

WAGE AND HOUR ACT

North Carolina General Statutes
Chapter 95, Article 2A

AND

ADMINISTRATIVE RULES

North Carolina Administrative Code
Title 13, Chapter 12

With Revisions Through August 2009



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Introduction

The N.C. Department of Labor's Wage and Hour Bureau enforces the 1979 Wage and Hour Act of North Carolina (Chapter 95, Article 2A of the North Carolina General Statutes) and the Administrative Rules promulgated thereunder (Title 13, Chapter 20 of the North Carolina Administrative Code). This Act, with amendments, covers minimum wages; overtime; wage payments; payments of promised wages and benefits, such as vacation, holiday and sick pay; and youth employment. Minimum wage and overtime provisions of the Act generally apply to all North Carolina businesses that are not subject to the federal Fair Labor Standards Act. Wage payment provisions cover all employees in North Carolina except those employed in federal, state or local government.

The Wage and Hour Bureau investigates workers' complaints and collects back wages due employees. Citizens of North Carolina who feel they have been treated unfairly by their employers in matters of pay, working hours, or such terms of employment as vacation or leave policies are invited to avail themselves of the services of the Wage and Hour Bureau.

This publication contains the Wage and Hour Act and Administrative Rules. It is intended for use by employers and employees to inform them of their rights and responsibilities in wage and hour 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. This gives our state a more effective and productive work force with which to maintain our competitive national economic position.

As a result of a departmental reorganization, the name of the Wage and Hour Division has been changed to the Wage and Hour Bureau. References made in the Wage and Hour Act or in the Administrative Rules to the Wage and Hour Division or its director should now be read as referring to the Wage and Hour Bureau and its administrator.

We encourage and solicit public comments concerning these laws and regulations. Please direct your comments and questions to the Wage and Hour 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 2A – WAGE AND HOUR ACT

§ 95-25.1. Short title and legislative purpose.

(a) This Article shall be known and may be cited as the "Wage and Hour Act."

(b) The public policy of this State is declared as follows: The wage levels of employees, hours of labor, payment of earned wages, and the well-being of minors are subjects of concern requiring legislation to promote the general welfare of the people of the State without jeopardizing the competitive position of North Carolina business and industry. The General Assembly declares that the general welfare of the State requires the enactment of this law under the police power of the State. (1937, c. 409, s. 2; 1979, c. 839, s. 1.)

§ 95-25.2. Definitions.

In this Article, unless the context otherwise requires:

- (1) "Agriculture" includes farming in all its branches performed by a farmer or on a farm as an incident to or in conjunction with farming operations.
- (2) "Commissioner" means the Commissioner of Labor.
- (3) "Employ" means to suffer or permit to work.
- (4) "Employee" includes any individual employed by an employer.
- (5) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.
- (6) "Establishment" means a physical location where business is conducted.
- (7) "The Fair Labor Standards Act" means the Fair Labor Standards Act of 1938, as amended and as the same may be amended from time to time by the United States Congress.
- (8) "Hours worked" includes all time an employee is employed.
- (9) "Payday" means that day designated for payment of wages due by virtue of the employment relationship.
- (10) "Pay periods" may be daily, weekly, biweekly, semimonthly, or monthly.
- (11) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons. For the purposes of G.S. 95-25.2, G.S. 95-25.3, G.S. 95-25.14, and G.S. 95-25.20, it also means the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government. The Government of the United States and any agency of the United States (including the United States Postal Service and Postal Rate Commission) are not included as persons for any purpose under this Article.
- (12) "Seasonal food service establishment" means a restaurant, food and drink stand or other establishment generally recognized as a commercial food service establishment, preparing and serving food to the public but operating 180 days or less per year.
- (13) "Seasonal religious or nonprofit educational conference center or a seasonal amusement or recreational establishment" means an establishment which does not operate for more than seven months in any calendar year, or during the preceding calendar year had average receipts for any six months of such year

- of not more than thirty-three and one-third percent (33 1/3%) of its average receipts for the other six months of that year.
- (14) "Tipped employee" means any employee who customarily receives more than twenty dollars (\$20.00) a month in tips.
 - (15) "Tip" shall mean any money or part thereof over and above the actual amount due a business for goods, food, drink, services or articles sold which is paid in cash or by credit card, or is given to or left for an employee by a patron or patrons of the business where the employee is employed.
 - (16) "Wage" paid to an employee means compensation for labor or services rendered by an employee whether determined on a time, task, piece, job, day, commission, or other basis of calculation, and the reasonable cost as determined by the Commissioner of furnishing employees with board, lodging, or other facilities. For the purposes of G.S. 95-25.6 through G.S. 95-25.13 "wage" includes sick pay, vacation pay, severance pay, commissions, bonuses, and other amounts promised when the employer has a policy or a practice of making such payments.
 - (17) "Workweek" means any period of 168 consecutive hours.
 - (18) "Enterprise" means the related activities performed either through unified operations or common control by any person or persons for a common business purpose and includes all such activities whether performed in one or more establishments or by one or more corporate units but shall not include the related activities performed for such enterprise by an independent contractor or franchisee. (1959, c. 475; 1961, c. 652; 1969, c. 34, s. 2; c. 218; 1971, c. 1231, s. 1; 1975, c. 413, s. 1; c. 605; 1977, c. 653; c. 672, s. 1; c. 826, s. 1; 1979, c. 839, s. 1; 1981, c. 663, ss. 10, 11; 1983, c. 708, s. 3; 1991, c. 330, s. 1.)

§ 95-25.3. Minimum wage.

(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise provided in this section.

(b) In order to prevent curtailment of opportunities for employment, the wage rate for full-time students, learners, apprentices, and messengers, as defined under the Fair Labor Standards Act, shall be ninety percent (90%) of the rate in effect under subsection (a) above, rounded to the lowest nickel.

(c) The Commissioner, in order to prevent curtailment of opportunities for employment, may, by regulation, establish a wage rate less than the wage rate in effect under section (a) which may apply to persons whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, as such persons are defined under the Fair Labor Standards Act.

(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (i) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are, receiving Work First Family Assistance or who are receiving supplemental security benefits under Title XVI of the Social Security Act.

Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for such subminimum wage shall be issued by the Employment Security Commission.

The regulation issued by the Commissioner shall not permit employment at the subminimum rate for a period in excess of 52 weeks.

(e) The Commissioner, in order to prevent curtailment of opportunities for employment, and to not adversely affect the viability of seasonal establishments, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to any employee employed by an establishment which is a seasonal amusement or recreational establishment, or a seasonal food service establishment.

(f) Tips earned by a tipped employee may be counted as wages only up to the amount permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped employee is notified in advance, is permitted to retain all tips and the employer maintains accurate and complete records of tips received by each employee as such tips are certified by the employee monthly or for each pay period. Even if the employee refuses to certify tips accurately, tips may still be counted as wages when the employer complies with the other requirements of this section and can demonstrate by monitoring tips that the employee regularly receives tips in the amount for which the credit is taken. Tip pooling shall also be permissible among employees who customarily and regularly receive tips; however, no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling arrangement. (1959, c. 475; 1963, c. 816; 1965, c. 229; 1969, c. 34, s. 1; 1971, c. 138; 1973, c. 802; 1975, c. 256, s. 1; 1977, c. 519; 1979, c. 839, s. 1; 1981, c. 493, s. 1; c. 663, s. 13; 1983, c. 708, s. 1; 1985, c. 97; 1987, c. 79; 1991, c. 270, ss. 1, 2; c. 330, s. 5; 1997-146, s. 1; 1997-443, s. 12.25; 2006-114, s. 1; 2006-259, s.18.)

§ 95-25.3A. Repealed by Session Laws 2003-308, s. 8, effective July 1, 2003.

§ 95-25.4. Overtime.

(a) Every employer shall pay each employee who works longer than 40 hours in any workweek at a rate of not less than time and one half of the regular rate of pay of the employee for those hours in excess of 40 per week; provided that employers of seasonal amusement or recreational establishment employees are required to pay those employees the overtime rate only for hours in excess of 45 per workweek.

(b) Repealed by Session Laws 1991, c. 330, s. 2. (1973, c. 685, s. 1; 1979, c. 839, s. 1; 1991, c. 330, s. 2, c. 492, s. 1.)

§ 95-25.5. Youth employment.

(a) No youth under 18 years of age shall be employed by any employer in any occupation without a youth employment certificate unless specifically exempted. The Commissioner of Labor shall prescribe regulations for youths and employers concerning the issuance, maintenance and revocation of certificates. Certificates will be issued, subject to review by the Department of Labor, by county directors of social services and such of their designees as are approved by the Commissioner; provided, the Commissioner may also issue certificates, both directly and electronically.

(a1) During the regular school term, no youth under 18 years of age who is enrolled in school in grade 12 or lower may be employed between 11 P.M. and 5 A.M. when there is school for the youth the next day. This restriction does not apply to youths 16 and 17 years of age if the employer receives written approval for the youth to work beyond the stated hours from the youth's parent or guardian and from the youth's principal or the principal's designee.

(b) No youth under 18 years of age may be employed by an employer in any occupation which the United States Department of Labor shall find and by order declare to be hazardous and without exemption under the Fair Labor Standards Act, or in any occupation which the Commissioner of Labor after public hearing shall find and declare to be detrimental to the health and well-being of youths.

(c) No youth 14 or 15 years of age may be employed by an employer in any occupation except those determined by the United States Department of Labor to be permitted occupations under the Fair Labor Standards Act; provided, such youths may be employed by employers:

- (1) No more than three hours on a day when school is in session for the youth;
- (2) No more than eight hours on a day when school is not in session for the youth;
- (3) Only between 7 A.M. and 7 P.M., except to 9 P.M. during the summer (when school is not in session);
- (4) No more than 40 hours in any one week when school is not in session for the youth;
- (5) No more than 18 hours in any one week when school is in session for the youth; and
- (6) Only outside school hours.

Notwithstanding the above, enrollees in high school apprenticeships or in work experience and career exploration programs as defined under the Fair Labor Standards Act may work up to 23 hours in any one week when school is in session, any portion of which may be during school hours.

(d) No youth 13 years of age or less may be employed by an employer, except youths 12 and 13 years of age may be employed outside school hours in the distribution of newspapers to the consumer but not more than three hours per day. An employment certificate shall not be required for any youth under 18 years of age engaged in the distribution of newspapers to the consumer outside of school hours.

(e) No youth under 16 years of age shall be employed for more than five consecutive hours without an interval of at least 30 minutes for rest. No period of less than 30 minutes shall be deemed to interrupt a continuous period of work.

