



**Know  
Your  
Rights  
as a  
Worker  
in N.C.**



**FIGHT FOR \$15**



north carolina

**JUSTICE CENTER**

WE HOPE THIS BOOKLET will help you understand more about your rights as a worker in North Carolina.

**For more information, contact any of the resources listed at the end.**

If you are having a problem at work, here are some things you might want to do:

1. **Write down** what is happening right away, including the date and any witnesses.
2. If you think you aren't being paid correctly, **write down your start and stop times** for work each day, and the times of any breaks.
3. **Keep all** of your paystubs, employee handbook, and other papers related to your work.
4. Make sure you know the **full name and contact information** for the company and for any supervisors.
5. **Don't post about work on social media!**

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## Organizing/Unions

### Who can join a union in North Carolina?

Anyone can be a member of a union. There are workplaces where the employer is not required to recognize that the union is your representative. In North Carolina, this is true if you work as a public employee, domestic worker, or agricultural worker, among other types of workers. You can still join a union, however, and the union can support you in many ways, such as helping you to understand your rights, organizing protests when there are problems in your workplace, and other things. However, no one is required to join a union to take advantage of the protections the union offers in North Carolina.

### What protections do I have if I am part of a union?

If you are helping to organize a union at your workplace, federal law says your employer cannot take negative action against you because of your organizing work. Once a union contract has been signed, everyone who is part of the group of workers covered by the contract (the “bargaining unit”) is covered by the protections in the contract. Usually that includes protection against being fired unless there is good cause. Most union contracts also include a grievance procedure, where you can file a complaint if you think you have been treated unfairly or there is a violation of the contract. Even people who have not joined the union are protected by the union contract if they are part of the bargaining unit.

### What can and can't I do as a union member?

Under most circumstances, a worker can wear a union button or T-shirt at work. Whether your union is allowed to strike or picket depends on the reason for the action, the type of workplace, the language of your contract, among other things.

### Can my employer talk badly about the union?

Your employer cannot threaten to close your workplace, take away your benefits, or make work harder if you support a union. Your employer can't ask you in a coercive way about your support for the union, videotape or photograph peaceful union activities, or spy on union activities.

## Wage Theft

Wage theft is what happens when your employer does not pay you for work you have done, or does not pay you the right amount.

Wage theft is illegal and can take several forms. Your employer may pay you less than the minimum wage or deny you overtime pay. Your employer may refuse to pay you at all, or may make illegal deductions from your pay.

Any time your employer underpays you or does not pay you for your work, that is wage theft.

### How much should I be paid?

**Minimum Wage** – The minimum wage in North Carolina and nationally is \$7.25 per hour. Agricultural workers on very small farms and some domestic (in-home) workers are not covered. It does not matter if you are paid by the hour or per piece; you should get paid at least \$7.25 for each hour worked. Even if you are undocumented, you have the right to be paid the minimum wage.

If your employer promises you more than the minimum wage, by law they have to pay you what they promised.

**Overtime Pay** – Your employer must pay you 1½ times your normal pay rate for all hours worked over 40 hours in a workweek. For example, if you make \$7.25 per hour, and you work 45 hours in a week, you should be paid \$7.25 per hour for 40 hours and \$10.88 ( $\$7.25 \times 1.5$ ) per hour for 5 hours.

Overtime pay is based on the hours worked each week, not the hours worked each day or the number of days worked. Agricultural and domestic workers generally do not have to be paid overtime pay.

**Salaried Workers** – It is fine for your employer to pay you a salary, but sometimes they still have to pay you overtime (even if you agreed that you would just be paid a flat salary). Whether you should be getting overtime depends on your job duties and whether your pay is subject to certain types of deductions (for example, deductions for excess labor costs or repaying your company for training if you quit your job). Sometimes even

## Wage Theft

people with the job title of manager should be paid overtime, so if you have any questions you should speak with an attorney.

### What time should I be paid for?

In addition to time you are working, **time spent waiting at the worksite** after you have reported for duty is paid time. Time spent in trainings and meetings your employer requires from you is paid time.

Your employer does not have to pay you for **any time when you are free to use the time for your own purposes.**

**Transportation** while on your employer's business between job sites is paid time. Time spent **putting on or taking off required clothing or equipment at work** is usually paid time. Ordinary home-to-work transportation is unpaid.

