Chapter 168A.

Persons With Disabilities Protection Act.

§ 168A-1. Title.

This Chapter may be cited as the North Carolina Persons With Disabilities Protection Act. (1985, c. 571, s. 1; 1999-160, s. 1.)

§ 168A-2. Statement of purpose.

(a) The purpose of this Chapter is to ensure equality of opportunity, to promote independent living, self-determination, and economic self-sufficiency, and to encourage and enable all persons with disabilities to participate fully to the maximum extent of their abilities in the social and economic life of the State, to engage in remunerative employment, to use available public accommodations and public services, and to otherwise pursue their rights and privileges as inhabitants of this State.

(b) The General Assembly finds that: the practice of discrimination based upon a disabling condition is contrary to the public interest and to the principles of freedom and equality of opportunity; the practice of discrimination on the basis of a disabling condition threatens the rights and proper privileges of the inhabitants of this State; and such discrimination results in a failure to realize the productive capacity of individuals to their fullest extent. (1985, c. 571, s. 1; 1999-160, s. 1; 2002-163, s. 1.)

§ 168A-3. Definitions.

The following definitions apply in this Chapter:

(1) Covered governmental entity. – 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.

(1a) Disabling condition. – Any condition or characteristic that renders a person a person with a disability.

(1b) Discriminatory practice. – Any practice prohibited by this Chapter.

(2) Employer. – Any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.

(3) Employment agency. – A person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.

(4) Recodified as G.S. 168A-3(7a).

(4a) Information technology. – As defined in G.S. 143B-1320. The term also specifically includes information transaction machines.

(5) Recodified as G.S. 168A-3(1).

(6) Labor organization. – An organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(7) Person. – Any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.

(7a) Person with a disability. – 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. The following definitions apply in this subdivision:

a. Physical or mental impairment. – Any of the following:

1. Any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect, or illness, affecting 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.

2. Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

"Physical or mental impairment" excludes (i) sexual preferences; (ii) active alcoholism or drug addiction or abuse; and (iii) any disorder, condition, or disfigurement which is temporary in nature, 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. – 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. – 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. – Any of the following:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation.

2. Has a physical or mental impairment that substantially limits major life activities because of the attitudes of others.

3. Has none of the impairments defined in sub-subdivision 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.

(8) Place of public accommodations. – Includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.

(9) Qualified person with a disability. – All of the following:

a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a disability, other employees, the employer's customers, or the public.

b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public accommodation.

c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.

(10) Reasonable accommodations. – All of the following:

a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job. "Reasonable accommodation" does not require that an employer do any of the following:

1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be employed.

2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned.

3. Reassign duties of the job in question to one or more other employees where the reassignment would increase the skill,

effort, or responsibility required of the other employee or employees from that required prior to the change in duties.

4. Alter, modify, change, or deviate from bona fide seniority policies or practices.
5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally.
6. Repealed by Session Laws 2002-163, s. 2, effective January 1, 2003.
7. Make any changes that would impose on the employer an undue hardship.

b. With regard to a place of public 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, 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. Reasonable accommodations do not require efforts which would impose an undue hardship on the entity involved.

(11) Undue hardship. – A significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:

a. The nature and cost of the accommodations needed under this Chapter.
b. The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources at the facility, and any other impact on the operation of the facility.
c. The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type, and location of the covered entity's facilities.
d. The type of operations of the covered entity, including the composition, structure, and functions of the workforce of the entity, the geographic separateness of the particular facility to the covered entity, and the administrative or fiscal relationship of the particular facility to the covered entity. (1985, c. 571, s. 1; 1999-160, s. 1; 1999-456, s. 44; 2002-163, s. 2; 2011-94, s. 1; 2015-241, s. 7A.4(hh); 2018-47, s. 14.)

§ 168A-4. Reasonable accommodation duties.

(a) A qualified person with a disability requesting a reasonable accommodation must apprise the employer, employment agency, labor organization, place of public 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, place of public 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). (1985, c. 571, s. 1; 1999-160, s. 1; 2011-94, s. 2.)

