Employment & Labor Law

EMPLOYER'S DESK REFERENCE FOR THE CAROLINAS

NEXSEN | PRUET

RALEIGH | GREENSBORO | CHARLOTTE | GREENVILLE | COLUMBIA
MYRTLE BEACH | CHARLESTON | HILTON HEAD
www.nexsenpruet.com

NEXSEN | PRUET

THIS EMPLOYER'S DESK REFERENCE PROVIDES A GENERAL GUIDE TO SOME OF THE ISSUES THAT ARE FACED BY HUMAN RESOURCES PROFESSIONALS AND MANAGERS ON A DAILY BASIS. THE REFERENCE IS ORGANIZED BY THESE TOPICS:

NEXSEN|PRUET

COMPLIMENTARY E-MAIL ALERT SERVICE

For up-to-the-minute legal developments on employment law, labor law, or benefits issues, we invite you to take advantage of our complimentary e-mail alerts. Once enrolled, you will receive periodic e-mails highlighting recent developments on these topics. You may remove your name from any list at any time. All of our e-mail alerts are also posted on our web site's publications page. Contact any attorney in our practice group to enroll today.

DISCLAIMERS

A RESULT ACHIEVED ON BEHALF OF ONE CLIENT IN ONE MATTER DOES NOT NECESSARILY INDICATE SIMILAR RESULTS CAN BE OBTAINED FOR OTHER CLIENTS. These materials have been prepared by Nexsen Pruet, LLC for informational purposes only. They are not legal advice. This information, or the receipt of this information, is not intended to and does not create a lawyer-client relationship. Do not send us any information that you or anyone else considers to be confidential or secret, or any information regarding a specific legal matter, unless we have first agreed to be your lawyers in that matter. Any information you send us before we agree to be your lawyers cannot be protected from disclosure. Readers of our information should not act upon this information without seeking professional legal counsel.

For more information visit www.nexsenpruet.com/practices.html.

PLANT CLOSINGS

The Worker Adjustment and Retraining Notification (WARN) Act requires employers to give 60 days' notice prior to a "plant closing" or "mass layoff" to affected employees, the state employment security commission, and certain local government officials. The act defines a plant closing as the permanent or temporary "shutdown" of a "single site of employment," or one or more "facilities or operating units" within a "single site of employment," if the shutdown results in an "employment loss" for 50 or more employees (as all those terms are defined by the act). A "mass layoff" means a layoff that does not involve a plant closing but results in an employment loss at a single site of employment for 50 or more employees if they constitute 33 percent or more of active employees, or 500 employees regardless of whether they constitute 33 percent of the workforce.

WARN Act notices must contain information the act requires. The WARN Act provides exceptions for closing temporary facilities, "faltering companies," "unforeseeable business circumstances," natural disasters, and sales of businesses, among others. Special rules apply in situations where all or part of a business is being sold (even in an asset sale).

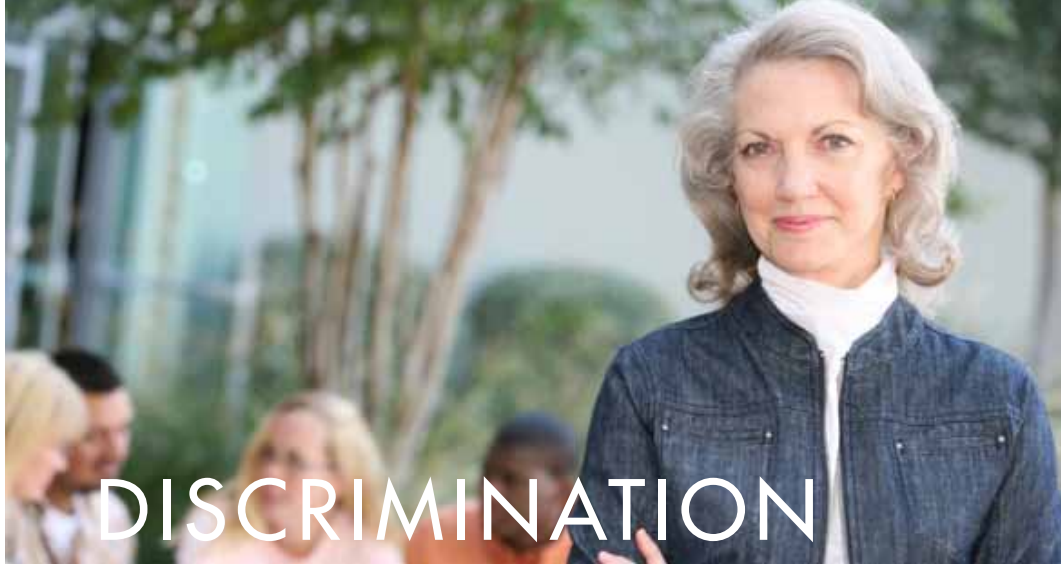
Violations can lead to civil penalties, including back pay and lost benefits for up to 60 days and attorneys' fees. If the required notice is not provided to the appropriate government officials, the employer can be fined up to $500 per day for each day of violation for up to 60 days. Certain factors may mitigate these civil penalties.

The Carolinas no longer have state plant-closing laws, but WARN notices must be sent to the relevant state unemployment department.

ABOUT US

Nexsen Pruet has one of the largest, most experienced Employment and Labor Groups in the Carolinas. With more than 25 attorneys, we provide a comprehensive range of services including advice and counsel, training, and litigation of claims before administrative agencies and in state and federal courts.

We believe the best way to defend against employment and labor disputes is to avoid them, so we also assist clients through proper planning, management training, development of effective policies and practices, and audits that expose potential issues and shape appropriate responses. At the same time, however, our attorneys have the litigation skills to aggressively pursue any matter through trial when it is in the best interests of the employers we represent.



DISCRIMINATION

RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION

Under Title VII of the Civil Rights Act of 1964, employers with 15 or more employees are prohibited from refusing to hire, discharging, or otherwise discriminating against any individual because of race, color, sex, national origin, or religion. Title VII also prohibits discriminatory harassment that is severe or pervasive and that creates a hostile work environment. Finally, Title VII prohibits retaliation against employees who report or oppose unlawful discrimination. Before an aggrieved employee can pursue litigation under Title VII, he or she must file a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discrimination (or, in South Carolina, file with the S.C. Human Affairs Commission within 300 days).

RACE

42 U.S.C. § 1981 prohibits all employers, regardless of size, from discriminating against any individual on the basis of race. Section 1981 also provides a remedy for racial harassment and retaliation. Claims under § 1981 do not have to be presented to the EEOC prior to filing suit. The statute of limitations for claims under § 1981 is four years. There are no statutory caps on damages under § 1981.

SEXUAL HARASSMENT

It is unlawful to harass an applicant or employee on the basis of sex. Sexual harassment may include, without limitation, unwelcome conduct, such as sexual comments, jokes, or gestures; requests for sexual favors; inappropriate touching; or sexual advances. Such conduct is actionable by an employee when it is made a term or condition of employment, forms the basis for an employment decision, or becomes so severe or pervasive that it creates a hostile work environment. In some cases, an employer that disseminates and enforces a policy against sexual harassment, and takes appropriate and prompt remedial action when made aware of a claim or violation of the policy, may be able to avoid liability. Claims under Title VII must be filed with the EEOC or the S.C. Human Affairs Commission prior to the employee's filing suit.

PREGNANCY

The Pregnancy Discrimination Act (PDA), an amendment to Title VII, provides that discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII. The PDA applies to employers with 15 or more employees. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations. In the event of a pregnancy-related absence, employers must hold open a job for the same length of time jobs are held open for employees on sick or disability leave. Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. The PDA also prohibits retaliation for opposition to employment practices that discriminate based on pregnancy or for engaging in protected activity.

AGE

Under the Age Discrimination in Employment Act (ADEA), employers with 20 or more employees are prohibited from refusing to hire, discharging, or otherwise discriminating against any individual because he or she is 40 years of age or older. The ADEA also prohibits age-based harassment that is severe or pervasive and creates a hostile work environment. Finally, the ADEA prohibits retaliation against employees who report or oppose age discrimination. An employer may, however, base hiring decisions on age or may discharge an older employee in the very rare situation where age is in fact a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business. Claims under the ADEA must be filed with the EEOC before filing suit.