**Off-the-clock work** like taking out the trash after you have clocked out at the end of your shift is time you should be paid for.

### What deductions can my employer take from my paycheck?

An employer will deduct income taxes and taxes for Medicare and Social Security from your paycheck. In general, they are not allowed to make any additional deductions that bring your hourly cash pay below the federal minimum wage of \$7.25 per hour, or below the wage they have promised to pay you. Usually, an employer must have you sign something that allows them to deduct for anything else. There are exceptions to this rule.

Some things that employees should not have to pay for include personal protective equipment (safety gear) and most uniforms.

## Getting Hired

### **What types of things might an employer want me to sign before starting work?**

It is becoming common for employers to ask workers to sign all sorts of agreements before starting work. Read carefully and ask questions before signing anything.

### **Non-compete, non-solicitation, and non-recruit agreements**

These agreements restrict the ways workers can work for other employers (either during or after leaving a job), work with the customers or clients from the employer, or recruit the employer's other workers to work somewhere else. Read carefully to see what exactly you will be prevented from doing if you sign such an agreement, where, and for how long. Try to negotiate with your employer to have the agreement be as narrow as possible.

### **Arbitration agreements**

Signing an arbitration agreement will make it difficult or impossible to sue your employer in court if you have a problem. Consider whether you can cross out the arbitration language in your contract.

### **Authorization for deductions**

Your employer may ask you to sign something giving them the right to make certain deductions from your paycheck. Deductions for things the employer should pay for, like tools or safety equipment, are unlawful. If you would prefer to pay for other things such as meals without having the cost deducted from your pay, ask the employer if that's an option.

### **E-Verify**

Most employers use a computer system called E-Verify to check your documents when you apply for work. An employer should only do this after he or she has offered you a job. If the employer says your documents are not good, and this is wrong, tell the employer you want to appeal. She or he will give you a paper to sign. You have eight business days to start to fix the problem by talking to the Social Security office or another office. While you are trying to

## **Getting Hired**

fix the problem, your employer cannot fire you or take other action against you.

### **What protections do I have if I don't want to sign my employer's agreement?**

Unfortunately, your employer could refuse to hire you if you decide not to sign. If any of the agreements sound unreasonable, ask for time to think it over before signing; consult with an attorney; or talk with other employees to see if they were able to avoid signing. You could also talk with your employer about your concerns – you might ask if signing is mandatory, or whether you can change any of the agreements to make them better for you, but your employer could refuse or decide not to hire you after all.

### **What if I sign an agreement and I have a problem later?**

If you have signed an agreement that is causing you problems, you should consult with an attorney to see if it can be challenged, or if you have another type of legal claim. If you have started work and you want to complain to your employer about the agreement, talk with your co-workers and complain as a group. You will have additional protections from retaliation this way.



## Getting Fired/Retaliation

### Can my employer fire me, even if the reason is false or unfair?

Yes, in many situations. In general, private-sector employment in North Carolina is “at will.” This means that an employer is free to fire an employee for any reason or no reason at all.

There are exceptions to the at-will rule. The most common exceptions include:

- **An employment contract that sets out the terms and conditions of employment and limits an employer’s ability to fire the employee at will.**
- **A termination that violates federal and state employment statutes prohibiting discrimination or retaliation.**
- **A firing that violates a particular public policy.**

### Do I have an employment contract?

Many employees think that handbooks or policy manuals are contracts, but they rarely are. There are two major types of employment contracts: individual contracts and collective bargaining agreements or union contracts.

### When does termination violate an employment statute?

The most common exceptions to the at-will doctrine are found in federal and state employment statutes. For example, a termination might be illegal if it is due to one of the following reasons:

- ***Discrimination based on race, national origin, sex, pregnancy, religion, disability, citizenship status, or age.*** Consult a lawyer or the Equal Employment Opportunity Commission (EEOC) to determine whether your situation rises to the level of discrimination.
- ***Retaliation for taking a leave of absence for a serious medical condition.*** The Family and Medical Leave Act allows eligible employees to take up to 12 weeks of unpaid leave per year without risking their jobs. ***For more information about your rights, see the section in this handbook on the Family and Medical Leave Act.***
- ***Retaliation for complaining about workplace safety or a work injury.*** The federal Occupational Health and Safety Act generally requires employers to provide work environments that are free from recognized hazards that may cause death,

## Getting Fired/Retaliation

serious injury, or physical harm to employees. In addition, the North Carolina Workers Compensation Act generally covers employees whose injuries arise “out of and in the course of” their employment. If you complained about workplace safety or a work injury and were fired for complaining, you may have a retaliation claim. ***For more information on your rights if you are injured on the job or have workplace safety concerns, see the sections in this handbook on Workers Compensation and Health and Safety.***

- ***Retaliation for complaining about wage violations or having filed a wage complaint.*** State and federal laws require most employers to pay a minimum wage, to pay time and a half for overtime, to pay you on time, and to only make deductions from your pay that are allowed by law. If you complained about your wages and were fired for complaining, you may have a retaliation claim. ***For more information on your rights under these laws, see the section in this handbook on Wage Theft.***
- ***Retaliation for engaging in union activity or collective action.*** Federal law prevents most employers from taking any adverse action, such as firing or demoting, against an employee for organizing a union, participating in a union, or joining with coworkers to complain about conditions of employment. ***For more information, contact the National Labor Relations Board.***

### When does a termination violate a public policy?

There are limited cases when a termination is unlawful, even if the employee is not protected by a contract or a federal or state statute. There is no specific list of the kinds of discharges that violate public policy, but an example is firing someone for refusing to lie under oath.

### What should I do if I think I have been terminated in violation of a law or public policy?

Depending on a number of factors, including the size of your employer, you may be able to file a complaint with the government agency that specializes in that law. A lawyer may be able to help you if you were fired in violation of a public policy. There are often short deadlines to file a complaint.

## Discrimination and Harassment

As an employee, several laws exist to protect you from workplace discrimination, including discrimination based on race, color, religion, sex, national origin, age, disability, pregnancy or citizenship status.

### What is discrimination?

Under the law, it is discrimination on the job if you are treated differently because of your race, color, sex, age, disability, religion, national origin, or citizenship status. You do not have to be fired for it to be discrimination. If you are paid less, given different work, seriously harassed, or demoted because you are a member of a protected group, this is discrimination that may be illegal.

### Is it illegal to make racist comments in the workplace?

Under federal law, it is illegal to discriminate against or harass someone in the workplace based on their race, color, religion or national origin. Frequent or severe harassment at work and harassment that leads to you losing your job or being demoted is illegal. Employment policies can be illegal if they have a negative impact on one group and there is no legitimate business reason for the policy. An employer may be found to have discriminated even if he/she is the same race, religion, etc. as the victim.

### What are my protections from discrimination based on sex or gender?

Federal laws forbid employers from treating individuals unfavorably in all aspects of employments – including pay, benefits, hiring decisions, promotions – because of their sex, sexual orientation, gender identity, or pregnancy.

In addition, it may violate federal law for an employer to ask job applicants questions about their family responsibilities, such as inquiries about marital status, number of children, spouse's employment situation, whether the applicant is pregnant or planning a pregnancy, and child care arrangements. Although some interview questions are not against the law, the ways employers use the answers may be.

Sexual harassment is also a form of sex discrimination and

## Discrimination and Harrassment

### Additional Prohibition on Gender-Based Differences in Pay

The Equal Pay Act (EPA) of 1963 makes it illegal for employers to pay unequal wages to men and women who perform substantially equal work. The employer can pay different amounts based on seniority, merit, quantity or quality of production, or a factor other than sex. But under the EPA, employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and

that are performed under similar working conditions within the same establishment.

If you believe your rights are being violated under the EPA, you can go directly to court without first filing a charge with the EEOC. You must file your claim—in court or with the EEOC—within two years of the alleged unlawful compensation practice or, in the case of a willful violation, within three years.

includes unwelcome words or behavior of a sexual nature as well as offensive words and behavior about a person's sex, gender identity, sexual orientation or pregnancy. Simple teasing or isolated comments probably won't be considered unlawful, but frequent or severe harassment at work and harassment that leads to you losing your job or being demoted is illegal. Harassing an employee because of his sexual orientation, gender identity, or because of a gender transition could all be considered unlawful sexual discrimination. The harasser can be a man or woman and can be the victim's supervisor, co-worker or a customer.

