

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 663
SENATE BILL 391

AN ACT TO REPEAL AND AMEND SECTIONS OF THE WAGE AND HOUR ACT.

Whereas, the North Carolina Department of Labor has given close and careful attention to interpreting and enforcing the provisions of the Wage and Hour Act as now written; and

Whereas, it has become apparent there is a need to clarify the act by repealing and amending certain provisions; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.7 is hereby amended by adding the following sentence at the end thereof:

"Wages based on bonuses, commissions or other forms of calculation shall be paid on the first regular payday after the amount becomes calculable when a separation occurs. Such wages may not be forfeited unless the employee has been notified in accordance with G.S. 95-25.13 of the employer's policy or practice which results in forfeiture. Employees not so notified are not subject to such loss or forfeiture."

Sec. 2. G.S. 95-25.8 is hereby amended by deleting the period at line 7 and adding the following words at the end thereof: "indicating the reason for the deduction. Two types of authorization are permitted:

(a) When the amount or rate of the proposed deduction is known and agreed upon in advance, the authorization shall specify the dollar amount or percentage of wages which shall be deducted from one or more paychecks, provided that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization;

(b) When the amount of the proposed deduction is not known and agreed upon in advance, the authorization need not specify a dollar amount which can be deducted from one or more paychecks, provided that the employee receives advance notice of the specific amount of any proposed deduction and is given a reasonable opportunity to withdraw the authorization before the deduction is made."

Sec. 3. G.S. 95-25.9 is hereby rewritten to read as follows:

"§ 95-25.9. Certain claims not to be deducted immediately. — Cash shortages, inventory shortages, or loss or damage to an employer's property may not be deducted from an employee's wages unless the employee receives notice of the amount to be deducted at least seven days prior to the payday on which the deduction is to be made, except when a separation occurs the seven-day notice is not required."

Sec. 4. G.S. 95-25.10 is hereby rewritten to read as follows:

"§ 95-25.10. Combined amounts of certain deductions and recoupments limited. — Cash shortages, inventory shortages, loss or damage to an employer's property, and deposits by the employee for the use of the employer's property may be deducted by an employer from an employee's paycheck in accordance with the requirements of G.S. 95-25.8 and G.S. 95-25.9 or may be recouped by methods other than payroll deductions, provided that the combined amount

of such deductions or recoupments shall not reduce wages for the pay period during which the deduction or recoupment occurs below:

- (1) eighty-five percent (85%) of the minimum and overtime wages required under this Article when such wages for the employee are determined under this Article, or
- (2) the minimum and overtime wages required under the Fair Labor Standards Act when such wages for the employee are determined under that Act, or
- (3) an amount equivalent to the amount of minimum and overtime wages which would be required under this Article when the wages for an employee are determined neither by this Article nor by the Fair Labor Standards Act.

Nothing in this section shall prohibit the voluntary repayment of any amount owed by an employee to an employer."

Sec. 5. G.S. 95-25.11 is hereby rewritten to read as follows:

"§ 95-25.11. Employers' remedies preserved. — (a) The provisions of G.S. 95-25.8, G.S. 95-25.9, and G.S. 95-25.10 do not apply if criminal process has issued against the employee, if the employee has been indicted, or if the employee has been arrested pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge incident to a cash shortage, inventory shortage, or damage to an employer's property.

If the employee is not found guilty, then the amount deducted shall be reimbursed to the employee by the employer.

(b) Nothing in this Article shall preclude an employer from bringing a civil action in the General Court of Justice to collect any amounts due the employer from the employee."

Sec. 6. G.S. 95-25.12 is hereby rewritten to read as follows:

"§ 95-25.12. Vacation pay. — No employer is required to provide vacation for employees. However, if an employer provides vacation for employees, the employer shall give all vacation time off or payment in lieu of time off in accordance with the company policy or practice. Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which requires or results in loss or forfeiture of vacation time or pay. Employees not so notified are not subject to such loss or forfeiture."

