

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 423
SENATE BILL 643

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE
RETALIATORY EMPLOYMENT DISCRIMINATION LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-241 reads as rewritten:

"§ 95-241. Discrimination prohibited.

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

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
 - a. Chapter 97 of the General Statutes.
 - b. Article 2A or Article 16 of this Chapter.
 - c. Article 2A of Chapter 74 of the General Statutes.
 - d. G.S. 95-28.1.
- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
- (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.

(b) It shall not be a violation of this Article for a person to discharge or take any other unfavorable action with respect to an employee who has engaged in protected activity as set forth under this Article if the person proves by the greater weight of the evidence that it would have taken the same unfavorable action in the absence of the protected activity of the employee."

Sec. 2. G.S. 95-242 reads as rewritten:

"§ 95-242. Complaint; investigation; conciliation.

(a) An employee allegedly aggrieved by a violation of G.S. 95-241 may file a written complaint with the Commissioner of Labor alleging the violation. The complaint shall be filed within 180 days of the alleged violation. Within 20 days following receipt of the complaint, the Commissioner shall forward a copy of the complaint to the person alleged to have committed the violation and shall initiate an investigation. If the Commissioner determines after the investigation that there is not reasonable cause to believe that the allegation is true, the Commissioner shall dismiss the complaint, promptly notify the employee and the respondent, and issue a right-to-sue letter to the

employee that will enable the employee to bring a civil action pursuant to G.S. 95-243. If the Commissioner determines after investigation that there is reasonable cause to believe that the allegation is true, the Commissioner shall attempt to eliminate the alleged violation by informal methods which may consist of conference, conciliation, and persuasion. The Commissioner shall make a determination as soon as possible and, in any event, not later than 90 days after the filing of the complaint.

(b) If the Commissioner is unable to resolve the alleged violation through the informal ~~procedures, methods,~~ the Commissioner shall notify the parties in writing that conciliation efforts have failed. The Commissioner shall then either file a civil action on behalf of the employee pursuant to G.S. 95-243 or issue a right-to-sue letter to the employee enabling the employee to bring a civil action pursuant to G.S. 95-243.

(c) An employee may make a written request to the Commissioner for a right-to-sue letter after 180 days following the filing of a complaint if the Commissioner has not issued a notice of conciliation failure and has not commenced an action pursuant to G.S. 95-242.

(d) Nothing said or done during the ~~course-use of these the informal procedures~~ methods described in subsection (a) of this section may be made public by the Commissioner or used as evidence in a subsequent proceeding under this Article without the written consent of the persons concerned.

(e) The Commissioner's files and the Commissioner's other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are open or pending in the trial court division.

(f) In making inspections and investigations under this Article, the Commissioner or his duly authorized agents may, in addition to exercising the authority granted in G.S. 95-4, issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel reimbursement requirements of the State. In the case of failure or refusal of any person to obey a subpoena under this Article, the district court judge or superior court judge of the county in which the inspection or investigation is conducted shall, upon the application of the Commissioner, have jurisdiction to issue an order requiring compliance."

Sec. 3. Article 21 of Chapter 95 of the General Statutes is amended by adding the following new section to read:

"§ 95-245. Rules.

The Commissioner may adopt rules needed to implement this Article pursuant to the provisions of Chapter 150B of the General Statutes."

Sec. 4. This act is effective upon ratification and applies to complaints filed under G.S. 95-242 on or after that date.

In the General Assembly read three times and ratified this the 21st day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives