

EMPLOYMENT LAW SUMMARY

North Carolina Fair Employment Laws - Overview



Because You're Different

Several federal laws protect employees from workplace discrimination. These laws include Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA).

In addition, North Carolina state law provides broad workplace discrimination protections to employees under the **Equal Employment Practices Act** (EEPA), the **Persons with Disabilities Protection Act** and other fair employment laws. This Employment Law Summary provides an overview of these state laws.

EQUAL EMPLOYMENT PRACTICES ACT

The EEPA protects the right and opportunity of all persons to seek, obtain and hold employment without discrimination on account of **race, religion, color, national origin, age, sex or handicap**. The EEPA applies to employers that **regularly employ 15 or more employees**.

PERSONS WITH DISABILITIES PROTECTION ACT

The North Carolina Persons with Disabilities Protection Act (Disabilities Act) protects employees from discrimination based on disability. This law applies to employers with **15 or more full-time employees** in the state and defines a "person with a disability" as anyone who:

- Has a physical or mental impairment that substantially limits one or more major life activities (for example, walking, speaking, standing, communicating, working or operation of a major bodily function);
- Has a record of the impairment; or
- Is regarded as having the impairment.

PROHIBITED PRACTICES

Under the Disabilities Act, discriminatory practices include:

- Failing to hire or consider for employment or promotion, discharging or otherwise discriminating against a qualified person with a disability on the basis of a disabling condition with respect to compensation or the terms, conditions or privileges of employment;
- Requiring applicants to identify themselves as having a disability prior to a conditional offer of employment (however, an employer may invite applicant to identify themselves as having a disability in order to act affirmatively on his or her behalf); and
- Failing to determine whether reasonable accommodations can be made or failing to make reasonable accommodations for a person with a disability.

REASONABLE ACCOMMODATIONS

Employers must make reasonable accommodations for employees and applicants' disabilities. Reasonable accommodations may include job restructuring, providing access to a job, or acquisition or modification of equipment or devices.

However, an employer is not required to make accommodations that would impose an **undue hardship** on its business. In determining whether an accommodation would impose an undue hardship, the following factors are considered:

- The nature and cost of the accommodations needed;
- The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources at the facility and any other impact on the operation of the facility;
- The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type and location of the covered entity's facilities; and
- The type of operations of the covered entity, including the composition, structure and functions of the workforce of the entity, the geographic separateness of the particular facility to the covered entity and the administrative or fiscal relationship of the particular facility to the covered entity.

EXCEPTIONS

It is not a discriminatory action for an employer to:

- Make an employment decision on the basis of state and federal laws or regulations imposing physical, health, mental or psychological job requirements;
- Fail to hire, transfer or promote, or discharge a person with a disability who has a history of drug abuse or who is unlawfully using drugs where the job in question is in an establishment that manufactures, distributes, dispenses, conducts research, stores, sells or otherwise handles controlled substances regulated by the North Carolina Controlled Substances Act;
- Fail to hire, transfer or promote, or discharge a person with a disability because the person has a communicable disease which would disqualify a person without a disability from similar employment; or
- Fail to make reasonable accommodations where the person with a disability has not submitted any necessary medical documentation, made suggestions for possible accommodations, and cooperated in any ensuing discussion and evaluation aimed at determining possible or feasible accommodations.

PRE-EMPLOYMENT INQUIRIES AND PHYSICALS

Under the Disabilities Act, employers may inquire whether a person has the ability to perform the duties of a job in question. Employers may administer pre-employment tests, including medical examinations, only if:

- An offer of employment has been made on the condition that the person meets the physical and mental requirements of the job with or without reasonable accommodation; and
- The examination is required of all persons conditionally offered employment for the same position regardless of disabling condition.

Pre-employment tests may measure only job-related activities and cannot be used for any reason, other than to:

- Determine the person's ability to safely and satisfactorily perform the duties of available jobs that the person is otherwise qualified; or
- Aid in determining possible accommodations for a disabling condition.

In addition, pre-employment tests may not reflect the impaired sensory, manual or speaking skills of a person with a disability except when those skills are requirements of the job in question.

RETALIATION

An employer may not discharge, expel, refuse to hire or otherwise discriminate against any person or applicant for employment because the person has opposed any discriminatory practice or because the person has testified, assisted or participated in any manner in discrimination proceedings.