LABOR RELATIONS

The National Labor Relations Act (NLRA) governs the legal relationships among employees, employers, and labor unions. It grants employees several basic rights, known as "Section 7 rights," such as the right to support or oppose labor unions in the workplace. Violating an employee's Section 7 rights can trigger unfair labor practice charges against an employer or union. The NLRA also provides for secret ballot elections by which employees can vote for or against unionization. An agency of the federal government, the National Labor Relations Board, enforces the NLRA and supervises the election process.

MEDICAL INFORMATION PRIVACY

In addition to covering the portability of health care coverage between employers, HIPAA sets forth specific privacy rights regarding individuals' medical records and other individually identifiable health information that is held or disclosed by a HIPAA-covered entity, such as a health plan or health care provider. In addition, HIPAA regulates how such information may be stored and transmitted and provides for significant fines for violations of HIPAA's confidentiality requirements.

OCCUPATIONAL SAFETY AND HEALTH

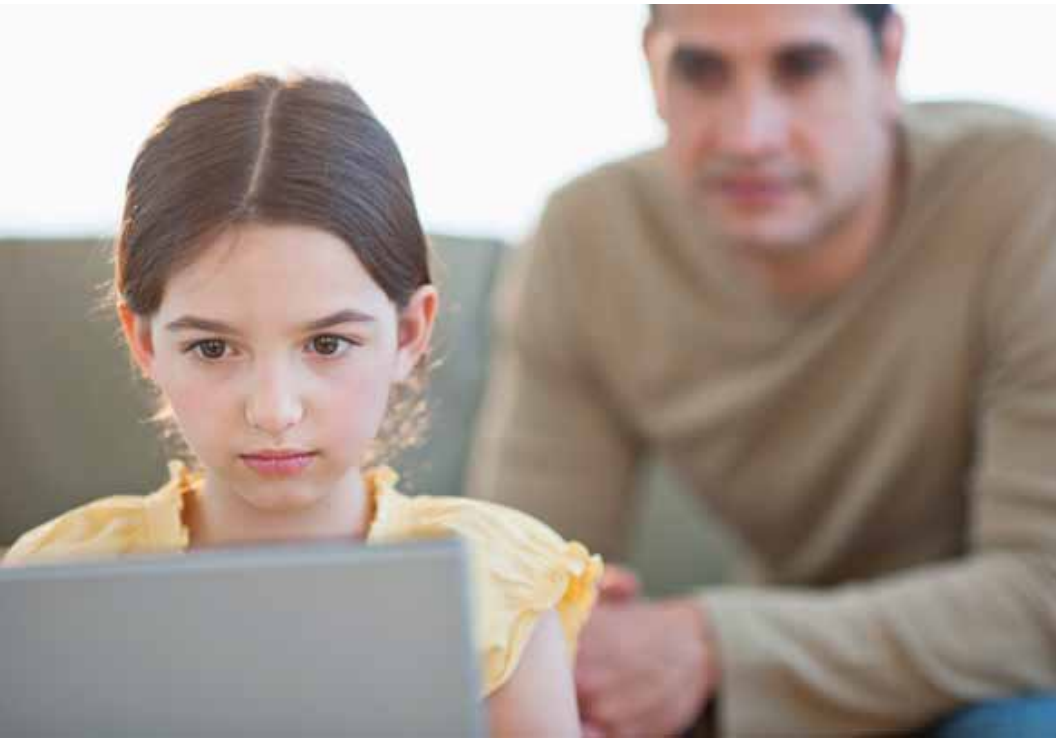
The Occupational Safety and Health Act requires all employers to provide their employees with a safe and healthy worksite free of hazards that may cause injuries and illnesses to workers. North and South Carolina have adopted the federal Occupational Safety and Health Administration (OSHA) standards almost verbatim, with exceptions in the areas of construction and general industry standards. Civil penalties for OSHA violations may be as high as $70,000 if the employer has knowledge of the hazard and shows an intentional disregard or indifference to the requirements of the law, or if a repeat violation occurs. OSHA also imposes record-keeping and recording requirements.