(f) For any youth 13 years of age or older, the Commissioner may waive any provision of this section and authorize the issuance of an employment certificate when:

- (1) He receives a letter from a social worker, court, probation officer, county department of social services, a letter from the North Carolina Alcohol Beverage Control Commission or school official stating those factors which create a hardship situation and how the best interest of the youth is served by allowing a waiver; and
- (2) He determines that the health or safety of the youth would not be adversely affected; and
- (3) The parent, guardian, or other person standing in loco parentis consents in writing to the proposed employment.

(g) Youths employed as models, or as actors or performers in motion pictures or theatrical productions, or in radio or television productions are exempt from all provisions of this section except the certificate requirements of subsection (a).

(h) Youths employed by an outdoor drama directly in production-related positions such as stagehands, lighting, costumes, properties and special effects are exempt from all provisions of this section except the certificate requirements of subsection (a). Positions such as office workers, ticket takers, ushers and parking lot attendants have no exemption and are subject to all provisions of this section.

(i) Youth under 18 years of age employed by their parent, guardian, or other person standing in loco parentis are exempt from all provisions of this section, except for all of the following:

- (1) The certificate requirements of subsection (a) of this section.
- (2) The prohibition from hazardous or detrimental occupations of subsection (b) of this section.
- (3) The prohibitions of subsection (j)(2) of this section if the youths only work at the establishment when another employee at least 21 years of age is in charge of and present at the licensed premises.

(j) No person who holds any ABC permit issued pursuant to the provisions of Chapter 18B of the General Statutes for the on-premises sale or consumption of alcoholic beverages, including any mixed beverages, shall employ a youth:

- (1) Under 16 years of age on the premises for any purpose, unless the youth is at least 14 years of age and each of the following conditions is met:
 - a. The person obtains the written consent of a parent or guardian of the youth.
 - b. The youth is employed to work on the outside grounds of the premises for a purpose that does not involve the preparation, serving, dispensing, or sale of alcoholic beverages.
- (2) Under 18 years of age to prepare, serve, dispense or sell any alcoholic beverages, including mixed beverages.

(k) Persons and establishments required to comply with or subject to regulation of child labor under the Fair Labor Standards Act are exempt from all provisions of this section, except the certificate requirements of subsection (a), the provisions of subsection (a1), the prohibition from occupations found and declared to be detrimental by the Commissioner of Labor pursuant to subsection (b), and the prohibitions of subsection (j). In addition, employment certificates will not be issued if such person's employment will be in violation of the applicable child labor provisions of the Fair Labor Standards Act. Such employers may also be assessed civil penalties pursuant to G.S. 95-25.23 for each violation of the provisions of this section or any regulation issued hereunder from which there is no exemption.

(l) Notwithstanding any other provision of this section, any youth who holds a North Carolina driver's license valid for the type of driving involved may be assigned as part of his employment to drive an automobile or truck not exceeding 6,000 pounds gross vehicle weight within a 25-mile radius of the principal place of employment, provided that the youth has completed a State-approved driver-education course, and provided that the assignment does not involve the towing of vehicles. "Gross vehicle weight" includes the truck chassis with lubricants, water and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis and body equipment, and payload.

(m) Notwithstanding any other provision of this section, youths who are enrolled at an institution of higher education may be employed by the institution provided the employment is not hazardous. As used in this subsection, "institution of higher education" means any constituent institution of The University of North Carolina, any North Carolina community college, or any college or university that awards postsecondary degrees.

(n) Nothing in this section prohibits qualified youths under 18 years of age from participating in training through their fire department, the Office of State Fire Marshal, or the North Carolina Community College System. As used in this subsection, the term "qualified youth under 18 years of age" means an uncompensated fire department or rescue squad member who is over the age of 15 and under the age of 18 and who is a member of a bona fide fire

department, as that term is defined in G.S. 58-86-25, or of a rescue squad described in G.S. 58-86-30. (1937, c. 317, ss. 1-3, 6, 9, 18; 1943, c. 670; 1951, c. 1187, s. 1; 1967, cc. 173, 764; 1969, c. 962; 1973, c. 649, s. 1; c. 758, s. 1; 1977, c. 551, ss. 1-4; 1979, c. 839, s. 1; 1981, c. 412, ss. 3, 4; c. 489, ss. 1-7; c. 747, s. 66; 1985, c. 97, s. 1; 1987, c. 154; 1991, c. 492, s. 2; 1991 (Reg. Sess., 1992), c. 991, s. 1; 1993, c. 239, s. 1; 1995, c. 214, s. 1; 1999-237, s. 14.1; 2001-312, s. 3; 2001-515, s. 5; 2005-453, s. 15; 2009-21, s. 2.)

§ 95-25.6. Wage payment.

Every employer shall pay every employee all wages and tips accruing to the employee on the regular payday. Pay periods may be daily, weekly, bi-weekly, semi-monthly, or monthly. Wages based upon bonuses, commissions, or other forms of calculation may be paid as infrequently as annually if prescribed in advance. (1975, c. 413, s. 3; 1977, c. 826, s. 3; 1979, c. 839, s. 1.)

§ 95-25.7. Payment to separated employees.

Employees whose employment is discontinued for any reason shall be paid all wages due on or before the next regular payday either through the regular pay channels or by mail if requested by the employee. Wages based on bonuses, commissions or other forms of calculation shall be paid on the first regular payday after the amount becomes calculable when a separation occurs. Such wages may not be forfeited unless the employee has been notified in accordance with G.S. 95-25.13 of the employer's policy or practice which results in forfeiture. Employees not so notified are not subject to such loss or forfeiture. (1975, c. 413, s. 4; 1979, c. 839, s. 1; 1981, c. 663, s. 1; 1993, c. 214, s. 1.)

§ 95-25.7A. Wages in dispute.

(a) If the amount of wages is in dispute, the employer shall pay the wages, or that part of the wages, which the employer concedes to be due without condition, within the time set by this Article. The employee retains all remedies that the employee might otherwise be entitled to regarding any balance of wages claimed by the employee, including those remedies provided under this Article.

(b) Acceptance of a partial payment of wages under this section by an employee does not constitute a release of the balance of the claim. Further, any release of the claim required by an employer as a condition of partial payment is void. (1989, c. 687, s. 1.)

§ 95-25.8. Withholding of wages.

- (a) An employer may withhold or divert any portion of an employee's wages when:
- (1) The employer is required or empowered to do so by State or federal law;
 - (2) When the amount or rate of the proposed deduction is known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; (ii) indicates the reason for the deduction; and (iii) states the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. Provided, that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization; or
 - (3) When the amount of the proposed deduction is not known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; and (ii) indicates the reason for the

deduction. Prior to any deductions being made under this section, the employee must (i) receive advance written notice of the actual amount to be deducted; (ii) receive written notice of their right to withdraw the authorization; and (iii) be given a reasonable opportunity to withdraw the authorization in writing.

(b) The withholding or diversion of wages owed for the employer's benefit must comply with the following requirements:

- (1) In nonovertime workweeks, an employer may reduce wages to the minimum wage level.
- (2) In overtime workweeks, employers may reduce wages to the minimum wage level for nonovertime hours.
- (3) No reductions may be made to overtime wages owed.

(c) In addition to complying with the requirements in subsections (a) and (b) of this section, an employer may withhold or divert a portion of an employee's wages for cash shortages, inventory shortages, or loss or damage to an employer's property after giving the employee written notice of the amount to be deducted seven days prior to the payday on which the deduction is to be made, except that when a separation occurs the seven-day notice is not required.

(d) Notwithstanding subsections (a) and (b), above, an overpayment of wages to an employee as a result of a miscalculation or other bona fide error, advances of wages to an employee or to a third party at the employee's request, and the principal amount of loans made by an employer to an employee are considered prepayment of wages and may be withheld or deducted from an employee's wages. Deductions for interest and other charges related to loans by an employer to an employee shall require written authorization in accordance with subsection (a), above.

(e) Notwithstanding subsections (a) and (c), above, if criminal process has issued against an employee, an employee has been indicted, or an employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge incident to a cash shortage, inventory shortage, or damage to an employer's property, an employer may withhold or divert a portion of the employee's wages in order to recoup the amount of the cash shortage, inventory shortage, or damage to the employer's property, without the written authorization required by this section, but the amount of such withholdings shall comply with the provisions of subsection (b) of this section. If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.

(f) For purposes of this section, a written authorization or written notice may be in the form of an electronic record in compliance with Article 40 of Chapter 66 (the Uniform Electronic Transactions Act).

(g) Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee. (1975, c. 413, s. 6; 1979, c. 839, s. 1; 1981, c. 663, s. 2; 2005-453, s. 16.)

§ 95-25.9. Repealed by Session Laws 2005-453, s. 17, effective October 1, 2005.

§ 95-25.10. Repealed by Session Laws 2005-453, s. 18, effective October 1, 2005.

§ 95-25.11. Employers' remedies preserved.

- (a) Repealed by Session Laws 2005-453, s. 19.

(b) Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee. (1979, c. 839, s. 1; 1981, c. 663, s. 5; 2005-453, s. 19.)

§ 95-25.12. Vacation pay.

No employer is required to provide vacation pay plans for employees. However, if an employer provides these promised benefits for employees, the employer shall give all vacation time off or payment in lieu of time off in accordance with the company policy or practice. Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which requires or results in loss or forfeiture of vacation time or pay. Employees not so notified are not subject to such loss or forfeiture. (1979, c. 839, s. 1; 1981, c. 663, s. 6; 2005-453, s. 20.)

§ 95-25.13. Notification, posting, and records.

Every employer shall:

- (1) Notify its employees, orally or in writing at the time of hiring, of the promised wages and the day and place for payment;
- (2) Make available to its employees, in writing or through a posted notice maintained in a place accessible to its employees, employment practices and policies with regard to promised wages;
- (3) Notify employees, in writing or through a posted notice maintained in a place accessible to its employees, at least 24 hours prior to any changes in promised wages. Wages may be retroactively increased without the prior notice required by this subsection; and
- (4) Furnish each employee with an itemized statement of deductions made from that employee's wages under G.S. 95-25.8 for each pay period such deductions are made. (1975, c. 413, s. 7; 1979, c. 839, s. 1; 1981, c. 663, s. 12; 1993, c. 203; 2005-453, s. 21.)

§ 95-25.14. Exemptions.

