

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 958
May 1, 2024
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30422-LRap-130A

Short Title: Workers Rights Act.

(Public)

Sponsors: Representative Logan.

Referred to:

A BILL TO BE ENTITLED
AN ACT PROTECTING WORKERS RIGHTS IN NORTH CAROLINA AND
APPROPRIATING FUNDS FOR THAT PURPOSE.
The General Assembly of North Carolina enacts:

PART I. INDIVIDUAL PROTECTIONS

AT-WILL EMPLOYMENT ABOLISHED

SECTION 1.1. Abolish At-Will Employment. – The General Assembly finds that:

- (1) The origin of the employment at-will doctrine has been traced back to an 1877 treatise that legal scholars have since questioned. The employment at-will doctrine is disfavored by several states and by almost all modern, industrialized nations. The employment at-will doctrine allows an employer to terminate an employee for unfair reasons or for no reason at all, with this imbalance of power created by the employment at-will doctrine adversely affecting personal freedom and economic security.
- (2) The implied covenant of good faith and fair dealing is an important legal doctrine that underpins the Uniform Commercial Code in Section 1-304. The implied covenant of good faith and fair dealing is recognized by the American Law Institute as Section 205 of the Restatement (Second) of Contracts.
- (3) Good public policy dictates that acts of bad faith should not be tolerated just because they are committed as part of an employment contract, thus warranting the statutory prohibition of at-will employment contained in this act.

SECTION 1.2. Article 3 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-31.1. Covenant of good faith and fair dealing; at-will employment abolished.

(a) The General Assembly finds that every contract for employment, whether the contract is written or oral, consists of both express and implied terms that are legal covenants between the parties to the contract. Further, the General Assembly declares that an implied covenant of good faith and fair dealing is part of every employment contract in this State. Therefore, it is the public policy of this State that the employment at-will doctrine is inconsistent with the implied covenant of good faith and fair dealing that is part of every employment contract in this State.

(b) The doctrine of at-will employment is abolished in this State.

(c) An employee in this State may only be fired for just cause."



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MANDATORY PAID WORK BREAKS AND PAID MEAL PERIODS

SECTION 1.3. Article 2A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-25.6A. Paid work break and meal period required.

(a) An employee who is to work more than six continuous hours during a 24-hour period shall be provided a paid meal period of 60 minutes and at least one paid work break of 15 minutes.

(b) An employee who is to work six continuous hours or less during a 24-hour period shall be provided at least one paid work break of 15 minutes."

ELIMINATE THE SUBMINIMUM WAGE FOR TIPPED EMPLOYEES

SECTION 1.4. Effective January 1, 2025, G.S. 95-25.3(f) reads as rewritten:

~~"(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. shall not be counted as wages. 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."~~

NO DISCRIMINATION OR RETALIATION FOR DISCLOSING WAGE INFORMATION

SECTION 1.5.(a) Article 2A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-25.6B. Right to disclose and discuss wage information.

(a) The General Assembly finds that an employee has the right to disclose and discuss information about employee wages.

(b) No employer may do any of the following:

- (1) Require, as a condition of employment, that an employee refrain from disclosing the amount of the employee's wages.
- (2) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of the employee's wages.
- (3) Discharge, discipline, or otherwise discriminate against an employee for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee."

SECTION 1.5.(b) G.S. 95-241(a) reads as rewritten:

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

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
 - a. Chapter 97 of the General Statutes.
 - b. Article 2A or Article 16 of this Chapter.
 - c. Article 2A of Chapter 74 of the General Statutes.
 - d. G.S. 95-28.1.
 - e. Article 16 of Chapter 127A of the General Statutes.
 - f. G.S. 95-28.1A.
 - g. Article 52 of Chapter 143 of the General Statutes.

- h. Article 5F of Chapter 90 of the General Statutes.
- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
- (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter, by Article 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter 143 of the General Statutes.
- (4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.
- (5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5.
- (6) Exercise rights under G.S. 95-25.6B."

SECTION 1.5.(c) This section is effective when it becomes law and applies to employment in this State on or after that date.

PART II. STATE EMPLOYEE AND CONTRACTOR PROTECTIONS

REPEAL BAN ON PUBLIC EMPLOYEE COLLECTIVE BARGAINING

SECTION 2.1. G.S. 95-98 is repealed.

OMBUD'S OFFICE CREATED/NO MISTREATMENT OF CONTRACT EMPLOYEES

SECTION 2.2.(a) G.S. 126-4 reads as rewritten:

"§ 126-4. Powers and duties of State Human Resources Commission.

Subject to the approval of the Governor, the State Human Resources Commission shall establish policies and rules governing each of the following:

- ...
- (20) Delegation of authority to an Ombud's Office charged with providing independent review of State employee workplace complaints and assistance to State employees in resolving workplace issues. In addition, the Ombud's Office shall establish programs to educate State employees about their rights and to train both supervisors and employees in dispute resolution techniques appropriate for the State government workplace.

...."

SECTION 2.2.(b) Chapter 126 of the General Statutes is amended by adding a new Article to read:

"Article 17.

"Contract Employee Protection.

"§ 126-100. Definitions.

The following definitions apply in this Article:

- (1) Adverse action. – Any of the following actions taken by a private third-party employer or a State government employee against a contract employee:
- a. Reassignment to less-desired work location.
- b. A reduction in compensation.
- c. Failure to give a promised or customary increase in compensation or work status.
- d. Disciplinary action, including discharge, demotion, or transfer.
- e. More intensive or critical supervision.
- f. Withdrawal of previously allowed privileges.
- g. Assignment to more difficult duties.
- h. A demand of increased production for a retaliatory purpose.
- i. Treatment that subjects the contract employee to workplace bullying.

- (2) Contract employee. – An employee of a private third-party employer who is assigned to work in a State government workplace or on a State-controlled project.
- (3) Private third-party employer. – A nongovernmental employer that (i) employs two or more employees and (ii) has a contract with the State to furnish employees to a State agency, department, or institution to perform personal services in a State government workplace or on a State-controlled project.
- (4) Workplace bullying. – A persistent pattern of mistreatment from others in the workplace that causes physical, emotional, or financial harm, including, but not limited to, verbal, nonverbal, psychological, or physical abuse and interference with an employee's work or career advancement.

"§ 126-101. Mistreatment of contract employees prohibited.

(a) It is against the public policy of this State for any State employee to mistreat a contract employee in the State government workplace or in connection with a State-controlled project. It is the duty of each supervisor in a State government workplace to take all reasonable steps to prevent mistreatment of contract employees.

(b) No State employee shall take or cause a private third-party employer to initiate an adverse action against a contract employee in retaliation for the contract employee doing any of the following:

- (1) Making a complaint or providing information, in good faith, to the North Carolina Department of Labor or the United States Department of Labor about a possible labor law violation by the private third-party employer or by the State agency, department, or institution.
- (2) Testifying in any investigation made or other proceeding held under State, local, or federal law relating to a State government workplace or State-controlled project.
- (3) Exercising any employee rights that are protected under State, local, or federal law.
- (4) Complaining about workplace bullying in a State government workplace or in connection with a State-controlled project.

Any State employee who violates this subsection shall be subject to disciplinary action up to and including termination from State government employment.

(c) A private third-party employer shall not take adverse action against a contract employee in retaliation for the contract employee doing any of the following:

- (1) Making a complaint or providing information, in good faith, to the North Carolina Department of Labor or the United States Department of Labor about a possible labor law violation by the private third-party employer or by the State agency, department, or institution.
- (2) Testifying in any investigation made or other proceeding held under State, local, or federal law relating to a State government workplace or State-controlled project.
- (3) Exercising any employee rights that are protected under State, local, or federal law.
- (4) Complaining about workplace bullying in the State government workplace or in connection with a State-controlled project.

(d) The North Carolina Department of Labor shall investigate alleged violations of this section and may assess a civil penalty against a private third-party employer in an amount from one thousand dollars (\$1,000) to twenty thousand dollars (\$20,000) for each violation of this section. A private third-party employer who is found by the North Carolina Department of Labor to have violated this section shall be ineligible to enter into contracts with any State agency, department, or institution for a period of five years.

(e) The contract employee may bring a civil action against a private third-party employer for a violation of this subsection in the superior court of the county where the violation occurred or where the contract employee lives within two years of the date of the alleged adverse action. If the contract employee is the prevailing party in an action under this subsection, the court may order reinstatement, back pay, and other appropriate relief and shall order payment of the prevailing party's attorneys' fees and litigation costs by the losing party.

(f) The Department of Labor and the State Human Resources Commission shall jointly develop, publish, and distribute educational and training materials about contract employee rights under this section, including physical posters to be placed conspicuously in the workplace and online materials made available over the internet.