IMMIGRATION – NORTH CAROLINA

In 2011 North Carolina enacted legislation requiring the use of E-Verify for most private employers. Under the new law, all employers with 25 or more employees must use E-Verify unless the employees are seasonal, temporary workers that are employees for 90 days or less during any consecutive 12-month period. Employers that employ 500 or more employees must begin to use E-Verify in the hiring process by October 1, 2012. Employers that employ 100 to 499 employees have until January 1, 2013, to begin using E-Verify, and those with 25 to 99 employees have until July 1, 2013, to comply.

Complaints may be filed anonymously with the North Carolina Department of Labor (NCDOL). The NCDOL will investigate complaints with the assistance of the State Bureau of Investigation. The NCDOL also has the authority to issue subpoenas for the production of employment records that relate to recruitment, hiring, employment, termination policies, or any other acts or practices of employment.

If the NCDOL finds an employer has violated the state immigration law, the employer must file an affidavit stating that it has requested verification for work authorization for its employees. Failure to provide an affidavit in a timely manner will result in a civil penalty of $10,000, with additional penalties available for repeat violations. Additionally, if the NCDOL finds a reasonable likelihood that an employee is an unauthorized worker, it will notify Immigration and Customs Enforcement (ICE) and local law enforcement agencies.



AGE – RELEASES

The Older Workers Benefits Protection Act (OWBPA) sets out specific requirements that employers must follow to obtain a valid release of ADEA claims. Strict compliance with the OWBPA is required in all severance agreements or settlement agreements where rights under the ADEA are being released. If these requirements are not complied with, a severance or settlement agreement may be insufficient to release ADEA and, potentially, other claims.

AMERICANS WITH DISABILITIES ACT

Title 1 of the Americans with Disabilities Act (ADA) makes it unlawful for an employer with 15 or more employees to discriminate against a qualified individual with a disability. The ADA Amendments Act (ADAAA) provides that the definition of disability under the ADA should be construed in favor of broad coverage. Under the ADAAA, mitigating measures other than ordinary eyeglasses or contact lenses are not to be considered in assessing whether an individual has a disability, and an impairment that is episodic or in remission qualifies as a disability if it would substantially limit a major life activity when active.

A qualified individual with a disability is one who, with or without reasonable accommodation, can perform the essential functions of the employment position that he or she holds or desires. An employer must reasonably accommodate a disabled employee's functional limitations unless doing so would impose an undue hardship on the employer. The ADA also regulates the manner and method by which an employer may question employees, including the manner in which employee physicals and other medical examinations are administered. ADA claimants must file with the EEOC before filing suit.

GENETIC INFORMATION NON-DISCRIMINATION ACT

Title II of the Genetic Information Non-Discrimination Act (GINA) applies to private employers with 15 or more employees; federal, state, and local governments; and education institutions that employ 15 or more individuals. Title II prohibits employers from discriminating against employees and applicants on the basis of genetic information. Genetic information includes: an individual's genetic tests; the genetic tests of family members of the individual; and the manifestation of a disease or disorder in family members of an individual or in family medical history. Genetic information does not include information about the sex or age of any individual. Employers must keep genetic information confidential and in a separate medical file. The act is enforced by the EEOC. In general, the powers, remedies, and procedures provided for under Title VII also apply with regard to claims against employers under GINA.

STATE LAW

The law in North and South Carolina prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, age, or disability. Generally, these laws cover employers with 15 or more employees. North Carolina law also prohibits discrimination based on sickle cell trait, hemoglobin C trait, or genetic information. Furthermore, the laws in both states prohibit employers from retaliating against any employee for making a claim under, or exercising any rights guaranteed by, the payment of wages or workers' compensation statutes.

AFFIRMATIVE ACTION

Federal contractors and subcontractors and federally assisted construction contractors and subcontractors with contracts exceeding $10,000 are prohibited from discriminating against applicants and employees on the basis of race, color, religion, sex, and national origin, and covered contractors must take affirmative action to ensure equal employment opportunity. Federal contractors or subcontractors with 50 or more employees and $50,000 or more in government contracts or subcontracts must develop a written affirmative action program for each of their establishments.