(a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), and G.S. 95-25.5 (Youth Employment), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not apply to:

- (1) Any person employed in an enterprise engaged in commerce or in the production of goods for commerce as defined in the Fair Labor Standards Act:
 - a. Except as otherwise specifically provided in G.S. 95-25.5;
 - b. Notwithstanding the above, any employee other than a learner, apprentice, student, or handicapped worker as defined in the Fair Labor Standards Act who is not otherwise exempt under the other provisions of this section, and for whom the applicable minimum wage under the Fair Labor Standards Act is less than the minimum wage provided in G.S. 95-25.3, is not exempt from the provisions of G.S. 95-25.3 or G.S. 95-25.4;
 - c. Notwithstanding the above, any employer or employee exempt from the minimum wage, overtime, or child labor requirements of the Fair Labor Standards Act for whom there is no comparable exemption under this Article shall not be exempt under this subsection except that where an exemption in the Fair Labor Standards Act provides a method of computing overtime which is an alternative to the method required in 29 U.S.C.S. § 207(a), the employer or employee subject to that alternate method shall be exempt from the provisions of G.S. 95-25.4(a); provided that, persons not employed at an enterprise described in subdivision (1) of this subsection shall also be subject to

the same alternative methods of overtime calculation in the circumstances described in the Fair Labor Standards Act exemptions providing those alternative methods;

- (2) Any person employed in agriculture, as defined under the Fair Labor Standards Act;
- (3) Any person employed as a domestic, including baby sitters and companions, as defined under the Fair Labor Standards Act;
- (4) Any person employed as a page in the North Carolina General Assembly or in the Governor's Office;
- (5) Bona fide volunteers in medical, educational, religious, or nonprofit organizations where an employer-employee relationship does not exist;
- (6) Persons confined in and working for any penal, correctional or mental institution of the State or local government;
- (7) Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio or television productions, as defined under the Fair Labor Standards Act, except as otherwise specifically provided in G.S. 95-25.5;
- (8) Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special effects, except as otherwise specifically provided in G.S. 95-25.5; but this exemption does not include such positions as office workers, ticket takers, ushers and parking lot attendants.

(b) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not apply to:

- (1) Any employee of a boys' or girls' summer camp or of a seasonal religious or nonprofit educational conference center;
- (2) Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;
- (3) The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina;
- (4) Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act;
- (5) Repealed by Session Laws 1989, c. 687, s. 2.
- (6) Any person while participating in a ridesharing arrangement as defined in G.S. 136-44.21;
- (7) Any person who is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, as defined in the Fair Labor Standards Act.

(b1) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to the exemptions provided for in this subsection, do not apply to any of the following:

- (1) Hours worked as a bona fide volunteer firefighter in an incorporated, nonprofit volunteer or community fire department.
- (2) Hours worked as a bona fide volunteer rescue and emergency medical services personnel in an incorporated, nonprofit volunteer or community fire department, or an incorporated, nonprofit rescue squad.

Hours worked in accordance with this subsection shall not be considered hours worked for purposes of G.S. 95-25.3 or G.S. 95-25.4.

(c) The provisions of G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to this exemption, do not apply to:

- (1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair Labor Standards Act;
- (2) Taxicab drivers;
- (3) Seamen, employees of railroads, and employees of air carriers, as defined under the Fair Labor Standards Act;
- (4) Salespersons, mechanics and partsmen employed by automotive, truck, and farm implement dealers, as defined under the Fair Labor Standards Act;
- (5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under the Fair Labor Standards Act;
- (6) Live-in child care workers or other live-in employees in homes for dependent children;
- (7) Radio and television announcers, news editors, and chief engineers, as defined under the Fair Labor Standards Act.

(d) The provisions of this Article do not apply to the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, except for the following provisions, which do apply:

- (1) The minimum wage provisions of G.S. 95-25.3;
- (2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable provisions;
- (3) The exemptions of subsections (a) and (b) of this section;
- (4) The complainant protection provisions of G.S. 95-25.20.

(e) Employment in a seasonal recreation program by the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage). (1937, c. 406; c. 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59; 1947, c. 825; 1949, c. 1057; 1959, cc. 475, 629; 1961, cc. 602, 1070; 1963, c. 1123; 1965, c. 724; 1967, c. 998; 1973, c. 600, s. 1; 1975, c. 19, s. 26; c. 413, s. 2; 1977, c. 146; 1979, c. 839, s. 1; 1981, c. 493, s. 2; c. 606, s. 2; c. 663, s. 7; 1983, c. 708, s. 2; 1989, c. 687, s. 2; 1991, c. 330, s. 3; 1993, c. 214, s. 2; 1995, c. 509, s. 47; 1997-146, s. 2; 2002-113, s. 2.)

§ 95-25.15. Investigations and inspection of records; notice of law.

(a) The Commissioner or his designated representative shall have the power and authority to enter any place of employment and gather such facts as are essential to determine whether or not the employer is covered by any provision of this Article.

With respect to any provision of this Article under which the employer is covered, the Commissioner or the Commissioner's designated representative may inspect such places and such records, make transcriptions of any and all such records, question employees and investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered establishment.

(b) Except as otherwise provided in this Article, every employer subject to any provision of this Article shall make, keep, and preserve such records of the persons employed by the employer, including the ages of employees, and of the wages, hours, and other conditions and practices of employment which are essential to the enforcement of this Article and are prescribed by regulation of the Commissioner, except that the Commissioner shall have no authority to prescribe records for the State of North Carolina, a city, town, county or other municipality or agency or instrumentality of government.

(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article. (1937, c. 317, ss. 5, 19; 1959, c. 475; 1971, c. 1231, s. 2; 1973, c. 649, s. 4; 1975, c. 413, ss. 7, 9; 1979, c. 839, s. 1; 2005-453, s. 22; 2009-351, s. 2.)

§ 95-25.16. Enforcement.

(a) The Commissioner shall enforce and administer the provisions of this Article, and the Commissioner or his authorized representative is empowered to hold hearings and to institute criminal and civil proceedings hereunder.

(b) The Commissioner or his authorized representative shall have power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and take depositions and affidavits in any proceeding hereunder.

(c) The Commissioner is empowered to enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of the department or agency, for the collection in the other state of claims and judgments for wages based upon investigations and findings made by the Commissioner or his authorized representative.

The Commissioner may, to the extent provided for by any reciprocal agreement entered into by law or with an agency of another state, as provided in this section, maintain actions in the courts of any other state for the collection of claims or judgments for wages and may assign the claims and judgments to the labor department or agency of the other state for collection to the extent that such an assignment may be permitted or provided for by the law of that state or by reciprocal agreement.

Except as provided in subsection (d) of this section, the Commissioner may, upon the written consent of the labor department or corresponding agency of any other state or of any person, board, officer, or commission authorized to act on behalf of the department or agency, maintain actions in the courts of this State upon assigned claims and judgments for wages arising in the other state in the same manner and to the same extent that these actions by the Commissioner are authorized when arising in this State.

(d) Subsection (c) of this section applies only to those states that extend comity to this State. (1937, c. 317, s. 19; c. 409, s. 7; 1971, c. 1231, s. 2; 1973, c. 649, s. 4; 1975, c. 473, s. 9; c. 475; 1979, c. 839, s. 1; 1989, c. 687, s. 3.)

§ 95-25.17. Wage and Hour Division established.

The Commissioner of Labor is charged with enforcement of this Article. The Commissioner shall appoint a Wage and Hour Director and any other employees the Commissioner deems necessary for enforcement of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the Director and employees engaged in the administration of this Article. (1979, c. 839, s. 1; 2005-453, s. 23.)

§ 95-25.18. Legal representation.

It shall be the duty of the Attorney General of North Carolina, when requested, to represent the Department of Labor in actions or proceedings in connection with this Article. (1979, c. 839, s. 1.)

§ 95-25.19. Rules.

The Commissioner may adopt rules needed to implement this Article. (1937, c. 317, s. 18; 1975, c. 413, s. 12; 1979, c. 839, s. 1; 1987, c. 827, s. 262.)

§ 95-25.20. Records.

Files and other records relating to investigations and enforcement proceedings pursuant to this Article, or pursuant to Article 21 of this Chapter with respect to Wage and Hour Act violations, shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are pending. Nothing under this section shall impede the right to discovery under G.S. 1A-1, Rules of Civil Procedure. (1979, c. 839, s. 1; 1981, c. 663, s. 8; 1991 (Reg. Sess., 1992), c. 1021, s. 3.)

§ 95-25.21. Illegal acts.

(a) It shall be unlawful for any person to interfere unduly with, hinder, or delay the Commissioner or any authorized representative in the performance of official duties or refuse to give the Commissioner or his authorized representative any information required for the enforcement of this Article.

(b) It shall be unlawful for any person to make any statement or report, or keep or file any record pursuant to this Article or regulations issued thereunder, knowing such statement, report, or record to be false in a material respect.

(c) Any person who violates this section shall be guilty of a Class 2 misdemeanor. (1937, c. 409, ss. 6, 8; 1979, c. 839, s. 1; 1993, c. 539, s. 661; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 95-25.22. Recovery of unpaid wages.

(a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, their unpaid overtime compensation, or their unpaid amounts due under G.S. 95-25.6 through 95-25.12, as the case may be, plus interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due.

(a1) In addition to the amounts awarded pursuant to subsection (a) of this section, the court shall award liquidated damages in an amount equal to the amount found to be due as provided in subsection (a) of this section, provided that if the employer shows to the satisfaction of the court that the act or omission constituting the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Article, the court may, in its discretion, award no liquidated damages or may award any amount of liquidated damages not exceeding the amount found due as provided in subsection (a) of this section.

(b) Action to recover such liability may be maintained in the General Court of Justice by any one or more employees.

(c) Action to recover such liability may also be maintained in the General Court of Justice by the Commissioner at the request of the employees affected. Any sums thus recovered

by the Commissioner on behalf of an employee shall be held in a special deposit account and shall be paid directly to the employee or employees affected.

(d) The court, in any action brought under this Article may, in addition to any judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by the defendant. In an action brought by the Commissioner in which a default judgment is entered, the clerk shall order attorneys' fees of three hundred dollars (\$300.00) to be paid by the defendant.

The court may order costs and fees of the action and reasonable attorneys' fees to be paid by the plaintiff if the court determines that the action was frivolous.

(e) The Commissioner is authorized to determine and supervise the payment of the amounts due under this section, including interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due, and the agreement to accept such amounts by the employee shall constitute a waiver of the employee's right to bring an action under subsection (b) of this section.

(f) Actions under this section must be brought within two years pursuant to G.S. 1-53.

(g) Prior to initiating any action under this section, the Commissioner shall exhaust all administrative remedies, including giving the employer the opportunity to be heard on the matters at issue and giving the employer notice of the pending action. (1959, c. 475; 1975, c. 413, s. 11; 1979, c. 839, s. 1; 1989, c. 687, s. 4; 1991, c. 298.)

§ 95-25.23. Violation of youth employment; civil penalty.

(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for the first violation and not to exceed one thousand dollars (\$1,000) for each subsequent violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B.

(b) The amount of such penalty when finally determined may be recovered in the manner set forth in G.S. 95-25.23B.

(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation. (1979, c. 839, s. 1; 1981, c. 663, s. 9; 1989, c. 687, s. 6; 1993, c. 225, s. 1; 1998-215, s. 107; 2003-308, s. 1; 2007-231, s. 4; 2009-351, s.1.)

§ 95-25.23A. Violation of record-keeping requirement; civil penalty.

(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per employee with the maximum not to exceed two thousand dollars (\$2,000) per investigation by the Commissioner or the Commissioner's authorized representative. In determining the amount of the penalty, the Commissioner shall consider each of the following:

- (1) The appropriateness of the penalty for the size of the business of the employer charged.
- (2) The gravity of the violation.
- (3) Whether the violation involves an employee under 18 years of age.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B.

(b) The amount of the penalty when finally determined may be recovered in the manner set forth in G.S. 95-25.23B.

(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation. (1989, c. 687, s. 5; 1993, c. 225, s. 2; 1998-215, s. 108; 2003-308, s. 2; 2007-231, s. 5; 2009-351, s. 3)

§ 95-25.23B. Civil penalty collection.

The Commissioner may file in the office of the clerk of the superior court of any county a certified copy of an assessment, either unappealed from or affirmed in whole or in part upon appeal, of a civil money penalty under G.S. 95-25.23 or G.S. 95-25.23A. Upon such filing, the clerk shall enter judgment in accordance with the unappealed or affirmed portion of the assessment and shall notify the parties. Such judgment shall have the same effect, and all proceedings in relation to the judgment shall thereafter be the same, as though the judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice. (1993, c. 225, s. 3.)

§ 95-25.23C. Report on youth employment enforcement activities.

(a) Findings. – The General Assembly finds that:

- (1) There is an increasing need to protect the educational opportunities of youths under age 18 and to prohibit their employment in jobs and under conditions that are detrimental to their health and well-being.
- (2) Although the statutory protections available for youths under age 18 who are employed in this State are comprehensive, those protections are rendered meaningless without effective enforcement.
- (3) It is in the best interest of the State and its youngest workers to ensure that North Carolina employers are in full compliance with the youth employment laws and regulations enacted under the Wage and Hour Act.

(b) Intent. – Recognizing that the Department of Labor is the State agency charged with enforcing the Wage and Hour Act as it pertains to youth employment, the General Assembly intends to review the Department's education and enforcement activities on a regular basis in order to identify effective measures for enhancing youth employment protections in this State.

(c) Report. – No later than February 1 of each year, the Commissioner shall submit a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly on the Department of Labor's investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to

youth employment. Each report submitted pursuant to this subsection shall contain data and information about the calendar year preceding the date on which the last written report was submitted. The report shall include at least all of the following:

- (1) All activities the Department of Labor has sponsored or participated in for the purpose of educating employers about their responsibilities under the Wage and Hour Act.
- (2) The total number of complaints received by the Department of Labor alleging youth employment violations under the Wage and Hour Act, or any regulations issued under the Wage and Hour Act, or both.
- (3) The specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the Department of Labor.
- (4) The total number of investigations conducted by the Department of Labor concerning alleged youth employment violations, the length of the investigations, and the number of investigators assigned to conduct the investigations. For purposes of this subdivision, the Commissioner shall provide a separate analysis of (i) investigations initiated by the Department in response to a complaint, (ii) investigations initiated by the Department in the absence of a complaint, and (iii) alleged record-keeping violations pertaining to youth employment.
- (5) The total number of administrative proceedings involving youth employment violations.
- (6) The total number and identity of employers cited for youth employment violations and the industries or occupations that received the greatest and the least number of complaints alleging youth employment violations.
- (7) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23 and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.
- (8) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23A and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.
- (9) An explanation of any obstacles that prevented the Department of Labor from enforcing any provision of the Wage and Hour Act as it pertains to youth employment, any recommended changes to the Wage and Hour Act to strengthen the Department of Labor's oversight and enforcement of youth employment laws and regulations in this State, and any other information related to the Department of Labor's enhanced enforcement of the State's youth employment laws and regulations.
- (10) Recommendations about the funding needed by the Department to (i) eliminate any identified obstacles to enforcement of youth employment laws and regulations and (ii) effectively implement any recommended changes. (2009-139, s. 1.)

§ 95-25.24. Restraint of violations.

The General Court of Justice has jurisdiction and authority upon application of the Commissioner to enjoin or restrain violations of this Article, including the restraint of any withholding of payment of unpaid wages, minimum wages, or overtime compensation found by

the court to be due to employees under this Article (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the applicable statute of limitations). (1979, c. 839, s. 1; 1991, c. 330, s. 4.)

§ 95-25.25. Construction of Article and severability.

This Article shall receive a liberal construction to the end that the welfare of adult and minor workers may be protected. If any provisions of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect the provisions or application of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1979, c. 839, s. 1.)

N.C. ADMINISTRATIVE CODE
TITLE 13 – DEPARTMENT OF LABOR
CHAPTER 12 – WAGE AND HOUR ACT RULES

SECTION .0100 - GENERAL PROVISIONS

13 NCAC 12 .0101 WAGE AND HOUR DIVISION

*History Note: Authority G.S. 95-25.17;
Eff. November 1, 1980;
Amended Eff. November 1, 1988; July 1, 1988;
Repealed Eff. April 1, 1999.*

13 NCAC 12 .0102 STATE AND FEDERAL LAWS AND INTERPRETATIONS AVAILABLE

Copies of state and federal laws which are incorporated by reference in the Wage and Hour Act will be available for inspection in the office of the Department of Labor. Copies of judicial and administrative interpretations and rulings established under the federal law which will be used as a guide for interpreting the North Carolina law and which will be controlling for enforcement purposes will also be available for inspection in the office of the Department of Labor.

*History Note: Authority G.S. 95-25.17; 95-25.19;
Eff. November 1, 1980.*

13 NCAC 12 .0103 FEDERAL LAW AS GUIDE

Where the legislature has adopted the language or terminology of the Fair Labor Standards Act (F.L.S.A.) for the purpose of facilitating and simplifying compliance by employers with both the federal and state labor laws, or has incorporated a federal act by reference, the Department of Labor will look to the judicial and administrative interpretations and rulings established under the federal law as a guide for interpreting the North Carolina law. Such federal interpretations will therefore be considered persuasive and will carry great weight as a guide to the meaning of the North Carolina provisions and will be controlling for enforcement purposes. However, where there are intentional differences in the language of the North Carolina statutes, or where the laws of this State or the authority granted to the Commissioner of Labor of North Carolina require a different interpretation, the federal decisions will not be binding on the Department.

*History Note: Authority G.S. 95-25.17; 95-25.19;
Eff. November 1, 1980.*

13 NCAC 12 .0104 FORMS

*History Note: Authority G.S. 95-25.3; 95-25.5; 95-25.17; 95-25.19; 95-25.22;
Eff. November 1, 1980;
Amended Eff. February 1, 1982;
Repealed Eff. April 1, 1999.*

SECTION .0200 - SUBMINIMUM WAGES

13 NCAC 12 .0201 SUBMINIMUM WAGE: STUDENTS: LEARNERS: APPRENTICES: ETC.

*History Note: Authority G.S. 95-25.3;
Eff. November 1, 1980;
Repealed Eff. February 1, 1982.*

13 NCAC 12 .0202 DISABLED WORKER CERTIFICATION

(a) For purposes of this Rule, a "disabled worker" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work he is to perform.

(b) An application for the issuance of a disabled worker certificate establishing a subminimum wage rate for an individual for a particular job may be made by an employer with the Administrator of the Wage and Hour Bureau and must include:

- (1) the name, address and nature of the business of the employer;
- (2) a description of the occupation at which the worker is to be employed;
- (3) the nature of the worker's disability and its relation to his work;
- (4) the wage the employer proposes to pay the worker (as a percentage of the State minimum wage);
- (5) signatures of the employer and the worker; and
- (6) certification of the applicant's disability by the Division of Vocational Rehabilitation of the Department of Health and Human Services.

(c) If the proposed subminimum wage is less than 50 percent of the applicable minimum wage, the application and evidence must establish that the individual has multiple disabilities or is so severely impaired that his earning or productive capacity would not yield wages equal to at least 50 percent of the minimum wage if compensated at wage rates which are commensurate with those for non-disabled workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(d) To determine whether the facts justify the issuance of a certificate, the Administrator may require the submission of additional information and may require the worker to take a medical examination.

(e) A Disabled Worker Certificate shall be issued by the Administrator only if a proper application has been made and the facts show:

- (1) A special subminimum wage is necessary to prevent curtailment of the worker's opportunities for employment.
- (2) The earning or productive capacity of the worker for the work he is to perform is impaired by age or physical or mental deficiency or injury.
- (3) The wage rate requested reflects adequately the individual worker's earning or productive capacity and is not less than 50 percent of the applicable minimum wage, unless a lower rate is justified in accordance with (c) of this Rule.
- (4) In an establishment or a vicinity where non-disabled employees are employed at piece rates in the same occupation, the disabled worker will be paid at least the same piece rates or at the hourly rate specified in the certificate, whichever is greater.

(f) When a certificate is issued, the subminimum wage rate shall be established as a percentage of the State minimum wage, so that the disabled worker's wage rate will adjust automatically with changes in the State minimum wage without reissuance of a new certificate. Copies of the

certificate shall be transmitted to the employer and the worker. The employer shall keep, maintain and have available for inspection a copy of the certificate.

(g) A certificate shall not be issued retroactively and shall be issued for a period of three years, subject to renewal by the Administrator. The terms of a certificate, including wage rate, may be amended by the Administrator upon written notice to the parties concerned, if the facts justify such an amendment. A certificate expires automatically when there is a substantial change in the job description, employment is terminated, or due to a change in circumstances the Administrator determines that the certificate or the subminimum wage rate set by the certificate no longer complies with the requirements of this Rule.

(h) Any person aggrieved by an action of the Administrator pursuant to this Rule may, within 15 days after such action, file with the Administrator a written petition for review setting forth the grounds. The Commissioner of Labor or his designated hearing officer may conduct a hearing and offer aggrieved persons the opportunity to present data and views pursuant to Chapter 150B, Article 3 of the North Carolina General Statutes. Any person adversely affected by the decision of the Commissioner or his designee may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

(i) Certificates providing subminimum wage rates for sheltered workshops for persons with disabilities may be issued in accordance with the rules and regulations promulgated under the F.L.S.A. regulating and allowing for the issuance of such certificates.

*History Note: Authority G.S. 95-25.3; 95-25.15; 95-25.17; 95-25.19;
Eff. November 1, 1980;
Amended Eff. January 1, 2007; February 1, 1982.*

SECTION .0300 – WAGES

13 NCAC 12 .0301 BOARD: LODGING OR OTHER FACILITIES

(a) "Wage" paid to an employee includes the reasonable cost of furnishing employees with board, lodging and other facilities where there is benefit to the employee and the benefit has been received by the employee.

(b) "Other facilities" under this Section must be in the nature of board or lodging. Other facilities include but are not limited to: meals furnished at company restaurants or by hospitals, hotels or restaurants to their employees; meals, dormitory rooms and tuition furnished by a college to its student employees; housing furnished for dwelling purposes; general merchandise furnished at company stores and commissaries (including articles of food, clothing and household effects); fuel furnished for the noncommercial personal use of the employee; transportation furnished employees between their homes and work where the travel time does not constitute compensable hours worked and such transportation is not an incident of and necessary to the employment.

(c) Reasonable cost under this Section does not include a profit to the employer or to an affiliated person.

(d) Items which are primarily for the benefit of the employer and which will not be computed as wages include but are not limited to: tools and equipment required by the employer; uniforms, where the business requires the employee to wear a unique or customized uniform; transportation charges where it is an incident of and necessary to the employment.

*History Note: Authority G.S. 95-25.2; 95-25.19;
Eff. November 1, 1980.*

13 NCAC 12 .0302 COMPUTATION OF REASONABLE COST

(a) For the purpose of calculating the wage paid to an employee, in an establishment which regularly provides meals to the public, the reasonable cost of furnishing employees meals will be computed as 50 percent of the established retail rate for the meals. In establishments without an established retail rate, the cost will be computed as 50 percent of the retail rate charged for comparable meals of like quality and kind within the community.

(b) With respect to lodging furnished to an employee, the employer may count as wages the full retail cost of the facilities furnished. Where there is no retail cost, the employer may compute the retail rate charged for comparable services of like quality within the community.

(c) In order to include the reasonable cost of board, lodging or other facilities as a wage paid to an employee, the employer must keep accurate and complete records of the board, lodging and other facilities provided to the employee. Obtaining the signature or initials of the employee monthly or for each pay period on a written record which specifies dollar amounts constitutes acknowledgement by the employee of receipt of such benefits, and subject to the other provisions of this Section, these costs will be computed as wage compensation. Where permanent lodging is provided for an employee, a blanket acknowledgement may be signed by the employee when the employee begins residence so long as the acknowledgement specifies a dollar amount which is to be credited as wages.

(d) Homes for dependent children with live-in employees who are exempt from overtime and recordkeeping provisions pursuant to G.S. 95-25.14(c)(6), may contract with any resident employee to pay such employee an annual wage of 2,080 times the minimum wage. Such a contract shall satisfy the requirements of the minimum wage law, but the employer shall not be entitled to any additional credits for meals and lodging.

*History Note: Authority G.S. 95-25.2; 95-25.15;95-25.19;
Eff. November 1, 1980.*

13 NCAC 12 .0303 TIPS AND TIP CREDITS

(a) Tips are not wages. Tips may be counted toward wages only to the extent set forth in Paragraphs (e), (f) and (g) of this Rule.

(b) A tip shall not include a service charge which the employer requires the customer to pay, no matter what the charge is labeled.

(c) Tips belong to the employee for whom they were left by the customer. Employees and employers may not agree that the employee will surrender tips to the employer. However, if there is a tip pooling arrangement under 95-25.3(f), the employee may be required to surrender tips received for distribution in accord with the tip pooling arrangement.

(d) If a customer pays by credit, charge or debit card and includes a tip for an employee:

- (1) the tips so charged accrue to the employee at the time of the charge. The employer shall pay the employee the charged tip no later than the payday for the pay period in which the customer signs the charge; and
- (2) employers may retain from the tips an amount up to or equal to the pro rata portion of the fee charged by the card issuing company which is attributable to the tips. When employers make such retentions, they do so without violating G.S. 95-25.6 and without becoming disqualified from claiming the tip credit on the charged tip.

- (e) In order for an employer to claim a tip credit toward the minimum wage:
- (1) the employee must be a tipped employee within the meaning of the Act;
 - (2) the employer shall notify the employee in accordance with G.S. 95-25.13 if the employer intends to claim the tip credit; and
 - (3) the employee must retain all tips, subject to any valid tip pooling arrangement as described in Paragraph (h) of this Rule.
- (f) The following records shall be kept by the employer for each employee for whom a tip credit is claimed:
- (1) Complete and accurate records of the amount of tips received for each workweek as such tips are certified by the employee monthly or for each pay period. The employee certification is the employee's signature or initials on the employer's records. Certification shall occur either monthly or for each pay period. The sole exception to this requirement is set forth in Paragraph (g) of this Rule. An employee's acceptance of wages from the employer shall not constitute certification by the employee of tips received;
 - (2) The amount claimed by the employer as tip credit for each employee for each workweek;
 - (3) For each employee participating in a tip pool, for each workweek, the amount of contributions to the tip pool; and
 - (4) For each employee participating in a tip pool, for each workweek, the amount received from the tip pool.
- (g) If the employee refuses to certify or to certify accurately and completely the amount of tips received, a tip credit may be claimed if the employer:
- (1) meets the requirements of Paragraphs (e)(3) and (f) of this Rule; and
 - (2) can demonstrate with written documentation for each workweek for which a credit is claimed:
 - (A) that the tipped employee certifies having received tips in the amount for which the credit is taken, or
 - (B) that a similarly situated tipped employee received tips in the amount for which the credit is taken, or
 - (C) by other method which reliably establishes that the tipped employee regularly receives tips in the amount for which the credit is taken.
- (h) "Tip pooling" as used in G.S. 95-25.3(f) is an arrangement in which all or a part of the tips of the contributing employees are combined into a common pool and then divided among the participating employees according to a pre-determined formula. An employee's share of a tip pool is that portion of the total amount in the pool which the employee receives. A tip pooling arrangement is valid under G.S. 95-25.3(f) when:
- (1) the contributing employees are notified of the arrangement before the pay period in which it will be used;
 - (2) the share of each contributing employee is at least 85% of the employee's tips before the employee contributes to the tip pool; and
 - (3) only employees who customarily and regularly receive tips receive a share from the pool.

The requirement of 95-25.6 that the employer pay "tips accruing to the employee" shall be satisfied if the employee in a tip pooling arrangement receives 85% of the employee's actual tips before pooling or the employee's share received from the pool, whichever is greater. By complying with Subparagraph (h)(2) of this Rule, the employer has also satisfied the provision of G.S. 95-25.3(f) requiring the employer to allow the tipped employee to retain all tips.

*History Note: Authority G.S. 95-25.3; 95-25.6; 95-25.13; 95-25.15; 95-25.19;
Eff. November 1, 1980;
Amended Eff. April 1, 1999.*

13 NCAC 12 .0304 WITHHOLDING OF WAGES

- (a) Employers shall furnish each employee an itemized statement indicating the amount and purpose of all deductions, diversions, payments or withholding of wages for each pay period in which deductions or recoupments are made.
- (b) "Criminal process," as that term is used in G.S. 95-25.8(e), means any citation, criminal summons, warrant for arrest, or order for arrest, issued by a justice, judge, magistrate, clerk of court, or law enforcement officer for the purpose of requiring a person to appear in court and answer to allegations of a cash shortage, inventory shortage, or damage to an employer's property based upon a showing of probable cause supported by oath or affirmation.

*History Note: Authority G.S. 95-25.8; 95-25.11; 95-25.13; 95-25.19;
Eff. November 1, 1980;
Amended Eff. January 1, 2007; April 1, 1999; February 1, 1982.*

13 NCAC 12 .0305 AUTHORIZATION FOR WITHHOLDING OF WAGES

- (a) When an authorization is required by the Act, the monetary limitations and time requirements specified in G. S. 95-25.8 of the Wage and Hour Act apply and shall not be waived.
- (b) Deductions for the convenience of the employee, as that term is used in G.S. 95-25.8, include savings plans, credit union installments, savings bonds, union or club dues, uniform rental or cleaning not required by the employer, parking and charitable contributions.
- (c) A "reasonable opportunity to withdraw," as that term is used in G.S. 95-25.8(a), shall be at least three calendar days from the date of the employer's notice of the actual amount to be deducted or the employee's written notice of withdrawal of the authorization.
- (d) In accordance with G.S. 95-25.8(d), advances of wages to the employee or to a third party at the employee's request are considered to be prepayment of wages. A dated receipt, signed by the employee, for the advance of wages, shall be sufficient to show that the advance was requested and made.
- (e) Loans from an employer to an employee that are considered to be an advance of wages pursuant to G.S. 95-25.8(d) may include credit advanced for purchasing from the employer items not primarily for the benefit of the employer and personal usage of the employer's property when designated for business use only. Personal loans from a supervisor to a subordinate or loans made by third parties to an employee with payroll deduction arrangements are not an advance of wages.
- (f) If an employer underpays wages to an employee as a result of a miscalculation of wages or other bona fide error, the employer shall pay any such underpayment owed as soon as possible upon the discovery of the error and no later than the next regularly scheduled pay day, along with accrued interest at the legal rate set forth in G.S. 24-1 from the date the wages first became due.
- (g) Authorizations for deductions that are not permitted by law are invalid. For example:
 - (1) G.S. 97-21 invalidates agreements by an employee to pay any portion of a premium paid by his or her employer to a workers' compensation insurance carrier;

- (2) 13 NCAC 07F .0101(a)(2) requires the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job.

If an employer withholds or diverts wages for purposes not permitted by law, the employer shall be in violation of G.S. 95-25.6 or G.S. 95-25.7, or both, even if the employee authorizes the withholding in writing pursuant to G.S. 95-25.8(a), because that authorization is invalid.

(h) An employer may obtain a written authorization pursuant to G.S. 95-25.8(a) and include in the authorization a provision for deducting the balance of the unpaid amount from the employee's paycheck in the event the employee separates before the full amount has been collected. If the employer obtains such an authorization, the employer may deduct as much of the balance possible from the final paycheck without having to give the employee notice of the amount and a reasonable opportunity to withdraw his or her authorization as required by G.S. 95-25.8(a), subject to the withholding limitations of G.S. 95-25.8(b).

(i) A wage credit in the form of tips in accordance with Rule .0303 of this Section, or the reasonable costs of meals, lodging or other facilities in accordance with Rule .0301 of this Section, is not a withholding of wages and does not require written authorization pursuant to G.S. 95-25.8(a).

*History Note: Authority G.S. 95-25.8; 95-25.11; 95-25.13; 95-25.19;
Eff. November 1, 1980;
Legislative Objection Lodged Eff. March 27, 1981;
Amended Eff. January 1, 2007; April 1, 1999; February 1, 1982.*

13 NCAC 12 .0306 VACATION PAY

(a) All vacation policies and practices shall address:

- (1) How and when vacation is earned so that the employees know the amount of vacation to which they are entitled;
- (2) Whether or not vacation time may be carried forward from one year to another, and if so, in what amount;
- (3) When vacation time must be taken;
- (4) When and if vacation pay may be paid in lieu of time off; and
- (5) Under what conditions vacation pay will be forfeited upon discontinuation of employment for any reason.