### What are my protections as an older worker?

If you are 40 or older, it is illegal for an employer to fire, refuse to hire, or take other adverse employment actions against you based on your age under the federal Age Discrimination in Employment Act (ADEA). It is also illegal to severely harass someone 40 or older based on their age or to have workplace policies that negatively impact older workers unless it is based on a reasonable consideration other than age. For example, it would be illegal for a tech company to require employees to retire once they reach age 60.

## Discrimination and Harrassment

It is *not illegal* for an employer to discriminate based on age if you are under 40 and it is not illegal for an employer to treat an older worker better than a younger worker under the age of 40. The ADEA only applies to workplaces with 20 or more employees but under North Carolina law, it is illegal for an employer with 15 or more employees to fire someone based on age.

### What are my protections if I have a disability?

Employers with 15 or more employees cannot discriminate against an employee or job applicant based on their physical or mental disability. Employers are required to accommodate qualified employees or job applicants who aren't able to do the job because of their disability, as long as the accommodation would not be too burdensome. This means that the employer may have to change the job or the working environment in some way that will enable the individual to do the job. However, in order to be entitled to an accommodation, you must request one and follow the employer's policy about it. An employer does not have to provide the specific accommodation you request, but they cannot fire you for requesting one or charge you for the cost of the accommodation.

### What is considered a disability?

Under the law, a disability is a physical or mental impairment that substantially limits one or more major life activity. Some examples of recognized disabilities include epilepsy, HIV infection, significant hearing or visual impairment, and specific learning disabilities. Minor and temporary conditions such as the flu or a broken leg probably won't be covered.

**For more information,  
contact Disability Rights NC:  
[www.disabilityrightsn.org](http://www.disabilityrightsn.org)**

## Discrimination and Harrassment

### Is it illegal to discriminate based on my immigration status?

The Immigration and Nationality Act prohibits employers with four or more employees from discriminating based on an employee's citizenship or legal immigration status. This includes employers treating individuals differently in hiring, recruiting, referring or firing decisions. Undocumented workers are not protected from citizenship status discrimination. If your employer is asking you to give new or different documents to prove that you are eligible to work in the United States, that may be illegal as well.

### Retaliation

The federal anti-discrimination laws also protect employees from being retaliated against for opposing employment practices that discriminate or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under these protections. ***For more information, see the section on Retaliation.***

## Health and Safety at Work

### If things at my job aren't safe, can I file a complaint with someone?

You have the right to **file a complaint with OSHA** if you think your workplace is unsafe, either in writing or by telephone. If you want OSHA to inspect your workplace, put your complaint in writing. You can ask OSHA to keep your name confidential, so your employer won't know who made the complaint.

**You have the right** to be provided with information from your employer about:

- **Chemicals used at work:** Your employer must make sure all hazardous chemicals are properly labeled and must make the Material Safety Data Sheets for each chemical available
- **Injuries and illnesses** that happened at work to co-workers or past employees
- **Your medical records**
- **Tests your employer has done** to measure chemical, noise, and radiation levels

Your employer must provide **training on safety and health hazards** at your workplace. You should get training on how to safely handle chemicals and how to make sure machinery you use is properly shut off (lock-out/tag-out procedures).

### If I raise questions about health and safety can my employer retaliate or discriminate against me?

It is illegal for your employer to retaliate or discriminate against you for complaining about health and safety. He or she cannot transfer you, deny you a pay raise, cut your hours, or fire you because you took action regarding your health or safety. **For more information about your rights, go to the Retaliation section.**

### Safety Committees

Workplaces with 11 or more employees and a high rate of accidents or illnesses must have safety committees that include employees. If your workplace doesn't have one, you and your co-

workers can start one. **For more information, contact your local workers center or workers' rights group, or your union.**

Working together in a safety

committee or union is a great way to solve workplace problems. If there isn't a safety committee or union in your work-place, you may want to organize one.

## Workers' Compensation

If you have been injured on the job, you may have the right to workers' compensation. Workers' compensation provides benefits to workers who are injured on the job or who have an illness, disease, or disability caused or made worse by workplace conditions. In North Carolina, every employer with three or more employees must have workers' compensation insurance, with a few exceptions. All workers, including minors and undocumented workers, are eligible for workers' compensation benefits.

