

WORKPLACE VIOLENCE PREVENTION ACT

**North Carolina General Statutes
Chapter 95, Article 23**

WITH REVISIONS THROUGH MAY 2007



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**

Introduction

This publication contains the Workplace Violence Prevention Act (Chapter 95, Article 23 of the North Carolina General Statutes). 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 with regards to obtaining civil no-contact orders to protect employees from unlawful contact from any individual at the employee's workplace.

The Employment Discrimination Bureau ("EDB") is responsible for enforcing one of the provisions of the Workplace Violence Prevention Act (N.C. Gen. Stat. § 95-270), as it relates to the Retaliatory Employment Discrimination Act ("REDA") (Chapter 95, Article 21 of the N.C. General Statutes). If you know of a violation of N.C. Gen. Stat. § 95-270, you may contact EDB at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101, (919) 807-2823 or 1-800-NC-LABOR. Otherwise, the N.C. Department of Labor does not enforce this Act. If you would like information on how to obtain a civil no-contact order, contact your local clerk of court. To locate the Clerk of Court for your judicial district, you may access the N.C. Court System's website at www.nccourts.org.

We encourage and solicit public comments concerning these laws. 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

May 2007

Table of Contents

	Page
§ 95-260	Definitions1
§ 95-261	Civil No-Contact Orders; Persons Protected.....1
§ 95-262	Commencement of Action; Venue1
§ 95-263	Process for Action for No-Contact Order1
§ 95-264	Civil No-Contact Order; Remedy2
§ 95-265	Temporary Civil No-Contact Order; Court Holidays and Evenings2
§ 95-266	Permanent Civil No-Contact Order.....3
§ 95-267	Duration; Extension of Orders3
§ 95-268	Notice of Orders4
§ 95-269	Violation of Valid Order4
§ 95-270	Employment Discrimination Unlawful4
§ 95-271	Scope of Article; Other Remedies Available5

N.C. GENERAL STATUTES
CHAPTER 95 – DEPARTMENT OF LABOR
ARTICLE 23 – WORKPLACE VIOLENCE PREVENTION
(Revised as of May 2007)

§ 95-260. Definitions.

The following definitions apply in this Article:

- (1) Civil no-contact order. – An order granted under this Article, which includes a remedy authorized by G.S. 95-264.
- (2) Employer. – Any person or entity that employs one or more employees. Employer also includes the State of North Carolina and its political subdivisions.
- (3) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon an employee, but does not include acts of self-defense or defense of others:
 - a. Attempting to cause bodily injury or intentionally causing bodily injury.
 - b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. 14-277.3, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety.
 - c. Willfully threatening, orally, in writing, or by any other means, to physically injure the employee in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out. (2004-165, s. 1.)

§ 95-261. Civil no-contact orders; persons protected.

An action for a civil no-contact order may be filed as a civil action in district court by an employer on behalf of an employee who has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace. The employee that is the subject of unlawful conduct shall be consulted prior to seeking an injunction under this Article in order to determine whether any safety concerns exist in relation to the employee's participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this Article shall not face disciplinary action based on their level of participation or cooperation. (2004-165, s. 1.)

§ 95-262. Commencement of action; venue.

- (a) An action for a civil no-contact order is commenced by filing a verified complaint for a civil no-contact order in any civil district court or by filing a motion in any existing civil action.
- (b) A complaint or motion for a civil no-contact order shall be filed in the county where the unlawful conduct took place. (2004-165, s. 1.)

§ 95-263. Process for action for no-contact order.

- (a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Article shall require the respondent to answer

within 10 days of the date of service. Attachments to the summons shall include the verified complaint for the civil no-contact order and any temporary civil no-contact order that has been issued and the notice of hearing on the temporary civil no-contact order.

(b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court. (2004-165, s. 1.)

§ 95-264. Civil no-contact order; remedy.

(a) Upon a finding that the employee has suffered unlawful conduct committed by the respondent, the court may issue a temporary or permanent civil no-contact order. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury to the employee or injury to the employer's property.

(b) The court may grant one or more of the following forms of relief in its orders under this Article:

- (1) Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's employee at the employer's workplace, or otherwise interfere with the employer's operations.
- (2) Order the respondent to cease stalking the employer's employee at the employer's workplace.
- (3) Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.
- (4) Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.
- (5) Order the respondent not to contact by telephone, written communication, or electronic means the employer or the employer's employee at the employer's workplace.
- (6) Order other relief deemed necessary and appropriate by the court.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: "A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment." (2004-165, s. 1.)

