

# EMPLOYMENT LAW SUMMARY

## North Carolina: Wage Payment Requirements



*Because You're Different*

Several federal laws regulate employee wage payments, including the Fair Labor Standards Act (FLSA), the Davis-Bacon Act and the Service Contract Act. The North Carolina Wage and Hour Act (WHA) complements federal law and defines wage payment requirements for employers in the state. In general, the WHA follows federal guidelines, but in some instances provides more stringent requirements for employers.

The Wage and Hour Bureau of the [North Carolina Department of Labor](#) (NCDOL) enforces WHA provisions and investigates wage payment violation claims. Under state law, local governments are prohibited from adopting or imposing any requirement upon an employer pertaining to employee compensation, such as wage levels, hours of labor and payment of earned wages.

### Notice Requirements

The WHA requires employers in North Carolina to:

- Display a notice of their wage payment policies and practices in a place accessible to employees;
- Notify employees at the time of hiring of their wage rate and the day and place for payment. The notice must be in writing;
- Notify employees of any changes in wage payment at least one pay period before the changes take place (the notice must be in writing); and
- Provide each employee with an itemized statement of all deductions made to the employee's wages for each pay period when a deduction is made.

### Frequency of Payments

The WHA allows employers in North Carolina to pay their employees every day, every week, every other week, twice a month or every month. Subject to an advanced notice requirement, the WHA also allows employers to pay annual wages to employees when the employees' wages are based on bonuses, commissions and other forms of infrequent payment.

### Vacation Pay and Other Wage Benefits

The WHA does not require employers to provide vacation pay or any other "wage benefits," such as paid time off, travel expenses, holiday pay, birthday pay, jury duty pay or shift premium pay. However, wage benefits become "promised wages" if the employer promises, implements a policy or adopts a practice of paying wage benefits. Promised wages are subject to the payment requirements described above.

In addition, employers that offer vacation pay must create vacation policies and practices that address:

- How and when vacation is earned, so that the employees know the amount of vacation to which they are entitled;
- Whether vacation time may be carried forward from one year to another, and if so, in what amount;
- When vacation time must be taken;
- When and if vacation pay may be paid in lieu of time off; and

- Under what conditions vacation pay will be forfeited upon discontinuation of employment for any reason.

The NCDOL will interpret ambiguous policies and practices in the light that is most favorable to employees.

## Last Payment of Wages

Employees separated from employment are entitled to receive all of their earned, unpaid wages. Employees may not forfeit unpaid wages in full or in part, unless they have been duly notified. This includes the payment of any promised wages employees may have earned in accordance with their employers' policies or practices.

The WHA requires employers to pay all wages due to terminated employees, regardless of the reason for termination, before, or on, the next regular payday. Employers may deliver final wages either through regular pay channels or by trackable mail if they receive a written employee request.

If employee wages are based on bonuses, commissions or other form of calculation that may not be ready by the payday following the employee's separation from employment, employers must pay all due wages on the first regular payday after the wages become calculable.

## Payment of Unused Benefits on Termination

When Employees whose employment is discontinued for any reason must be paid sick, vacation, and severance pay as well as commissions, bonuses, and other amounts promised when the employer has a policy or practice of making such payments

Employees must be notified of any policy or practice which results in loss or forfeiture of vacation time or pay in accordance with [state law](#).

## Deductions and Withholdings

The WHA allows employers to withhold or divert portions of employee wages when withholding is required by state or federal law, the employee agrees to a deduction as part of an employee benefit plan or because of an employee-employer repayment agreement.

Employers that make wage deductions for their employees' benefit must have written proof that their employees authorized the deduction, (with a signature) and the actual amount to be deducted (or method of calculation) on or before the payday when the deduction takes place.

In addition, employers must be able to prove that deductions are for their employee's convenience, their employee fully understood the reasons for authorizing the deduction, and that they had a reasonable opportunity to withdraw the authorization.

The WHA allows employers to fulfill notification requirements through electronic communication as long as the communications comply with the North Carolina [Uniform Electronic Transactions Act](#).

When withholdings benefit employers, they may not reduce employee wages below the minimum wage rate. However, employers may not reduce employee overtime wages.

## Recoupment of Losses

Employers may reduce employee wages to recover cash shortages, inventory shortages, or the value of lost or damaged property after giving employees at least a seven-day notice of the recoupment. The seven-day notice requirement does not apply to employers that recover costs from employees who are separated from employment.

Employers may withhold a portion of their employees' wages to recover losses without requesting employee consent in the employees have been indicted in criminal charges for cash or inventory shortages, or for lost or damaged property. However, employers must refund any amount withheld if employees are ultimately found not guilty. Nevertheless, the WHA does not prevent employers from initiating a civil action against employees to recover losses.

## Correcting Miscalculations

The WHA considers overpayments due to miscalculation, wage advances and employer loans as wage prepayments. Employers may withhold or deduct the principal amount of these prepayments from an future employee wages. Employers may also deduct interest and other charges for these prepayments from employee wages, but only after receiving written authorization from affected individuals.

## Prohibited Acts

North Carolina laws prohibit employers and employees from hindering, delaying, interfering or refusing to cooperate with NCDOL personnel in wage payment investigations.

Employers and employees are also prohibited from making statements or filing reports they know to be false. The same provisions apply to withholding information material to an investigation.

## Retaliation

North Carolina prohibits employers from discriminating or retaliating against employees who file a complaint or initiate an inquiry, investigation, inspection, proceeding or another type of action against WHA violations. The prohibition extends to employees who threaten to take any of the measures previously mentioned or who testify or provide information regarding WHA violations.

## Penalties

Employers and employees that violate WHA provisions commit a Class 2 misdemeanor punishable by a fine of up to \$1,000 and imprisonment for up to 30 days. These penalties increase for repeat offenders.

Employers that violate WHA provisions are subject to criminal and civil proceedings. At these proceedings, employers may be found liable for unpaid wages plus interest (calculated from the time when wages were due), liquidated damages in an amount equal to wages due, reasonable attorney fees and court costs.

However, employees wishing to enforce minimum wage violations must first exhaust all NCDOL administrative remedies and bring claims within two years of the violation.

## More Information

Contact Heffernan Insurance Brokers for more information on wage payment and work hour 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. © 2012, 2017-2018, 2021, 2023 Zywave, Inc. All rights reserved.