### What types of injuries are covered by workers' compensation?

- **Specific traumatic injuries** – Such as sprains, fractures, cuts or concussions; can also include injuries caused by a traumatic event such as a fire, chemical spill, or fall.
- **Cumulative traumatic injuries** – Injuries that occur over time. For example, you may develop an injury over weeks or months by doing the same movement over and over again all day at work. Carpal tunnel syndrome is one kind of cumulative traumatic injury.
- **Occupational diseases** – Diseases affecting the respiratory system, skin, hearing or other body systems. Illness caused by exposure to asbestos is one example. These diseases usually occur over time.

Injuries normally not covered by workers' compensation include:

- **Injuries caused by drugs or intoxication**
- **Purposefully self-inflicted injuries**
- **Injuries occurring on personal time**

### What if the injury was my fault?

Workers' compensation is a "no-fault system." Generally, the employer must provide workers' compensation even if the injury was your fault.

### Is my injury covered under workers' compensation?

An injury which is the result of an accident must have arisen out of your employment and occurred in the course of your employment.



## Workers' Compensation

Back injuries, cumulative traumatic injuries, and occupational diseases can be particularly difficult workers' compensation situations. In any case, you may want to consult an attorney for help.

### What benefits can I receive through workers' compensation?

- **Medical Expenses** – If you are eligible, workers' compensation pays 100% of medical expenses. This includes the cost of medication, therapy, and transportation to and from medical appointments. If you need an interpreter to communicate with your medical provider, workers' compensation should pay for that as well.
- **Temporary Partial Disability (TPD)** – You are eligible for payments to compensate for lost wages when you have returned to work earning reduced wages. You should receive 2/3 of the difference between your pre-injury average weekly wage and your reduced weekly wage.
- **Temporary Total Disability (TTD)** – You may be eligible for payments to compensate for lost wages when you can't work at all due to your injury, if you are out of work for more than seven days. If you are out of work for more than 21 days, you will get paid for the first seven days you missed. You should receive 2/3 of your average weekly wage (subject to a ceiling known as the "maximum compensation rate").
- **Damages for Permanent Disability** – If your doctor says you have a permanent disability after you have reached maximum medical improvement, you may be eligible for compensation for the partial or total loss of use of part of your body.

### What if I don't like the company doctor?

Your employer has the right to send you to the doctor of their choice. However, if you don't like the care you are receiving, you have the right to seek a second opinion, paid for by workers' compensation. If necessary, you can also ask the Industrial Commission to allow you to change treating doctors.

### What should I do if I am injured on the job?

1. **Notify your employer.** You should give written notice of any work-related injury to your employer as soon as possible, but no later

## Workers' Compensation

than 30 days after the date of your injury.

- 2. Write down** as soon as you are able what happened, when it happened, who was there, what hurt first, how you felt, what you told a nurse, etc. When in doubt, get your injury checked by a medical professional.
- 3. Describe clearly** to whoever treats your injury exactly what happened, and note on the payment questions that you believe this is a work-related injury.
- 4. File a workers' compensation claim.** You must file a claim with the North Carolina Industrial Commission no later than two years from the date of your injury. If you have an occupational disease, you must file a claim within two years of learning that the disease is related to your work or within two years of becoming disabled. The best way to file a workers' compensation claim is by filing a Form 18 with the Industrial Commission. The filing of a Form 19 by your employer does NOT establish your claim for workers' compensation benefits.
- 5. See an attorney** if any question arises regarding your employment status, the cause of the injury, pre-existing conditions, or your degree of disability.

### **If I am injured on the job, can I choose between workers' compensation and suing my employer?**

Usually, workers' compensation is the only remedy for injured workers. An employee covered by workers' compensation normally cannot sue the employer for causing the injury.

To be eligible for workers' compensation, you must be an employee—not an independent contractor, guest, visitor, customer or anything else. However, employers sometimes misclassify workers as independent contractors. If your employer can exercise control over the manner in which you perform your work, then you may be an “employee” and not an “independent contractor” for the purposes of workers' compensation. **See the section on Misclassification for more information.**

## Unemployment Insurance

Unemployment insurance provides workers with temporary and partial replacement of lost wages during periods of unemployment. You must qualify and be eligible to receive unemployment insurance payments.

