

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-94
SENATE BILL 384

AN ACT AMENDING THE NORTH CAROLINA PERSONS WITH DISABILITIES PROTECTION ACT TO CONFORM WITH FEDERAL CHANGES UNDER THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008 (ADAAA).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 168A-3 reads as rewritten:

"§ 168A-3. Definitions.

As used in this Chapter, unless the context otherwise requires:

(1) "Covered governmental entity" means any State department, institution, agency, or any political subdivision of the State or any person that contracts with a State department, institution, agency, or political subdivision of the State for the delivery of public services, including, but not limited to, education, health, social services, recreation, and rehabilitation.

~~(4)~~(1a) "Disabling condition" means any condition or characteristic that renders a person a person with a disability.

~~(4a)~~(1b) "Discriminatory practice" means any practice prohibited by this Chapter.

...

(7a) "Person with a disability" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

a. "Physical or mental impairment" means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, ~~affecting one or more of the following body systems:~~a body system, including, but not limited to, neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in naturenature, lasting six months or fewer, and leaving no residual impairment. A disorder, condition, or disfigurement that is episodic or in remission is a physical or mental impairment if it would substantially limit a major life activity when active.

b. "Major life activities" means ~~functions such as~~functions, including, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, eating, sleeping, lifting, bending, standing, breathing, learning, reading, concentrating, thinking,



communicating, and working. A major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

- c. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.
- d. "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as (i) medication, medical supplies, equipment, or appliances, low-vision devices, which do not include ordinary eyeglasses or contact lenses, prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; (ii) use of assistive technology; (iii) reasonable accommodations or auxiliary aids or services; or (iv) learned behavioral or adaptive neurological modifications.

...
(10) "Reasonable accommodations" means:

- b. With regard to a place of public ~~accommodations~~, accommodations and a covered governmental entity, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, ~~provide~~ providing auxiliary aids and services needed to make aurally and visually delivered materials available, as needed, to individuals with hearing or sight impairments, providing mechanical aids or other assistance, or using alternative accessible locations, provided that reasonable accommodations does not require efforts which would impose an undue hardship on the entity involved.

...."

SECTION 2. G.S. 168A-4 reads as rewritten:

"§ 168A-4. Reasonable accommodation duties.

(a) A qualified person with a disability requesting a reasonable accommodation must apprise the employer, employment agency, labor organization, ~~or~~ place of public ~~accommodation~~ accommodation, or covered governmental entity of his or her disabling condition, submit any necessary medical documentation, make suggestions for such possible accommodations as are known to such person with a disability, and cooperate in any ensuing discussion and evaluation aimed at determining possible or feasible accommodations.

(b) Once a qualified person with a disability has requested an accommodation, or if a potential accommodation is obvious in the circumstances, an employer, employment agency, labor ~~organization or~~ organization, place of public ~~accommodation~~ accommodation, or covered

governmental entity shall investigate whether there are reasonable accommodations that can be made and make reasonable accommodations as defined in G.S. 168A-3(10)."

SECTION 3. G.S. 168A-7 reads as rewritten:

"§ 168A-7. Discrimination in public service.

(a) ~~It is a discriminatory practice for a State department, institution, or agency, or any political subdivision of the State or any person that contracts with the above for the delivery of public services including but not limited to education, health, social services, recreation, and rehabilitation,~~covered governmental entity to exclude a qualified person with a disability from participation in or deny the benefits of services, programs, or activities because of a disability or to refuse to provide reasonable accommodations, including auxiliary aids and adaptations services necessary for a known qualified person with a disability to use or benefit from existing public services operated by such entity; provided that the aids and adaptations accommodations do not impose an undue hardship on the entity involved. This subsection includes equivalent services provided via information technology.

(b) ~~A State department, institution, or agency, any political subdivision of the State, and any person that contracts with these entities for the delivery of public services~~covered governmental entity shall administer its services, programs, and activities in the most integrated setting appropriate to the needs of persons with disabilities."

SECTION 4. G.S. 168A-9 reads as rewritten:

"§ 168A-9. Affirmative defenses.

Any employer may assert affirmative defenses in any action brought under this Chapter. This section shall not create any inference that an employment action which is not listed as an affirmative defense is therefore, by implication, a discriminatory practice, so long as the employment action is not otherwise prohibited by this Chapter. The following is a non-exclusive list of affirmative defenses:

- (1) The failure of the qualified person with a disability to comply with or meet the employer's work rules and policies or performance standards, absent a reasonable accommodation excusing noncompliance, provided that ~~such the~~ person is not held to rules or standards different from other employees without a disability similarly employed;
- (2) The excessive, willful or habitual tardiness or absence of a qualified person with a disability, absent a reasonable accommodation that allows for flexible working hours, provided that the standard used by the employer in determining whether such tardiness or absence is excessive is the same as that applied by the employer to employees without a disability similarly employed; or
- (3) A bona fide seniority or merit system, or a system which measures earnings by quantity or quality of work or production, or differences in location of employment."

SECTION 5. G.S. 168A-10 reads as rewritten:

"§ 168A-10. Retaliation prohibited.

(a) No employer shall discharge, expel, refuse to hire, or otherwise discriminate against any person or applicant for employment, nor shall any employment agency discriminate against any person, nor shall a labor organization discriminate against any member or applicant for membership because ~~such the~~ person has opposed any practice made a discriminatory practice by this Chapter or because ~~he the~~ person has testified, assisted or participated in any manner in proceedings under this Chapter.

(b) No entity or person covered under this Chapter shall retaliate against or coerce, intimidate, threaten, or interfere with a person who exercises rights under this Chapter or assists a person in exercising the person's rights under this Chapter."

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of May, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 10:54 a.m. this 26th day of May, 2011