IMMIGRATION – VISAS

U.S. immigration law provides three basic status types: U.S. citizens, Permanent Resident aliens (holders of "Green Cards"), and holders of various types of temporary visas. Temporary visas are designated as "A" through "V." Some temporary visas allow the holder to work in the United States; others do not. The most common temporary working visa used by businesses and universities is the H-1B visa. The H-1B has three fundamental requirements: the employee must hold a professional-level university degree, or the equivalent thereof; be offered a professional-level position; and be offered a salary that at least equals the "prevailing wage." No more than 85,000 H-1B visas are issued per year, and there are long waiting periods. Employers can also seek to employ workers on a permanent basis. Each year approximately 140,000 employment-based immigrant visas are available to qualified applicants. In most cases, a prospective employer must first obtain a labor certification approval from the U.S. Department of Labor before obtaining an immigrant visa approval.

IMMIGRATION – SOUTH CAROLINA

Under a 2011 revision of South Carolina's immigration enforcement law, all private employers must enroll and participate in E-Verify by January 1, 2012. Employers can no longer accept a state-issued driver's license or identification card from South Carolina or another acceptable state at the time of hire as proof of employment verification. Employers can operate in the state and employ workers only if their imputed employment license and all other applicable licenses (i.e., business license) are in effect. Employers must verify a new hire's work authorization status within three business days from the date of hire, even if the employee is terminated within the first three days of employment.

The South Carolina Department of Labor, Licensing and Regulation (SCLLR) will continue to enforce the employment verification requirements of the law. SCLLR may initiate an investigation based either upon a written and signed complaint or upon good cause if reasonable grounds exist that the employer violated the law. SCLLR will continue with random audits of employers as well. Penalties for violating the law may include suspension or revocation of the employer's business and/or employment license.

OTHER LAWS

ERISA

The Employee Retirement Income Security Act (ERISA) governs employee claims related to employer-sponsored retirement benefit plans and welfare benefit plans. ERISA establishes requirements for plan sponsors, plan administrators, plan fiduciaries, and third-party claims administrators. These requirements include proper management of plan assets, strict rules for claims processing, establishment of written plan documents, providing plan documents to plan participants and beneficiaries, and filing annual reports. ERISA preempts state law when the state law relates to a benefit plan. Common ERISA-based claims include claims for benefits under a benefit plan, claims for breach of fiduciary duty, and claims related to the plan administrator's failure to provide documents.

IMMIGRATION – I-9 COMPLIANCE

All employers, regardless of size, are required to verify the identity and eligibility of every new employee hired after November 6, 1986, using the I-9 form. To verify an individual's identity and employment eligibility, the employer must receive from each employee any combination of acceptable documents listed on the back of the I-9 form for review and verification. The hiring of unauthorized workers is strictly prohibited and may result in civil and/or criminal penalties for the employer. Once an employee is terminated, the employer must retain the I-9 form for three years from the date of hire or one year from the date of termination, whichever is later. Discrimination against employees or applicants on the basis of national origin or citizenship is prohibited under the law as well. The Department of Homeland Security's Immigration and Customs Enforcement agency has substantially increased worksite enforcement investigations in recent years. Employers are encouraged to conduct periodic I-9 self-audits and make appropriate corrections on I-9 forms working in close coordination with legal counsel.

OTHER INDIVIDUAL RIGHTS

AT-WILL EMPLOYMENT

Generally, employees are employed "at will," and an employer may terminate an employee at any time for any reason or for no reason at all. Both North Carolina and South Carolina recognize a "public policy exception" to the employment at-will doctrine; this exception prohibits the discharge of an employee at will for a reason that violates public policy.

EMPLOYEE HANDBOOKS

A South Carolina statute offers some protection for employers against a finding that a handbook, or other writing, creates a contract altering the at-will relationship provided that the writing includes a "conspicuous" disclaimer. The disclaimer must appear on the first page of the document in underlined capital letters, and, for handbooks and personnel manuals, employees must sign the disclaimer. It is currently unclear whether the "cover page" of a document or the numbered Page 1 will constitute the first page under the statute. In North Carolina, a handbook will not typically alter the employment at-will relationship. Handbooks can be very important tools for employers, from both a business and a legal standpoint. However, it is critical that employers keep their handbooks up-to-date with the ever-changing employment laws.