### Qualifying for Unemployment Benefits

You may qualify for unemployment insurance if you lost your job through no fault of your own, such as your position was terminated. There are also some situations in which you may qualify if you resigned or you were fired for not following internal rules. If you are not sure, apply.

To apply, go to <https://des.nc.gov/DES/Home> or call the Division of Employment Security at 1-877-841-9617. You will need your social security number, the names of the places you worked during the last 18 months and the dates you worked there, and contact information for your last employer. You will also have to provide the reason you lost your job and any documents related to that.

### Eligibility for Unemployment Benefits

To be eligible for unemployment benefits, you must have worked in covered employment (meaning your employer had to pay UI taxes) and have received wages for a certain length of time, which is roughly six months out of the last 15 months.

- You also must be **able** and **available** to work. To show this, you are required to register for work at [www.NCWorks.gov](http://www.NCWorks.gov) and create an online account
- **Look for work.** You have to make five contacts with potential employers each week and report your efforts to find work each week. If you forget to file your weekly work search report you will not receive a payment for that week and your future payments will be delayed.
- **Accept any suitable job offers**

You must be a **U.S. citizen or legally present with work authorization** in order to receive benefits.

## **Unemployment Insurance**

### **What if I don't speak English?**

The Division of Employment Security must provide information to significant minority populations in their own languages. If you need help in another language, ask the Division to help you. If you don't get the help you need, contact a lawyer.

### **What if I'm denied unemployment benefits?**

If you are denied unemployment benefits, you have 10 days to appeal the agency's decision against you. You need to do so in writing. If you are denied because your employer says you are an independent contractor, and you disagree, be sure to appeal.

### **How much will I receive in benefits?**

The weekly benefit amount is how much money you can receive each week in unemployment benefits. The amount is based on your earnings before you were unemployed. The maximum weekly benefit amount that anyone can receive is \$350.

### **How long can I receive benefits?**

The maximum number of weeks of benefits you can receive is 20 weeks, and the minimum number of weeks is five. The exact number of weeks of benefits you can receive will depend on the state unemployment rate. There is also a cap on the total amount of benefits a worker may receive, which is based on the worker's previous wages and the amount of benefits they are receiving.

## Family Medical Leave

### What does the Family and Medical Leave Act provide?

The Family and Medical Leave Act (FMLA) requires certain employers to provide eligible employees with up to 12 weeks of unpaid, job-protected leave per year to:

- Care for a newborn or newly-adopted child or newly placed foster child;
- Care for a seriously ill family member (spouse, parent, or child)
- Recover from a worker's own serious health condition;
- Deal with qualifying issues related to a worker's spouse, son, daughter or parent who is a covered military member on "covered military duty."

You may also be allowed up to 26 weeks of leave to care for a family member with a serious injury or illness who is either a service member or a veteran discharged or separated from the military within the last five years.

### What counts as a "serious health condition"?

A serious health condition must involve either inpatient care or continuing treatment by a health care provider. Situations such as pregnancy, health conditions with periods of incapacity, and long-term conditions for which treatment is ineffective may all be covered.

### Am I eligible under the FMLA?

You are eligible if you have worked for at least one year and you have worked at least 1,250 hours within the last year at a business with 50 or more employees or at a public agency, including schools.

### When can I use FMLA to care for a family member?

You may also take leave time to care for your spouse (including same-sex spouse), parent or child under the age of 18 with a qualifying serious health condition.

You may take leave to care for your spouse, son, daughter, parent, or next of kin who has a serious injury or illness related to, or made worse by, their military service.

## Family Medical Leave

### When can I use FMLA leave to deal with other issues related to my family member's active duty?

You may take leave time to attend military sponsored functions, make appropriate financial and legal arrangements, or arranging for alternative childcare related to your family member's military active duty. This applies to the families of members of both the active duty and reserve components of the Armed Forces.

### How do I apply for leave and how much notice must I give?

If you know you will need leave time in advance – for instance, if you are having surgery or having a baby – you must tell your employer at least 30 days before you expect to take time off. If you have a medical emergency, you must follow your employer's rules for giving notice.