(b) Ambiguous policies and practices shall be construed against the employer and in favor of employees.

(c) Vacation benefits granted under a policy which does not establish an earning period cannot be reduced or eliminated as a result of a change in policy. An example of such a policy is: "Employees are entitled to one week of vacation per calendar year." If a policy which establishes an earning period or accrual rate is changed, employees are entitled to a pro rata share of the benefits earned under the original policy through the effective date of the change and of the benefits earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

*History Note: Authority G.S. 95-25.2; 95-25.12; 95-25.13; 95-25.19;
Eff. November 1, 1980;
Legislative Objection Lodged Eff. March 27, 1981;
Amended Eff. January 1, 2007; April 1, 2001; April 1, 1999; February 1, 1982.*

13 NCAC 12 .0307 BONUSES, COMMISSIONS AND OTHER FORMS OF WAGE CALCULATION

- (a) Employers may pay wages based on bonuses, commissions or other forms of calculation as infrequently as annually, if the employees are so notified before earning such wages.
- (b) Employers shall notify employees of the employers' policies and practices concerning pay, wages based on bonuses, commissions, or other forms of wage calculation.
- (c) Ambiguous policies and practices shall be construed against the employer and in favor of employees.
- (d) All policies or practices relating to bonuses, commissions, or other forms of calculation wages shall address:
 - (1) How and when bonuses, commissions or other forms of calculation wages are earned so that the employees know the amount of bonuses, commissions or other forms of calculation wages to which they are entitled; and
 - (2) Under what conditions and in what amount bonuses, commissions or other forms of calculation wages will be paid upon discontinuation of employment.
- (e) Wages computed under a bonus, commission, or other forms of calculation policy or practice which does not establish specific earning criteria cannot be reduced or eliminated as a result of a change in policy or practice. An example of such a policy is: "Employees earn commissions of xx% on all 'sales' (where sales are not defined by the employer)." If the employer changes a policy or practice which establishes specific earning criteria, the employee is entitled to the bonus, commission or other forms of calculation wages earned under the original policy through the effective date of the change and is entitled to the bonus, commission or other forms of calculation wages earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

*History Note: Authority G.S. 95-25.6; 95-25.7; 95-25.13; 95-25.19;
Eff. February 1, 1982;
Amended Eff. January 1, 2007; April 1, 2001; April 1, 1999.*

13 NCAC 12 .0308 FINAL PAY FOR SEPARATED EMPLOYEES

- (a) For purposes of G.S. 95-25.7 and these Rules:
 - (1) "Separated employees" are employees whose employment has been discontinued either voluntarily or involuntarily for any reason.
 - (2) "The next regular payday" is the payday for the pay period in which the separated employee's employment is discontinued, except for bonuses, commissions and other forms of compensation. "The next regular payday" for bonuses, commissions and other forms of compensation is the first regular payday for the pay period in which such wages become calculable.
- (b) If an employee requests that the employee's final paycheck be mailed, the employer shall mail the paycheck to the employee at the employer's expense. Employers shall not withhold the final paycheck because the employee refuses to come to the business office or place of employment to pick up the paycheck. The employer may require the employee to provide a notarized or witnessed written request for the mailing of the final paycheck.
- (c) If a final paycheck mailed at the employee's request:
 - (1) Is lost or stolen before the employee receives it, the employer shall replace the paycheck upon request of the employee. The employer shall not deduct costs

related to replacing the check without written authorization from the employee in accordance with Rule .0305 of this Section.

- (2) Is lost or stolen after the employee receives it, the employer shall replace the paycheck upon request of the employee. The employer may deduct costs related to replacing the paycheck without a written authorization from the employee. "Costs of replacing the paycheck" shall include the cost of stopping payment on the lost or stolen check.

(d) An employer owes the employee the wages due until the employee receives the final paycheck. However, if the check is dishonored by the financial institution against which it is drawn, then the employer's obligation to pay the wages remains.

History Note: Authority G.S. 95-25.2; 95-25.6; 95-25.7; 95-25.7A; 95-25.8; 95-25.19; Eff. April 1, 1999.

13 NCAC 12 .0309 FORM OF PAYMENT OF WAGES

G.S. 95-25.6 and G.S. 95-25.7 do not require a specific form of payment. Therefore, the employer may select any legal form of payment, so long as payment is made in full on the designated payday, subject to authorized deductions and legal withholdings. Acceptable forms of payment include cash, money order, negotiable checks, and direct deposit into an institution whose deposits are insured by the United States government or an institution selected by the employee.

History Note: Authority G.S. 95-25.2; 95-25.6; 95-25.7; 95-25.19; Eff. April 1, 1999.

13 NCAC 12 .0310 "OTHER AMOUNTS PROMISED" AS WAGES

"Other amounts promised" as that term is used in G.S. 95-25.2(16) are those amounts which the employer has promised or has a policy or practice of paying and shall include, but are not limited to, travel expenses, holiday pay, birthday pay, jury duty pay, shift premium pay, prizes, moving expenses, educational expenses, or telephone expenses.

History Note: Authority G.S. 95-25.2; 95-25.6; 95-25.7; 95-25.19; Eff. April 1, 1999.

SECTION .0400 - YOUTH EMPLOYMENT

13 NCAC 12 .0401 CERTIFICATION OF YOUTHS

(a) Unless exempted by the Wage and Hour Act, all employees under 18 years of age must obtain a youth employment certificate prior to starting work. Where there is no employer-employee relationship, a youth is not employed as a worker and a certificate is not required.

(b) Youths who reside in homes for dependent children may perform domestic activities without being considered employees. Such activities include personal care, maintenance of living quarters, work around the residence or its farm and other activities normally performed by children when living at home and under direct parental control.

(c) A youth employment certificate is valid only for the employer specified on the certificate. This certificate is valid at all locations of this employer. A new certificate must be obtained for

each new employer. A certificate remains valid for a youth who terminates employment but then resumes work at the same place of employment.

*History Note: Authority G.S. 95-25.5; 95-25.14; 95-25.19;
Eff. November 1, 1980;
Amended Eff. April 1, 2001; February 1, 1982.*

13 NCAC 12 .0402 APPLICATION FOR A YOUTH EMPLOYMENT CERTIFICATE

(a) A youth employment certificate may be obtained:

- (1) electronically from the Department of Labor; or
- (2) from the county director of social services' office in the county in which the youth resides or the county in which the youth intends to work, or from a designee outside the social services' office in the county in which the youth resides or the county in which the youth intends to work who has been approved to issue youth employment certificates pursuant to 13 NCAC 12 .0407.

(b) Proof of Age.

- (1) If the youth employment certificate is obtained electronically, the employer shall verify the age of the youth.
- (2) If the youth employment certificate is not obtained electronically, the youth must provide proof of age by means of one of the following:
 - (A) A birth certificate;
 - (B) Evidence from the bureau of vital statistics in the state in which the youth was born;
 - (C) Any state driver's license, learner's permit, or state-issued identification card;
 - (D) Passport;
 - (E) School records or insurance records; or
 - (F) Other documentary evidence determined as equivalent by the Wage and Hour Bureau.

(c) A youth employment certificate obtained pursuant to Paragraph (a) of this Rule shall not be valid unless it is signed by the youth and by a parent, guardian, custodian, or other person standing in loco parentis and by the employer. In the event that a final decree of emancipation has been issued for the youth by a court of competent jurisdiction pursuant to G.S. 7B, Article 35, the youth may sign the certificate without the approval of a parent, guardian or custodian, or other person standing in loco parentis.

*History Note: Authority G.S. 95-25.5; 95-25.19;
Eff. November 1, 1980;
Amended Eff. January 1, 2007; February 1, 2004; April 1, 2001.*

13 NCAC 12 .0403 REVIEW: ISSUANCE AND MAINTENANCE OF CERTIFICATES

(a) The county director of social services, approved designee or the Department of Labor shall review the youth employment certificate to see that it is complete and shall ascertain the age of the youth by the means prescribed in Rule .0402 of this Section and the permissibility of employment based on type of employment and prohibitions in G.S. 95-25.5 and the child labor provisions of the F.L.S.A.

(b) The county director of social services, approved designee or Department of Labor shall sign, date and issue the certificate. The employer's copy of the certificate shall be given to the youth. Certificates shall not be issued if:

- (1) The proposed employment does not comply with all statutory requirements and prohibitions, and all rules adopted under this Section; or
- (2) The proposed employment will be in violation of the F.L.S.A. and all rules promulgated thereunder.

(c) The county director of social services shall send one copy of each certificate to the Wage and Hour Bureau within one week of issuance, and shall maintain one copy of each certificate on file for two years following the date of issuance.

(d) The employer's copy of the youth employment certificate must be given to the employer by the youth on or before the first day of employment. The employer shall not employ a youth until the employer has received its copy of the issued certificate. The employer shall maintain the certificate on record where it is readily accessible to any person authorized to inspect or investigate youth employment. The employer shall maintain the certificate on record so long as the youth is employed thereunder and for two years after the employment terminates.

(e) The employer or youth may request a review of the denial of a certificate by written or oral request to the Wage and Hour Bureau. Appeals of the review decisions rendered must be made in writing within 15 days to the Wage and Hour Administrator who shall issue a written decision. Any person adversely affected by the Administrator's decision may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

History Note: Authority G.S. 95-25.5; 95-25.14; 95-25.15;

Eff. November 1, 1980;

Amended Eff. January 1, 2007; April 1, 2001; February 1, 1982.

13 NCAC 12 .0404 WAIVER

(a) When an application for a waiver of any youth employment provision is received, if the proposed employment is in the best interest of the youth and his health and safety will not be adversely affected, the Department shall issue a waiver for the youth.

(b) Any person adversely affected by a decision of the Department may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

History Note: Authority G.S. 95-25.5; 95-25.17;

Eff. November 1, 1980;

Amended Eff. January 1, 2007; July 1, 1988.

13 NCAC 12 .0405 REVOCATION

(a) The Administrator of the Wage and Hour Bureau or his designated representative shall review the issuance of all youth employment certificates by county social services directors. If upon review, or because of any other circumstance, the Administrator determines a certificate has been issued in violation of the youth employment provisions or the rules adopted thereunder, he shall notify the youth, the county social service director and the employer of the youth that the certificate is being revoked and shall specify the reasons for the revocation.

(b) If the certificate is revoked, the employer shall cease to employ the youth and shall return the certificate to the Administrator of the Wage and Hour Bureau or to the county social service director, who shall forward it to the Wage and Hour Administrator.

(c) The employer or youth may object to the revocation by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes. Even if a petition for a hearing is filed, the certificate must be returned and the employment must cease pursuant to Paragraph (b) of this Rule.

*History Note: Authority G.S. 95-25.5; 95-25.17;
Eff. November 1, 1980;
Amended Eff. January 1, 2007; July 1, 1988.*

13 NCAC 12 .0406 DETRIMENTAL OCCUPATIONS

(a) The following occupations are found and declared to be detrimental to the health and well-being of youths. No youth under 18 years of age may be employed by an employer in these detrimental occupations:

- (1) Welding, brazing and torch cutting as defined in the Occupational Safety and Health Administration (OSHA) General Industry Standards, 29 CFR 1910. 251 through 255 and OSHA Construction Standards, 29 CFR 1926.350 through 354;
- (2) Any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form;
- (3) Any work involving exposure to lead or any of its compounds in any form;
- (4) At any work involving exposure to benzene or any benzene compound which is volatile or which can penetrate the skin;
- (5) Occupations in canneries, seafood and poultry processing establishments which involve the use, setting up, adjusting, repairing, or cleaning of cutting or slicing machines, or freezing or packaging activities;
- (6) Any work which involves the risk of falling a distance of 10 feet or more, including the use ladders and scaffolds;
- (7) Any work as an electrician or electrician's helper;
- (8) Any work in confined spaces as defined by OSHA General Industry Standard, 29 CFR 1910.146 and OSHA Construction Standard, 29 CFR 1926.21;
- (9) Occupations in which the use of a respirator is required by OSHA General Industry Standard, 29 CFR 1910.134 or OSHA Construction Industry Standards, 29 CFR 1926.

(b) Youths and employers working under the supervision of bona fide apprenticeship and student-learner programs, as defined by the Fair Labor Standards Act and the rules and regulations promulgated thereunder, are exempt from the prohibition against employment of youths in detrimental occupations.

*History Note: Authority G.S. 95-25.5; 95-25.19;
Eff. February 1, 1982;
Amended Eff. April 1, 2001.*

13 NCAC 12 .0407 DESIGNATION OF YOUTH EMPLOYMENT CERTIFICATE ISSUERS

(a) County directors of social services may, subject to approval by the Commissioner of Labor, designate personnel outside their staffs to issue youth employment certificates. Requests for designee approval shall be made on the Department of Labor form provided to each DSS office.

(b) The Commissioner of Labor shall approve the designation only if:

- (1) The designee is an employee of a State or local government agency, a public, private or charter school, or a private non-profit organization which assists in placing youths into jobs at no cost to the youths;
- (2) The designee and the designee's employer have consented to the designation and the conditions for designation in Paragraph (c) of this Rule; and
- (3) The designee has received training provided by the Department of Labor or training which has been approved as equivalent by the Department.

(c) The Department of Labor approval of a designee shall be made upon the agreement of the designee and the designee's employer to the following conditions:

- (1) Neither the designee nor the designee's employer shall be entitled to receive any funding from the county department of social services or the Department of Labor for performing the functions of a designee;
- (2) The designee may not issue any youth employment certificate to a youth for a job with the designee's employer;
- (3) Neither the designee nor the designee's employer may charge a fee in connection with the issuance of any youth employment certificate; and
- (4) The designee shall take training provided by the Department of Labor or training which has been approved as equivalent by the Department.

(d) Department of Labor approval of a designee shall be terminated upon:

- (1) Failure of the designee or the designee's employer to abide by the conditions listed in Paragraph (c) of this Rule;
- (2) Written resignation by the designee;
- (3) Separation from employment with the agency, institution or organization with whom the designee was employed at the time of approval;
- (4) Written withdrawal of the designee's employer's consent;
- (5) Written withdrawal of the designation by the county director of social services; or
- (6) Written withdrawal of the approval by the Commissioner of Labor.

*History Note: Authority G.S. 95-25.5; 95-25.19;
Eff. April 1, 2001.*

13 NCAC 12 .0408 DEFINITIONS RELATIVE TO ABC RESTRICTIONS

(a) For purposes of G.S. 95-25.5(j) and the Rules in this Chapter, and in addition to the definitions promulgated by the NC Alcoholic Beverage Control Commission in 04 NCAC 02S, the following terms are defined:

- (1) Prepare: To make ready; or to put together by combining various elements or ingredients.
- (2) Serve: To supply; or to place before the customer.
- (3) Dispense: To pour; or to draw from a tap.
- (4) Sell: To offer; to accept the order for; to exchange or deliver for money or equivalent; or to handle payment.

- (5) Premises: The building or area of a building plus any other property immediately adjacent to it that forms a component or integral part of the business for which the permit was issued.
- (6) Outside Grounds: The land immediately adjacent to the building or area of a building that forms a component or integral part of the business for which the permit was issued.
- (7) ABC Permit for On-Premises Sale or Consumption: A written or printed authorization issued by the NC Alcoholic Beverage Control Commission pursuant to G.S. 18B and 04 NCAC 02, that authorizes the consumption of alcoholic beverages on the premises of the business for which the permit was issued..

*History Note: Authority G.S. 95-25.5; 95-25.19;
Eff. March 1, 2001;
Amended Eff. January 1, 2004.*

13 NCAC 12 .0409 PARENTAL EXEMPTION

*History Note: Authority G.S. 95-25.5; 95-25.19;
Eff. April 1, 2001;
Repealed Eff. January 1, 2007.*

SECTION .0500 - JURISDICTION AND EXEMPTIONS

13 NCAC 12 .0501 EXEMPTIONS

(a) G.S. 95-25.14(a)(1) provides an exemption from the minimum wage, overtime, youth employment and related record keeping requirements of the Wage and Hour Act for any person employed in an "enterprise" as defined by the F.L.S.A. Persons who are not employed by an "enterprise", but who are subject to the F.L.S.A. because they are engaged in commerce or in the production of goods for commerce are subject to both the F.L.S.A. and the Wage and Hour Act, unless otherwise exempted.

(b) Pursuant to G.S. 95-25.14(a)(1)(c), where the F.L.S.A. provides an exemption from child labor, minimum wage, or overtime (other than an exemption providing for an alternate method of computing overtime), but the Wage and Hour Act does not provide the same exemption, the provisions of the Wage and Hour Act apply. Examples of such federal exemptions include:

- (1) Minimum wage and overtime exemptions under the F.L.S.A.:
 - (A) Seasonal amusement or recreational establishments as specified in 29 U.S.C. 213(a)(3);
 - (B) Small newspapers as specified in 29 U.S.C. 213(a)(8); and
 - (C) Small public telephone companies as specified in 29 U.S.C. 213(a)(10).
- (2) Overtime exemptions under the F.L.S.A.:
 - (A) Outside buyers of poultry, eggs, and milk as specified in 29 U.S.C. 213(b)(5);
 - (B) Small grain elevators as specified in 29 U.S.C. 213(b)(14);
 - (C) Maple sugar or syrup processors as specified in 29 U.S.C. 213(b)(15);
 - (D) Employees engaged in intra-state transportation of fruits or vegetables as specified in 29 U.S.C. 213(b)(16);
 - (E) Motion picture theaters as specified in 29 U.S.C. 213(b)(27);

- (F) Small lumbering or forestry operations as specified in 29 U.S.C. 213(b)(28); and
- (G) Newspaper carriers and makers of wreaths composed of natural materials as specified in 29 U.S.C. 213(d).

(c) Pursuant to G.S. 95-25.14(a)(1)(c), where an F.L.S.A. exemption provides an alternate method for computing overtime, persons subject to that exemption are also exempted from the overtime provisions of the Wage and Hour Act. Moreover, persons covered only by the overtime provisions of the Wage and Hour Act are subject to the same alternate methods of overtime calculation. Examples of such F.L.S.A. exemptions include:

- (1) Petroleum distributors as specified in 29 U.S.C. 207(b)(3);
- (2) Employees who work irregular hours and are paid a guaranteed salary as specified in 29 U.S.C. 207(f);
- (3) Piece rate workers as specified in 29 U.S.C. 207(g);
- (4) Commissioned inside salespersons in retail as specified in 29 U.S.C. 207(i);
- (5) Employees of hospitals, nursing homes, old age homes as specified in 29 U.S.C. 207(j);
- (6) Seasonal employees at tobacco warehouses and auctions as specified in 29 U.S.C. 207(m);
- (7) Bus drivers as specified in 29 U.S.C. 207(n);
- (8) Employees of concessionaires in national parks as specified in 29 U.S.C. 213(b)(29);
- (9) Seasonal employees in cotton ginning, sugarcane or sugar beet processing as specified in 29 U.S.C. 213(h);
- (10) Seasonal employees in local cotton ginning as specified in 29 U.S.C. 213(i); and
- (11) Seasonal employees in sugar processing as specified in 29 U.S.C. 213(j).

(d) The statutory exemption from certain wage and hour provisions for the spouse, child, parent or dependent of the employer applies equally to the spouse, child, parent or dependent of corporate officers. For the purposes of this Section only, corporate officers are those who directly head the establishment and:

- (1) are majority stockholders, or
- (2) are principal stockholders with voting control, or
- (3) are in voting control through stock ownership or with joint ownership of spouse or family.

(e) Homes for dependent children pursuant to G.S. 95-25.14(c)(6) include institutions and group homes for dependent children.

*History Note: Authority G.S. 95-25.14; 95-25.19;
Eff. November 1, 1980;
Amended Eff. April 1, 2001.*

13 NCAC 12 .0502 COUNTING EMPLOYEES

*History Note: Authority G.S. 95-25.14; 95-25.19;
Eff. November 1, 1980;
Amended Eff. July 1, 1988;
Repealed Eff. April 1, 1999.*

SECTION .0600 - INVESTIGATION AND ENFORCEMENT

13 NCAC 12 .0601 COMPLAINTS

The complaint required by G.S. 95-25.15 to initiate a wage payment investigation of an F.L.S.A. covered establishment shall be made by contacting the Wage and Hour Bureau's complaint desk. All complaints shall be reduced to written form by the Wage and Hour Bureau.

*History Note: Authority G.S. 95-25.15; 95-25.19;
Eff. November 1, 1980;
Amended Eff. May 1, 2007.*

13 NCAC 12 .0602 INVESTIGATIONS

(a) The Commissioner shall afford the employer an opportunity to bring to the Commissioner's attention any information pertinent to the possible violations under investigation and any computation of wages possibly due an employee. The employer's failure to timely bring to the Commissioner's attention such information will not prevent the Commissioner from proceeding to a determination.

(b) The Commissioner shall notify the employer of the Commissioner's findings in accordance with Rule .0604 of this Section.

*History Note: Authority G.S. 95-25.15; 95-25.16; 95-25.17; 95-25.19;
Eff. November 1, 1980;
Amended Eff. April 1, 1999.*

13 NCAC 12 .0603 SUPERVISION OF PAYMENT

*History Note: Authority G.S. 95-25.16; 95-25.17; 95-25.19; 95-25.22;
Eff. November 1, 1980;
Repealed Eff. April 1, 1999.*

13 NCAC 12 .0604 ADMINISTRATIVE REMEDIES

(a) For purposes of 95-25.22(g), "exhausting administrative remedies" means that the Commissioner shall:

- (1) Investigate the alleged violations of the Act and afford the employer the opportunity to present evidence in its defense during such investigation; and
- (2) Notify the employer and complainant(s), after completion of the investigation, of:
 - (A) The violations found and amounts found due; and
 - (B) The employer's right to be heard further in the matter; and
- (3) Hear any additional evidence presented by the employer exercising its right to be heard further as set forth in Paragraphs (b) and (c) of this Rule; and
- (4) Notify the employer of any pending action.

(b) Employers wishing to exercise the right to be heard further shall:

- (1) Notify the Commissioner, within 14 days from the date the Commissioner notified the employer of the findings. The 14 days begins on the date the Commissioner mailed notification to the employer pursuant to Subparagraph (a)(2) of this Rule. The employer may notify the Commissioner either orally or in writing.

- (2) Present additional evidence to the Commissioner on disputed issues within 14 days from the date the employer notified the Commissioner of its intent to exercise the right to be heard further.
- (c) The employer shall waive its right to be heard further if it:
 - (1) fails to notify the Commissioner in accordance with Subparagraph (b)(1) of this Rule; or
 - (2) fails to submit evidence in accordance with Subparagraph (b)(2) of this Rule; or
 - (3) agrees to remedy the violations found and to pay in full the amounts found due.
- (d) If the employer presents additional evidence in accordance with Paragraph (b) of this Rule, the Commissioner shall notify the employer and complainant(s) of any modifications which are made to the Commissioner's findings.
- (e) For purposes of G.S. 95-25.22(g) and this Rule, the Commissioner shall make all notifications to the last known addresses of the employer and complainants.

*History Note: Authority G.S. 95-25.16; 95-25.17; 95-25.19; 95-25.22;
Eff. November 1, 1980;
Amended Eff. April 1, 1999.*

13 NCAC 12 .0605 LITIGATION

*History Note: Authority G.S. 95-25.15; 95-25.17; 95-25.19;. 95-25.20; 95-25.21; 95-25.22;
Eff. November 1, 1980;
Repealed Eff. April 1, 1999.*

SECTION .0700 - CIVIL MONEY PENALTIES

13 NCAC 12 .0701 CIVIL PENALTIES

- (a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment), G.S. 95-25.15(b) (Record Keeping) or these Rules is subject to a civil penalty for each violation.
- (b) Any person or establishment required to comply with or subject to regulation of child labor under the F.L.S.A. who violates the non-exempt provisions of G.S. 95-25.5, or these Rules is subject to a civil penalty for each violation.
- (c) The Commissioner shall determine the amount of all civil penalties in accordance with Rule .0702 of this Section.
- (d) In civil penalty cases, the Commissioner shall notify the employer by certified mail of the following:
 - (1) the nature of the violation;
 - (2) the amount of the civil penalty; and
 - (3) that the civil penalty will be final, unless the employer takes exception to the penalty as set forth in G.S. 95-25.23 and G.S. 95-23A of the penalty from the Commissioner.

*History Note: Authority: G.S. 95-25.5; 95-25.14; 95-25.17; 95-25.19; 95-25.23; 95-25.23A;
Eff. November 1, 1980;
Amended Eff. April 1, 1999; February 1, 1982.*

13 NCAC 12 .0702 CIVIL PENALTY ASSESSMENT

(a) If the Commissioner finds that an employer has violated any of the provisions of G.S. 95-25.5, G.S. 95-25.15(b) or these Rules, the Commissioner may assess a civil penalty for each violation.

(b) The maximum amount of a civil penalty will be based on the nature and the gravity of the violation or violations. Matters which are indications of the gravity of a violation include, but are not limited to:

- (1) the likelihood of injury and the seriousness of the potential injuries to which a youth has been exposed;
- (2) multiple violations by a business or employer;
- (3) recurring violations;
- (4) employment of any youth in a hazardous or detrimental occupation without a waiver from the Commissioner;
- (5) violations involving youths under fourteen years of age.

(c) The Commissioner shall assess a penalty of:

- (1) two hundred fifty dollars (\$250.00) if a youth employment certificate would not have been issued because the employment was for a hazardous or detrimental occupation.
- (2) one hundred twenty-five dollars (\$125.00) if the certificate would not have been issued, but the employment was non-hazardous or non-detrimental.
- (3) fifty dollars (\$50.00) if a certificate would have been issued but the employer did not have or maintain the certificate.

(d) Reductions in the penalty amount may be made based on the size of a business (number of employees and gross volume) and its past record of compliance with the Wage and Hour Act.

*History Note: Authority G.S. 95-25.17; 95-25.19; 95-25.23; 95-25.23A;
Eff. November 1, 1980;
Amended Eff. April 1, 1999; February 1, 1982.*

13 NCAC 12 .0703 EXCEPTIONS TO CIVIL PENALTY

An employer may take an exception to a civil penalty determination by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes. The penalty shall be final unless the employer takes exception to the civil penalty determination within 15 days after the employer's receipt of notification of the civil penalty.

*History Note: Authority G.S. 95-25.19; 95-25.23;
Eff. November 1, 1980;
Amended Eff. April 1, 2007; July 1, 1988.*

SECTION .0800 – RECORDKEEPING

13 NCAC 12 .0801 RECORDS TO BE MAINTAINED

(a) Every employer shall maintain complete and accurate records which contain the following information for each employee in each workweek, unless the employee is specifically exempted:

- (1) Name in full;
- (2) Home address, including zip code and phone number;
- (3) Date of birth if under 20;

- (4) Occupation in which employed or job title;
- (5) Time of day and day of week the employee's workweek begins (a group of employees working the same workweek may have one record keeping for the entire group);
- (6) Regular rate of pay;
- (7) Hours worked each workday;
- (8) Total hours worked each workweek;
- (9) Total straight-time earnings each workweek;
- (10) Total overtime earnings each workweek;
- (11) Total additions to or deductions from wages;
- (12) Total gross wages paid each pay period;
- (13) Date of each payment.

(b) All other records required by statute or rule for the enforcement of any provision of the Wage and Hour Act must also be maintained by the employer. Such records include, but are not limited to, the following: tip credits; costs of meals, lodging or other facilities; start and end time for youth under age 18; youth employment certificates; wage deductions; vacation and sick leave policies; policies and procedures relating to promised wages; and records required to compute wages as defined by G.S. 95-25.2(16).

*History Note: Authority G.S. 95-25.13; 95-25.15; 95-25.19;
Eff. November 1, 1980;
Amended Eff. April 1, 2001; February 1, 1982.*

13 NCAC 12 .0802 RECORD RETENTION

All records, posted notices and writings required by the Wage and Hour Act and the rules and regulations promulgated thereunder must be retained by employers for three years, unless a different period of time is specifically stated elsewhere in this Chapter.

*History Note: Authority G.S. 95-25.15; 95-25.19;
Eff. November 1, 1980.*

13 NCAC 12 .0803 SCOPE OF PROMISED WAGES

For the purposes of G.S. 95-25.13, the term "promised wages" includes all forms of wages as defined in G.S. 95-25.2(16), and any policy or practice that may affect the rate, amount or payment of wages.

*History Note: Authority G.S. 95-25.2; 95-25.13; 95-25.19;
Eff. April 1, 1999.*

13 NCAC 12 .0804 NOTIFICATION AT TIME OF HIRING

An employee's signature on an employer's written notice of the promised wages which bears the date on which the employee was provided with the notice shall be presumptive evidence of the employer's notification in accordance with G.S. 95-25.13(1).

*History Note: Authority G.S. 95-25.13; 95-25.19;
Eff. April 1, 1999;
Amended Eff. April 1, 2007.*

13 NCAC 12 .0805 NOTIFICATION DURING EMPLOYMENT

(a) Employers shall satisfy the notice requirements of G.S. 95-25.13(2) by posting or making available to its employees in writing all policies and practices relating to promised wages in a manner, place and time which ensures that employees have ready access to those policies and practices throughout their tenure with the employer and are able to use that information.

(b) Acceptable means of ensuring that the policies and practices are readily accessible to the employees include, but are not limited to:

- (1) Providing employees with an up-to-date employee handbook or other written statement of policies and practices with regard to promised wages;
- (2) Providing employees with payroll records, including check stubs, for wages promised in the form of hourly pay or salary or other form whose terms are readily identifiable from the payroll records.

(c) The employer shall pay the promised wages to the employee even if the employer has failed to comply with the requirements of G.S. 95-25.13(2). For purposes of G.S. 95-25.13(2) and these Rules, "promised wages" includes wages promised in accordance with an unwritten policy or practice with regard to the wages. The only exception to this Rule is that an employer shall not enforce an unwritten policy or practice resulting in the loss or forfeiture of vacation time or pay, commissions, bonuses or other forms of calculation. The employer shall not deny to any employee any vacation time or pay, commissions, bonuses or other forms of calculation on the basis of the application of an unwritten forfeiture or loss policy or practice.

*History Note: Authority G.S. 95-25.6; 95-25.7; 95-25.13; 95-25.15; 95-25.19;
Eff. April 1, 1999.*

13 NCAC 12 .0806 MEANING OF "MAINTAINED IN A PLACE ACCESSIBLE"

For the purposes of G.S. 95-25.13(2) and (3) and these Rules, the phrase "maintained in a place accessible" applies to the posting and to the writing. "Accessible" with respect to posting means "easily approached and viewed for reading," at a place designated for such purposes and regularly frequented by the affected employees. "Accessible" with respect to the writing means "easily and promptly obtained or viewed for reading" at a place designated for maintaining such writings.

*History Note: Authority G.S. 95-25.13; 95-25.19;
Eff. April 1, 1999.*

13 NCAC 12 .0807 METHODS OF PROVIDING EMPLOYEES WITH ITEMIZED STATEMENT OF DEDUCTIONS

The employer may provide the itemized statement required by G.S. 95-25.13(4) of deductions under G.S. 95-25.8:

- (1) in writing; or
- (2) by electronic mail, but only if such a transmission is capable of being printed out as a paper copy by the employee; or
- (3) by any other means which supplies the required information in a form the employees can retain in written form.

*History Note: Authority G.S. 95-25.13; 95-25.19;
Eff. April 1, 1999.*