CREDIT AND OTHER BACKGROUND CHECKS

An employer conducting a background check on a job applicant or an employee, generally through a third party, that includes a "consumer report" must comply with the federal Fair Credit Reporting Act (FCRA). The FCRA defines a consumer report broadly to include any written, oral, or other communication by a consumer reporting agency that bears on a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living and is used for employment purposes. Under the FCRA, a consumer reporting agency is a person or company that regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports. Before procuring a consumer report, an employer must provide a clear and conspicuous notice to the applicant or employee in writing that a consumer report may be obtained for employment purposes and must obtain the individual's written consent to obtain the consumer report. Before taking any adverse action as to an applicant or employee that is based in whole or in part on a consumer report, an employer must provide to the applicant or employee a copy of the report and a description in writing of the rights of individuals under the FCRA.

DRUG AND ALCOHOL TESTING

Private employers in the Carolinas have the discretion to design and implement drug- and alcohol-testing policies. Generally speaking, testing may occur pre-employment or during employment – and on a random, for cause, or post-accident basis – after obtaining written consent. Employers must carefully follow chain-of-custody protocols when obtaining a testing specimen and only use certified laboratories to confirm test results. North Carolina heavily regulates drug testing and requires various notices to employees both before and after testing. Employers involved with transportation must also be mindful of other testing-related rules issued by the U.S. Department of Transportation.

FAMILY AND MEDICAL LEAVE

The Family and Medical Leave Act (FMLA) provides up to 12 weeks of unpaid leave in a 12-month period to eligible employees for certain family and/or medical needs and up to 26 workweeks of leave during a single 12-month period for certain military caregiver needs.

The FMLA applies to employers with 50 or more employees. In order to be eligible for FMLA leave, an employee must have worked for the employer for at least 12 months and must have worked 1,250 hours in the preceding 12-month period. An employee may take leave under the FMLA for, among other things, his or her own serious health condition; the birth or adoption of a child; the serious health condition of a spouse, child, or parent; or any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty. An eligible employee may take up to 26 workweeks of unpaid leave during a single 12-month period to care for a covered service member with a serious injury or illness who is the spouse, son, daughter, parent, or next of kin of the employee.

Generally, employees on FMLA leave are entitled to continued health insurance coverage during the FMLA leave period, as well as reinstatement to the same or an equivalent position at the end of the leave period.

SOUTH CAROLINA

The South Carolina Payment of Wages Act (SCPWA) requires an employer to notify an employee in writing at the time of hire of the wages agreed upon, the normal hours the employee will work, the time and place wages will be paid, and the deductions the employer will make from the employee's pay, including deductions for insurance. In the event an employer desires to make any changes to these terms, with the exception of an increase in pay, the employer must provide notice to the employee in writing at least seven calendar days before the change becomes effective. Employers are prohibited from making any deductions from an employee's wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notice to the employee as required by the SCPWA. The act requires that employers pay separated employees all wages due to them within 48 hours of separation or by the next regular payday, which may not exceed 30 days. The term "wages" is broadly defined under the act and may include accrued and unused vacation unless the employer has a policy stating otherwise. If an employer is found to be in violation of the SCPWA, liability may include not only the wages due, but up to three times the wages due and the employee's attorneys' fees and costs. In addition, recent South Carolina court decisions have made it clear that personal liability for managers of a company may exist under the SCPWA if certain circumstances are present.

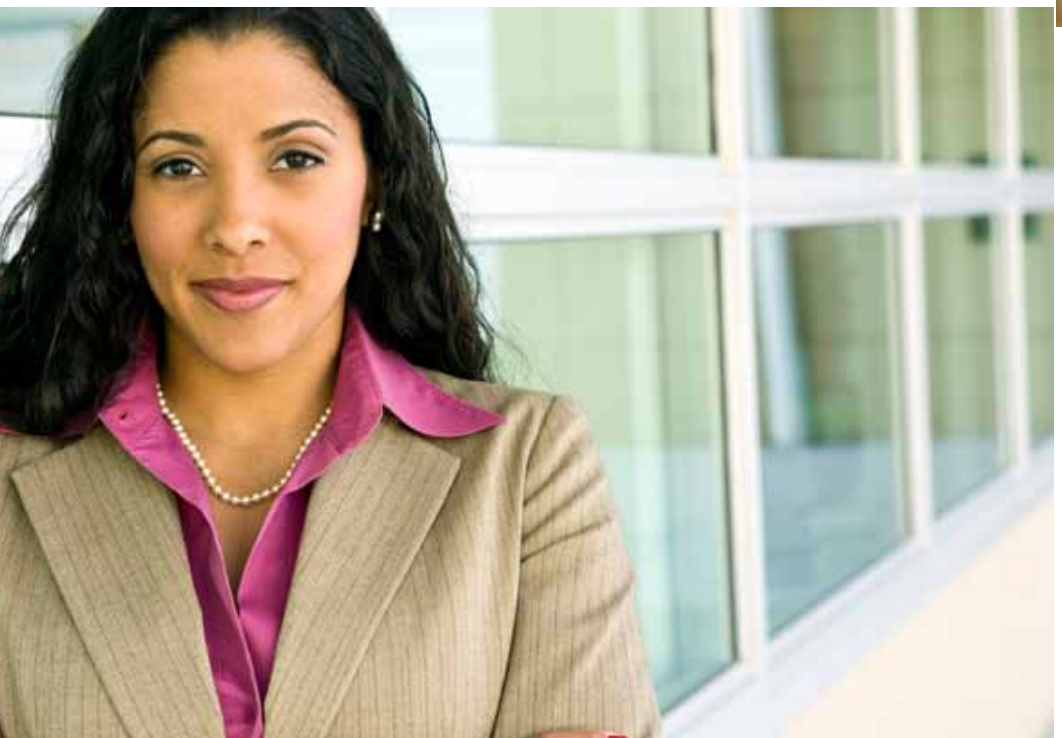
NORTH CAROLINA

North Carolina's Wage & Hour Act (NCWHA) requires employers to notify employees at the time of hire of the wages agreed upon and the time and place of payment. Any change in these terms, other than raises, must be communicated to employees at least 24 hours before the change becomes effective. Employers may not deduct any amount from an employee's wages unless the employer is required or permitted to do so by law or the employee has executed a written authorization form giving the employer permission to make the deduction. When an employee is terminated for any reason, the NCWHA requires that all wages due be paid by the next regular payday. If any employee will forfeit any "wages" (such as vacation pay, sick pay, or bonuses) upon termination, the employee must be properly notified in accordance with the NCWHA. If an employer violates the NCWHA, an aggrieved employee may recover double damages, plus costs and attorneys' fees.

WAGE AND HOUR LAW

FEDERAL

The Fair Labor Standards Act (FLSA) sets forth minimum wage, overtime pay, record-keeping and youth employment requirements for employers in both the private and public sector. The FLSA classifies employees as "exempt" or "non-exempt" and requires employers to pay covered non-exempt employees overtime pay at a rate of not less than one and one-half the regular rate of pay for any hours worked in excess of 40 hours during a workweek. Exemptions from overtime pay are available for certain employees, such as executives, professionals, administrators, and computer technicians. The act also sets forth the requirements for employers who claim a "tip credit" against their minimum wage obligation to "tipped employees." The FLSA requires employers to display a poster describing their obligations under the act and to maintain certain employee time and pay records. In addition to employees' having the right to bring a lawsuit under the FLSA, the U.S. Department of Labor may recover back wages and penalties for violations of the FLSA.