§ 168A-5. Discrimination in employment; exemptions.

(a) Discriminatory practices. – It is a discriminatory practice for:

(1) An employer to fail to hire or consider for employment or promotion, to discharge, or otherwise to discriminate against a qualified person with a disability on the basis of a disabling condition with respect to compensation or the terms, conditions, or privileges of employment;

(2) An employment agency to fail or refuse to refer for employment, or otherwise to discriminate against a qualified person with a disability on the basis of a disabling condition;

(3) A person controlling an apprenticeship, on-the-job, or other training or retraining program, to discriminate against a qualified person with a disability on the basis of a disabling condition in admission to, or employment in, a program established to provide apprenticeship or other training;

(4) An employer or employment agency to require an applicant to identify himself as a person with a disability prior to a conditional offer of employment; however, any employer may invite an applicant to identify himself as a person with a disability in order to act affirmatively on his behalf; or

(5) An employer, labor organization, or employment agency to fail to meet the duties imposed on them by G.S. 168A-4(b).

(b) Exemptions. – It is not a discriminatory action for an employer, employment agency, or labor organization:

(1) To make an employment decision on the basis of State and federal laws or regulations imposing physical, health, mental or psychological job requirements;

(2) To fail to hire, transfer or promote, or to discharge a person with a disability who has a history of drug abuse or who is unlawfully using drugs where the job in question is in an establishment that manufactures, distributes, dispenses, conducts research, stores, sells or otherwise handles controlled substances regulated by the North Carolina Controlled Substances Act, G.S. 90-86 et seq.;

(3) To fail to hire, transfer, or promote, or to discharge a person with a disability because the person has a communicable disease which would disqualify a person without a disability from similar employment;

(4) To fail to make reasonable accommodations where the person with a disability has not fulfilled the duties imposed by G.S. 168A-4;

(5) To inquire whether a person has the ability to perform the duties of the job in question;

(6) To require or request a person to undergo a medical examination, which may include a medical history, for the purpose of determining the person's ability or

capacity to safely and satisfactorily perform the duties of available jobs for which the person is otherwise qualified, or to aid in determining possible accommodations for a disabling condition, provided (i) that an offer of employment has been made on the condition that the person meets the physical and mental requirements of the job with or without reasonable accommodation; and (ii) that the examination, unless limited to determining the extent to which a person's disabling condition would interfere with his or her ability or capacity to safely and satisfactorily perform the duties of the job in question or the possible accommodations for a disabling condition, is required of all persons conditionally offered employment for the same position regardless of disabling condition;

(7) To obtain medical information or to require or request a medical examination where such information or examination is for the purpose of establishing an employee health record;

(8) To administer pre-employment tests, provided that the tests (i) measure only job-related abilities, (ii) are required of all applicants for the same position unless such tests are limited to determining the extent to which the person's disabling condition would interfere with his or her ability to safely and satisfactorily perform the duties of the job in question or the possible accommodations for the job in question, and (iii) accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the impaired sensory, manual or speaking skills of a person with a disability except when those skills are requirements of the job in question, provided that an employer shall not be liable for improper testing which was administered by a State agency acting as an employment agency. (1985, c. 571, s. 1; 1999-160, s. 1.)

§ 168A-6. Discrimination in public accommodations.

It is a discriminatory practice for a person to deny a qualified person with a disability the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of a disabling condition. In the area of structural modifications, this section may be satisfied by compliance with the North Carolina Building Code. (1985, c. 571, s. 1; 1999-160, s. 1.)

§ 168A-7. Discrimination in public service.

(a) It is a discriminatory practice for a 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 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 accommodations do not impose an undue hardship on the entity involved. This subsection includes equivalent services provided via information technology.

(b) A covered governmental entity shall administer its services, programs, and activities in the most integrated setting appropriate to the needs of persons with disabilities. (1985, c. 571, s. 1; 1999-160, s. 1; 2002-163, s. 3; 2011-94, s. 3.)