Your employer may require proof of the serious health condition for which you are requesting leave. She may require certification from a health care provider. Your employer can also require a second opinion, though your employer must pay for that second opinion. If the two opinions conflict, a third opinion paid for by your employer, will be the final decision.

Your employer can require you to take any paid vacation, personal leave or other leave as part of your FMLA leave.

### Can I get my job back after I return?

FMLA leave is **job-protected leave**. That means when you return to work you must get back your job or another job that has similar pay and benefits. However, your employer does not have to give you your job back if you would have been laid off during the time you were on leave.

Your employer cannot fire you or take other negative employment actions against you for using FMLA leave. **For more information, see the section on Retaliation.**

## Pregnancy and Breastfeeding

There are several federal laws that provide protection against discrimination and sexual harassment for pregnant women and parents. In addition, there are new provisions to help accommodate breastfeeding mothers.

### **What does the Pregnancy Discrimination Act (PDA) provide?**

The PDA prevents employers from treating an employee differently at work because she is pregnant. Under the PDA, employers are not allowed to discriminate in any aspect of employment, including the following:

- hiring
- firing
- promotions
- job assignments
- pay
- training
- fringe benefits (such as leave or health insurance)

### **What if I can't do my job because of my pregnancy?**

If you have a medical condition related to pregnancy or childbirth that makes you temporarily unable to perform your job, your employer must treat you the same as any other employee with a temporary disability by offering you, for example, a different job assignment that you can perform, disability leave or unpaid leave. If your medical condition is considered a disability under the Americans with Disabilities Act, your employer may have to offer you a reasonable accommodation at work.

### **What are my rights regarding breastfeeding or pumping at work?**

If you are a new mother going back to work and want to keep breastfeeding, a provision in the Patient Protection and Affordable Care Act (ACA) requires many employers to accommodate pumping breast milk during the day. The law requires an employer to allow an employee a place and opportunity to pump for her nursing child for one year after the child's birth.

## Pregnancy and Breastfeeding

Under the new law:

- **Employers must provide reasonable breaks as frequently as needed by the nursing mother.** The frequency of breaks and the duration will vary.
- **Employers must provide a functional space for expressing breast milk.** A bathroom, even if it is private, is not permissible under the ACA. The space does not have to be dedicated to this use, but it must be available when needed by the nursing mother, shielded from view, and free from intrusion by co-workers or the public.
- **Employers are not required to pay nursing mothers for pumping breaks.** However, if the employer already provides compensated breaks, a nursing mother who uses this time for pumping must be paid.
- **Employers cannot fire you for taking breaks you are entitled to under the law.**



## Misclassification/Independent Contractors

Employers sometimes incorrectly call their employees independent contractors instead of employees. This is called misclassification. Employers may misclassify workers as independent contractors because then they do not have to pay payroll taxes, contribute to Social Security, or pay workers' compensation and unemployment insurance.

### What is an independent contractor?

An independent contractor is a worker who provides goods or services to another individual or business through an agreement. The terms of the agreement (which does not have to be written) control the relationship, and the independent contractor treats the other party like a customer or client, rather than an employer. Independent contractors are self-employed, can have multiple clients, and typically find those clients on their own.

### How do I know if I am an independent contractor or employee?

There is no clear rule identifying who is an employee and who is an independent contractor because it is based on the specific situation. Some things to look at are who controls the relationship, who controls the work, and whether the worker is economically dependent on the other person or business. If your employer gives you a 1099 tax form, instead of a W-2, they are treating you as an independent contractor. They may also be treating you as an independent contractor if they pay you in cash and don't take out any taxes.

### Why does misclassification matter?

Independent contractors have fewer protections than employees. Independent contractors are not protected by wage and hour laws (e.g., minimum wage and overtime pay). They do not have access to workers' compensation if injured on the job, and they usually cannot apply for unemployment insurance if out of work. In addition, independent contractors cannot get time off to take care of a serious health condition, and they are not protected from discrimination based on disability, age, national origin, race, or sex. Independent contractors aren't guaranteed the right to bargain collectively.

**Misclassification/Independent Contractors**

Independent contractors pay more out of pocket taxes. Because they have to pay the full amount of payroll taxes, instead of splitting it with the employer

**What should you do if you think you were misclassified?**

If you think you have been misclassified, make sure you keep detailed records of the hours and type of work you performed (including tasks and how you were supervised).

