAWALS

The complainant may withdraw the complaint, in writing, at any time prior to the Department's determination that there is reasonable cause to believe that the allegations of the complaint are true.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

13 NCAC 19 .0603 RIGHT-TO-SUE DISMISSALS

Complaints may be dismissed and a right-to-sue letter issued for the following reasons:

- (1) Insufficient evidence to support the allegations of the complaint; or
- (2) Complainant's failure to cooperate during the investigation.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

13 NCAC 19 .0604 RIGHT-TO-SUE CLOSURE

Upon the issuance of a right-to-sue letter, the Commissioner shall close the case file.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

13 NCAC 19 .0605 SETTLEMENTS

Upon settlement of the case and compliance with the terms of any approved settlement agreement, the Commissioner shall close the case file.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

SECTION .0700 - SETTLEMENTS AND LITIGATION

13 NCAC 19 .0701 SETTLEMENT

Except in those cases where the complaint has been withdrawn, or a right-to-sue letter has been issued, the Commissioner shall be a party to all settlements of complaints filed with the Commissioner pursuant to REDA.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*

13 NCAC 19 .0702 LITIGATION

In determining whether to file a civil action or issue a right-to-sue letter, the Commissioner shall consider the interests of both the public and the individual complainant. If the Commissioner elects to file a civil action, the Commissioner shall control all aspects of the litigation, which shall include the acceptance of any proposed settlement.

*History Note: Authority G.S. 95-245;
Eff. April 1, 1999.*