HEALTH INSURANCE CONTINUATION COVERAGE

Group health plans of employers with 20 or more employees are required to provide health care continuation coverage to employees and their qualified beneficiaries under COBRA when, in the absence of COBRA, such coverage would end. If an eligible employee experiences a "qualifying event" that results in a loss of coverage, continuation coverage must be offered for 18 months to the employee and his or her dependents. In some cases, the period of continuation coverage may be extended to up to 36 months. "Qualifying events" include reduction in the employee's hours of employment; termination of the employee for any reason other than gross misconduct; or loss of coverage due to divorce or legal separation of the employee. COBRA also contains several notice requirements. North and South Carolina state law requires employers to provide continuation coverage where COBRA does not apply.

HEALTH INSURANCE PORTABILITY REQUIREMENTS

The Health Insurance Portability and Accountability Act (HIPAA) allows for portability of health care coverage; limits pre-existing condition exclusions for plan participants moving from one plan to another; and provides for the availability of health care coverage for small employers. Also, state law in North and South Carolina allows participants in group health plans to convert their group coverage to individual coverage.

HEALTH CARE REFORM

The Patient Protection and Affordable Care Act (PPACA) was enacted on March 23, 2010, and ushered into law sweeping changes reflecting the federal government's efforts to expand health care access and coverage. The new law contains many provisions that will become effective over an extended time-line, with most of the changes taking effect during a four-year period beginning with enactment through 2014. The new law contains mandated coverage levels, employer mandates, individual mandates, health care exchanges, Medicare and Medicaid reforms, and health care education initiatives, as well as preventive care and quality of care programs. PPACA's many reforms and changes are certain to be changed during its extended implementation period. Employers will have to adapt to PPACA's certain evolution.

MILITARY SERVICE LEAVE

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), men and women serving in the uniformed services have various employment and reemployment rights. USERRA applies to all employers regardless of size and protects all employees serving in the military, regardless of whether military service is voluntary or involuntary. The employee must be treated as if he or she had been employed continuously during the military service, and health insurance, pension, and other benefits must be maintained during the leave. Under most circumstances, the employer must reinstate the employee at the conclusion of the military service and, typically, to a position the employee would have held had he or she not taken the leave. For a period of time after returning from military service, an employee may only be terminated "for cause." Discrimination and retaliation on the basis of military service are prohibited. North Carolina has a similar statutory scheme for employees serving in the N.C. National Guard. The FMLA also provides certain rights to spouses, children, parents, and other family members of those serving in the armed services.

PERSONNEL FILES

Personnel files may include, among other documents, benefit elections and information about marital status, dependents, age, and the like where needed for insurance, benefits, or tax purposes. All medical information – including, without limitation, any information gathered in connection with medical examinations, FMLA leave requests, or drug testing – must be maintained in separate medical files and treated confidentially. Private sector employees do not have any guaranteed right to review their personnel files.

POLYGRAPH TESTS

The Employee Polygraph Protection Act (EPPA) broadly prohibits the use of polygraph and lie detectors in the workplace. Although there are a few exceptions, these exceptions are liability traps for the unwary. The EPPA specifically prohibits any employer from directly or indirectly requiring, requesting, suggesting, or causing an employee or prospective employee to take a lie detector test. Furthermore, an employer may not discharge or take any adverse action against a current employee, or refuse to hire an applicant, for refusal to take a lie detector test. The U.S. Secretary of Labor may impose civil penalties for violations of the EPPA, and individuals may bring a private civil action.

SMOKERS

Both North and South Carolina protect the rights of smokers in the workplace. In South Carolina, the use of tobacco products outside the workplace may not be the basis of any personnel action. The South Carolina statute applies to all employers regardless of size. In North Carolina, private employers with three or more regularly employed individuals (as well as certain public employers) are generally prohibited from discriminating against an employee because he or she engages in the use of lawful products (such as tobacco or alcohol) off the employer's premises, during non-working hours, and where such usage has no adverse effect on job performance or safety.

UNEMPLOYMENT BENEFITS

Both North and South Carolina provide for unemployment benefits for qualified employees who are separated from employment. To be eligible, the former employee must meet certain wage requirements, must be unemployed or partially unemployed, and must show that he or she was separated from employment through no fault of his or her own. Decisions granting and denying unemployment benefits are appealable by the affected party. An employer's unemployment tax rate is generally dependent upon the amount of unemployment benefit "experience" the employer has obtained, and an employer may appeal the determined rate.