GENETIC TESTING OR GENETIC INFORMATION PRIVACY

North Carolina law requires employers to treat genetic testing and genetic information in a manner that is consistent with federal law, including, but not limited to, the federal Genetic Information Nondisclosure Act (GINA). In addition, employers are required to comply with specific nondiscrimination requirements, as described below. The North Carolina genetic privacy laws apply to **all employers**, regardless of size.

PROHIBITED PRACTICE

Employers may not deny or refuse employment to any person or discharge any person from employment based on:

- The fact that the person requested genetic testing or counseling services; or
- Genetic information obtained concerning the person or a member of the person's family.

DEFINITIONS

“Genetic test” means a test for determining the presence or absence of genetic characteristics in an individual or a member of the individual's family in order to diagnose a genetic condition or characteristic or ascertain susceptibility to a genetic condition.

“Genetic characteristic” means any scientifically or medically identifiable genes or chromosomes, or alterations or products, which are known individually or in combination with other characteristics to be a cause of a disease or disorder, or determined to be associated with a statistically increased risk of development of a disease or disorder, and which are asymptomatic of any disease or disorder.

“Genetic information” means information about genes, gene products or inherited characteristics that may derive from an individual or a family member.

LAWFUL PRODUCTS DISCRIMINATION

North Carolina provides employment discrimination protections to employees who use lawful products during nonworking hours. The North Carolina lawful use law applies to all employers with **three or more regularly employed employees**.

PROHIBITED DISCRIMINATION

It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee or to discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions or privileges of employment because the employee uses lawful products, as long as the use:

- Occurs off the employer's premises;
- Occurs during nonworking hours; and
- Does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of the position in question or the safety of other employees.

EXCEPTIONS

An employer may restrict the lawful use of lawful products by employees during nonworking hours if the restriction relates to:

- A bona fide occupational requirement that is reasonably related to the employment activities; or
- The fundamental objectives of the organization.

In addition, an employer may discharge, discipline or take any action against an employee because of the employee's failure to comply with the employer's substance abuse prevention program or the recommendations of substance abuse prevention counselors employed or retained by the employer.

EFFECTS ON INSURANCE POLICIES

An employer may offer, impose or have in effect a health, disability or life insurance policy distinguishing between employees for the type or price of coverage based on the use or nonuse of lawful products if:

- Differential rates assessed reflect actuarially justified differences in the provision of employee benefits;
- The employer provides written notice to employees setting forth the differential rates imposed by insurance carriers; and
- The employer contributes an equal amount to the insurance carrier on behalf of each employee of the employer.

ENFORCEMENT

An employee who is discharged or otherwise discriminated against or a prospective employee who is denied employment based upon use of lawful products during nonworking hours, may bring a civil action within **one year** from the date of the alleged violation against the employer. The employee or prospective employee may be awarded any of the following:

- Wages or benefits lost as a result of the violation;
- An order of reinstatement without loss of position, seniority or benefits; or
- An order directing the employer to offer employment to the prospective employee.

SICKLE CELL TRAIT OR HEMOGLOBIN C TRAIT DISCRIMINATION

It is a discriminatory practice for employers to deny or refuse employment to any person or discharge any person from employment on account of the fact that the individual has the sickle cell trait or the hemoglobin C trait.

COMPLIANCE STEPS FOR EMPLOYERS

In general, state employment nondiscrimination laws provide similar, but not identical, protections to employees as the federal employment nondiscrimination laws. For example, state laws may protect different individuals, apply to small employers not subject to the federal provisions, and/or provide different exemptions from their discrimination prohibitions. Thus, employers should work with their advisors to become familiar with how both federal and state laws apply to their employment practices.

Additionally, employers can help protect themselves from discrimination claims by creating a work environment that discourages employment discrimination and encourages diversity. To create this type of environment, employers should consider the following steps:

- Confirm that workplace nondiscrimination policies are complete, accurate and up-to-date, and that such policies are actually being followed;
- Update the policies as necessary to include a strict “no tolerance” policy for prohibited discrimination, and include information on how employees can report incidents of discrimination to the employer;
- Train managers and supervisors on the updated policies and educate employees regarding employment discrimination, including sexual harassment training; and
- Respond to employee complaints in a timely and professional manner.

MORE INFORMATION

Please visit the North Carolina Department of Labor’s [website](#) or contact Heffernan Insurance Brokers for more information on fair employment laws in North Carolina.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice. © 2024 Zywave, Inc. All rights reserved.