§ 95-265. Temporary civil no-contact order; court holidays and evenings.

(a) A temporary civil no-contact order may be granted ex parte, without written or oral notice to the respondent, only if both of the following are shown:

- (1) It clearly appears from specific facts shown by a verified complaint or affidavit that immediate injury, loss, or damage will result to the complainant, or the complainant's employee before the respondent can be heard in opposition.
- (2) Either one of the following:
 - a. The complainant certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.

b. The complainant certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice of the complainant's efforts to obtain judicial relief.

(b) Every temporary civil no-contact order granted without notice shall:

- (1) Be endorsed with the date and hour of issuance.
- (2) Be filed immediately in the clerk's office and entered of record.
- (3) Define the injury, state why it is irreparable and why the order was granted without notice.
- (4) Expire by its terms within such time after entry, not to exceed 10 days.
- (5) Give notice of the date of hearing on the temporary order as provided in G.S. 95-267(a).

(c) If the respondent appears in court for the hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 95-266 have been met, the court may issue a permanent order.

(d) When the court is not in session, the complainant may file a complaint for a temporary order before any judge or magistrate designated to grant relief under this Article. If the judge or magistrate finds that there is an immediate and present danger of abuse against the complainant or employee of the complainant and that the complainant has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a temporary civil no-contact order. The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue temporary civil no-contact orders when the court is not in session. (2004-165, s. 1; 2006-264, s. 9.)

§ 95-266. Permanent civil no-contact order.

Upon a finding that the employee has suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may issue if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default. No permanent civil no-contact order shall be issued without notice to the respondent. (2004-165, s. 1.)

§ 95-267. Duration; extension of orders.

(a) A temporary civil no-contact order shall be effective for not more than 10 days as the court fixes, unless within the time so fixed the temporary civil no-contact order, for good cause shown, is extended for a like period or a longer period if the respondent consents. The reasons for the extension shall be stated in the temporary order. In case a temporary civil no-contact order is granted without notice and a motion for a permanent civil no-contact order is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion for a permanent civil no-contact order comes on for hearing, the complainant may proceed with a motion for a permanent civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the temporary civil no-contact order. On two days' notice to the complainant or on such shorter notice to that party as the judge may prescribe, the respondent may appear and move its dissolution or modification. In that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) A permanent civil no-contact order shall be effective for a fixed period of time not to exceed one year.

(c) Any temporary or permanent order may be extended one or more times, as required, provided that the requirements of G.S. 95-265 or G.S. 95-266, as appropriate, are satisfied. The court may renew a temporary or permanent order, including an order that previously has been renewed, upon a motion by the complainant filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the complainant seeks no modification of the order, the order may be extended if the complainant's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 95-265(d).

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day. (2004-165, s. 1.)

§ 95-268. Notice of orders.

(a) The clerk of court shall deliver on the same day that a civil no-contact order is issued a certified copy of that order to the sheriff.

(b) Unless the respondent was present in court when the order was issued, the sheriff shall serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order.

(c) A copy of the order shall be issued promptly to and retained by the police department of the municipality of the employer's workplace. If the employer's workplace is not located in a municipality or in a municipality with no police department, copies shall be issued promptly to and retained by the sheriff and the county police department, if any, of the county in which the employer's workplace is located.

(d) Any order extending, modifying, or revoking any civil no-contact order shall be recorded, issued, and served in accordance with the provisions of this Article. (2004-165, s. 1.)

§ 95-269. Violation of valid order.

A violation of an order entered pursuant to this Article is punishable as contempt of court. (2004-165, s. 1.)

§ 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.)

§ 95-271. Scope of Article; other remedies available.

This Article does not expand, diminish, alter, or modify any duty of any employer to provide a safe workplace for employees and other persons. This Article does not limit the ability of an employer, employee, or victim to pursue any other civil or criminal remedy provided by law. This Article does not apply in circumstances where an employee or representative of employees is engaged in union organizing, union activity, a labor dispute, or any activity or action protected by the National Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Article is intended to change the National Labor Relations Act's preemptive regulation of legally protected activities, nor to change the right of the State and its courts to regulate activities not protected by the National Labor Relations Act. (2004-165, s. 1; 2004-199, s. 58.)