You may be entitled to wage recovery, unemployment insurance, or other legal remedies. If you have not been paid overtime, or are denied unemployment or workers' compensation benefits and think you have been misclassified, consult with an attorney.

You can also file IRS Form SS-8 to have your federal tax withholdings corrected. Your employer will know you have contacted the IRS.

You may be an **employee**, not an independent contractor if:

- Your employer has the power to exercise control over the way you complete your job (how, when, and where you do your work).
- Your hours are set by your employer.
- You are paid on set dates in regular amounts.
- You are given extensive supervision.
- You are trained by your employer to do your job in a certain way.
- Your employer provides the tools and materials required to perform your job.
- You have worked for the same employer year after year.
- You work for only one employer.

## RESOURCES

For help finding a lawyer, call:

North Carolina Advocates for Justice	1-(800) 688-1413
North Carolina Bar Association Lawyer Referral Service	1-(800) 662-7660
Legal Aid of North Carolina	1-(866) 219-5262

To file a claim with a government agency or to seek information on the following issues, contact:

DISCRIMINATION	US Equal Employment Opportunity Commission	1-800-669-4000 <a href="http://www.eeoc.gov">www.eeoc.gov</a>
	Office of Special Counsel for Unfair Immigration-Related Employment Practices	1-800-255-7688 <a href="http://www.justice.gov/crt/about/osc/">www.justice.gov/crt/about/osc/</a>
E-VERIFY	Department of Homeland Security/ E-Verify	1-888-897-7781 <a href="http://www.dhs.gov/e-verify">www.dhs.gov/e-verify</a>
FAMILY AND MEDICAL LEAVE	US Department of Labor	1-866-487-9243 <a href="http://www.dol.gov/whd">www.dol.gov/whd</a>
HEALTH & SAFETY	NC Department of Labor	1-800-NC-LABOR (625-2267) <a href="http://www.nclabor.com/osha/osh.htm">www.nclabor.com/osha/osh.htm</a>
MISCLASSIFICATION	Internal Revenue Service	<a href="http://www.irs.gov/pub/irs-pdf/fss8.pdf">http://www.irs.gov/pub/irs-pdf/fss8.pdf</a>
	NC Industrial Commission, Employee Classification Section	(919) 807-2582 <a href="http://www.ic.nc.gov/EmployeeClassificationSection.html">www.ic.nc.gov/EmployeeClassificationSection.html</a>
RETALIATION	NC Department of Labor, Employment Discrimination Bureau	1-800-625-2267 <a href="http://www.nclabor.com/edb/edb.htm">www.nclabor.com/edb/edb.htm</a>
UNEMPLOYMENT INSURANCE	NC Department of Commerce, Division of Employment Security	1-877-841-9617 <a href="https://www.ncesc.com/">https://www.ncesc.com/</a>
UNIONS & COLLECTIVE ACTION	National Labor Relations Board	1-866-667-6572 <a href="http://www.nlr.gov">www.nlr.gov</a>
WAGE THEFT	NC Department of Labor, Wage and Hour Bureau	1-800-625-2267 <a href="http://www.nclabor.com/wh/wh.htm">www.nclabor.com/wh/wh.htm</a>
	US Department of Labor	1-866-487-9243 <a href="http://www.dol.gov/whd/">http://www.dol.gov/whd/</a>
WORKERS' COMPENSATION	NC Industrial Commission	1-800- 688-8349 <a href="http://www.ic.nc.gov/">http://www.ic.nc.gov/</a>

# Know Your Rights as a Worker in N.C.

PREPARED BY:

# FIGHT FOR \$15

205 S. Gregson Street | Durham, NC 27605

<https://fightfor15.org/>



north carolina

**JUSTICE CENTER**

P.O. Box 28068 | Raleigh, NC 27611 | (919) 856-2162

[www.ncjustice.org](http://www.ncjustice.org)

This handbook is intended to give workers in North Carolina a general overview of their rights in the workplace, but it does not include all of the information about exceptions from laws or who is covered by each law. In addition, laws and legal procedures are subject to frequent change and differing interpretations. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.