Sec. 7. G.S. 95-25.14 is hereby amended and rewritten to read as follows:

"§ 95-25.14. Exemptions. — (a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), G.S. 95-25.5 (Youth Employment), and G.S. 95-25.15(b) (Record Keeping) as it relates to these exemptions do not apply to:

- (1) Any person or establishment required to comply with or subject to the regulation of wages, overtime, child labor and related record keeping under the Fair Labor Standards Act, except as otherwise specifically provided in G.S. 95-25.5;
- (2) Any person employed in agriculture, as defined under the Fair Labor Standards Act;
- (3) Any person employed as a domestic, including baby sitters and companions, as defined under the Fair Labor Standards Act;
- (4) Any person employed as a page in the North Carolina General Assembly or in the Governor's Office;
- (5) Bona fide volunteers in medical, educational, religious, or nonprofit organizations where an employer-employee relationship does not exist;
- (6) Persons confined in and working for any penal, correctional or mental institution of the State or local government;
- (7) Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio or television productions, as defined under the Fair Labor Standards Act, except as otherwise specifically provided in G.S. 95-25.5;

(8) Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special effects, except as otherwise specifically provided in G.S. 95-25.5; but this exemption does not include such positions as office workers, ticket takers, ushers and parking lot attendants.

(b) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), and G.S. 95-25.15(b) (Record Keeping) as it relates to these exemptions do not apply to:

- (1) Any employee of a boys' or girls' summer camp;
- (2) Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;
- (3) The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina;
- (4) Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act;
- (5) Any person employed in an enterprise that does not have three or more employees in any workweek;
- (6) Any person while participating in a ridesharing arrangement as defined in G.S. 136-44.21.

(c) The provisions of G.S. 95-25.4 (Overtime) and G.S. 95-25.15(b) (Record Keeping) as it relates to this exemption do not apply to:

- (1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair Labor Standards Act;
- (2) Taxicab drivers;
- (3) Seamen, employees of railroads, and employees of air carriers, as defined under the Fair Labor Standards Act;
- (4) Salespersons, mechanics and partsmen employed by automotive, truck, and farm implement dealers, as defined under the Fair Labor Standards Act;
- (5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under the Fair Labor Standards Act;
- (6) Live-in child care workers or other live-in employees in homes for dependent children;
- (7) Radio and television announcers, news editors, and chief engineers, as defined under the Fair Labor Standards Act.

(d) The provisions of this Article do not apply to the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, except for the following provisions, which do apply:

- (1) The minimum wage provisions of G.S. 95-25.3;
- (2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable provisions;
- (3) The exemptions of subsections (a) and (b) of this section;
- (4) The complainant protection provisions of G.S. 95-25.20.

(e) Employment in a seasonal recreation program by the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage)."

Sec. 8. G.S. 95-25.20 is hereby amended by striking the number "30" in line 5 and substituting in lieu thereof the number "60".

G.S. 95-25.20 is further amended and divided into subsections by designating the present section as subsection (a) and by adding a new subsection (b), to read as follows:

"(b) Files and 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 pending."

Sec. 9. G.S. 95-25.23 is hereby amended by adding a new subsection immediately following subsection (c), to be designated subsection (d), and to read as follows:

"(d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation."

Sec. 10. G.S. 95-25.2(11) is hereby amended and rewritten to read as follows:

"(11) 'Person' means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons. For the purposes of G.S. 95-25.2, G.S. 95-25.3, G.S. 95-25.14, and G.S. 95-25.20, it also means the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government. The Government of the United States and any agency of the United States (including the United States Postal Service and Postal Rate Commission) are not included as persons for any purpose under this Article."

Sec. 11. G.S. 95-25.2 is hereby amended by adding a new subdivision immediately following subdivision (17), to be designated subdivision (18), and to read as follows:

"(18) 'Enterprise' means the related activities performed either through unified operations or common control by any person or persons for a common business purpose and includes all such activities whether performed in one or more establishments or by one or more corporate units but shall not include the related activities performed for such enterprise by an independent contractor or franchisee."

Sec. 12. G.S. 95-25.13 is hereby amended by striking from subdivision (3) the reference to "(b)" in line 11 and substituting in lieu thereof "(2)".

Sec. 13. G.S. 95-25.3(b) is hereby amended on line 3 thereof by striking all that appears after the word "be" and substituting the following:

"ninety percent (90%) of the rate in effect under subsection (a) above, rounded to the lowest nickel."

Sec. 14. G.S. 136-44.25, as enacted by Chapter 606, Session Laws of 1981, is amended by deleting the citation "G.S. 95-25.14(b)(5)", and inserting in lieu thereof the citation "G.S. 95-25.14(b)(6)".

Sec. 15. This act shall become effective October 1, 1981.

In the General Assembly read three times and ratified, this the 24th day of June, 1981.