§ 168A-8. Discrimination in public transportation.

It is a discriminatory practice for any transportation system providing transportation to the general public to fail to ensure access to and the benefits of public transportation to a qualified person with a disability; however, public transportation systems may use alternative methods to provide transportation for persons with a disability, as long as persons with a disability are offered transportation that, in relation to the transportation offered to other persons, is:

(1) In a similar geographic area of operation;
(2) For fares not greater in price;
(3) With similar or no restrictions as to trip purpose;
(4) With reasonable response time; and
(5) With similar hours of operations.

Nothing in this section shall apply to privately owned, local transit or transportation systems existing on October 1, 1985, or to interstate air carriers complying with federal regulations promulgated by the Civil Aeronautics Board and administered by the United States Department of Transportation. (1985, c. 571, s. 1; 1999-160, s. 1.)

§ 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 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. (1985, c. 571, s. 1; 1999-160, s. 1; 2011-94, s. 4.)

§ 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 the person has opposed any practice made a discriminatory practice by this Chapter or because 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. (1985, c. 571, s. 1; 2011-94, s. 5.)

§ 168A-10.1. Dispute resolution in public services discrimination cases.

The North Carolina Office on the Americans with Disabilities Act shall adopt rules to provide a consistent and comprehensive mechanism for accommodating requests regarding accessibility to public services, and shall adopt dispute resolution procedures to govern responsiveness to those requests. This section does not authorize the North Carolina Office on the Americans with Disabilities Act to adopt rules or procedures that apply to the resolution of matters constituting grounds for a contested case under Chapter 126 of the General Statutes. (2002-163, s. 4.)

§ 168A-11. Civil action.

(a) A person with a disability aggrieved by a discriminatory practice prohibited by G.S. 168A-5 through 168A-8, or a person aggrieved by conduct prohibited by G.S. 168A-10, may bring a civil action to enforce rights granted or protected by this Chapter against any person described in G.S. 168A-5 through 168A-8 or in G.S. 168A-10 who is alleged to have committed such practices or engaged in such conduct. The action shall be commenced in superior court in the county where the alleged discriminatory practice or prohibited conduct occurred or where the plaintiff or defendant resides. Such action shall be tried to the court without a jury.

(b) Any relief granted by the court shall be limited to declaratory and injunctive relief, including orders to hire or reinstate an aggrieved person or admit such person to a labor organization. In a civil action brought to enforce provisions of this Chapter relating to employment, the court may award back pay. Any such back pay liability shall not accrue from a date more than two years prior to the filing of an action under this Chapter. Interim earnings or amounts earnable with reasonable diligence by the aggrieved person shall operate to reduce the back pay otherwise allowable.

(c) No court shall have jurisdiction over an action filed under this Chapter where the plaintiff has commenced federal judicial or administrative proceedings under Section 503 or Section 504 of the Vocational Rehabilitation Act of 1973, 29 U.S.C. §§ 793 and 794, as amended, or federal regulations promulgated under those sections; or under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., as amended, or federal regulations promulgated under that Act, involving or arising out of the facts and circumstances involved in the alleged discriminatory practice under this Chapter. If such proceedings are commenced after a civil action has been commenced under this Chapter, the State court's jurisdiction over the civil action shall end and the action shall be forthwith dismissed.

(d) In any civil action brought under this Chapter, the court, in its discretion, may award reasonable attorney's fees to the substantially prevailing party as part of costs. (1985, c. 571, s. 1; 1999-160, s. 1.)

§ 168A-12. Statute of limitations.

A civil action regarding employment discrimination brought pursuant to this Chapter shall be commenced within 180 days after the date on which the aggrieved person became aware of or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct. A civil action brought pursuant to this Chapter regarding any other complaint of discrimination shall be commenced within two years after the date on which the aggrieved person became aware of or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct. (1985, c. 571, s. 1; 1999-160, s. 1.)