"§ 126-102. Applicability; notices; rules.

(a) This Article applies to all State employees, including those subject to, and those exempt from, provisions of this Chapter.

(b) This Article does not apply to a contract in which the federal government is a party.

(c) It is the duty of both the private third-party employer and the State employer to post notice in accordance with G.S. 95-9 or use other appropriate means to keep all employees informed of their protections and obligations under this Article.

(d) This section provides rights, obligations, procedures, and relief in addition to, and not in lieu of, what is provided under Article 14 of this Chapter and Article 21 of Chapter 95 of the General Statutes.

(e) The North Carolina Department of Labor and the State Human Resources Commission shall collaborate, and each shall adopt the appropriate rules, to carry out the provisions of this Article."

OMBUD'S OFFICE FUNDING

SECTION 2.3.(a) There is appropriated from the General Fund to the Department of Administration, State Human Resources Commission, the sum of one hundred eighty thousand dollars (\$180,000) in recurring funds for the 2024-2025 fiscal year for two new personnel positions to support establishment of the Ombud's Office created by this act.

SECTION 2.3.(b) There is appropriated from the General Fund to the Department of Administration, State Human Resources Commission, the sum of one hundred thousand dollars (\$100,000) in nonrecurring funds for the 2024-2025 fiscal year to fund enforcement, training, and educational efforts concerning G.S. 126-101, as enacted by this act, and to combat workplace bullying in State government.

SECTION 2.3.(c) There is appropriated from the General Fund to the Department of Labor the sum of seventy-seven thousand dollars (\$77,000) in recurring funds for the 2024-2025 fiscal year for one new personnel position to conduct investigations related to the enforcement of G.S. 126-101, as enacted by this act.

SECTION 2.3.(d) This section becomes effective July 1, 2024.

PART III. RESTORE STATE AND LOCAL GOVERNMENT RETIREE MEDICAL BENEFITS

SECTION 2.4.(a) Subsections (c) and (d) of Section 35.21 of S.L. 2017-57 are repealed.

SECTION 2.4.(b) This section is effective retroactively to December 31, 2020.

PART IV. LOCAL GOVERNMENT PROTECTIONS

NO BAN ON LOCAL MINIMUM WAGES

SECTION 3.1. Sections 5.9(a), 5.9(b), and 5.9(c) of S.L. 2023-134 are repealed.

1 **SECTION 3.2.** Article 23 of Chapter 153A of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 153A-463. Authority to adopt local minimum wage ordinances.**

4 A county may by ordinance set a local minimum wage."

5 **SECTION 3.3.** Article 21 of Chapter 160A of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 160A-499.8. Authority to adopt local minimum wage ordinances.**

8 A city may by ordinance set a local minimum wage."

9
10 **WORKER SAFETY PROGRAMS BY LOCAL GOVERNMENTS**

11 **SECTION 3.4.(a)** Article 21 of Chapter 160A of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 160A-492.1. Worker safety programs.**

14 The governing body of any city, town, or county is hereby authorized to undertake, and to
15 expend tax or nontax funds for, worker safety activities and programs and health standards and
16 practices applicable to the field of employment that are equivalent to or greater than State or
17 federal requirements. The governing body may appoint worker safety committees or boards and
18 citizens' committees, as it may deem necessary in carrying out the programs and activities, may
19 authorize the employment of personnel by the committees or boards, and may establish their
20 duties, responsibilities, and powers. The cities and counties may jointly undertake any program
21 or activity which they are authorized to undertake by this section. The expenses of undertaking
22 and engaging in the worker safety programs and activities authorized by this section are necessary
23 expenses for which funds derived from taxation may be expended without the necessity of prior
24 approval of the voters."

25 **SECTION 3.4.(b)** G.S. 153A-445(a) is amended by adding a new subdivision to
26 read:

27 "(5a) G.S. 160A-492.1. – Worker safety programs."

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29 **FUNDING FOR WORKER SAFETY INSPECTIONS**

30 **SECTION 3.5.(a)** There is appropriated from the General Fund to the Department
31 of Labor the sum of three hundred thousand dollars (\$300,000) in recurring funds for the
32 2024-2025 fiscal year for new personnel positions to conduct safety inspections related to local
33 worker safety protections established under this act.

34 **SECTION 3.5.(b)** This section becomes effective July 1, 2024.

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36 **PART V. EFFECTIVE DATE**

37 **SECTION 4.1.** Unless otherwise provided, this act is effective when it becomes law.