

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH30157-LR-126 (3/24)

Short Title: State Gov't Equal Employment Opportunity. (Public)

Sponsors: Representatives Luebke and Womble (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PERSONNEL ACT TO INCLUDE SEXUAL ORIENTATION TO THE LIST OF CLASSIFICATIONS COVERED BY THE STATE'S EQUAL EMPLOYMENT OPPORTUNITY LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 126-16 reads as rewritten:

"§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.

All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, creed, national origin, sex, age, sexual orientation, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. This section with respect to equal opportunity as to age shall be limited to individuals who are at least 40 years of age."

SECTION 2. G.S. 126-34.1 reads as rewritten:

"§ 126-34.1. Grounds for contested case under the State Personnel Act defined.

(a) A State employee or former State employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to the following personnel actions or issues:

(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.

(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:

a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed,

1 political affiliation, sexual orientation, or handicapping
2 condition as defined by Chapter 168A of the General Statutes.

3 b. Demotion, reduction in force, or termination of an employee in
4 retaliation for the employee's opposition to alleged
5 discrimination on account of the employee's age, sex, race,
6 color, national origin, religion, creed, political affiliation, sexual
7 orientation, or handicapping condition as defined by Chapter
8 168A of the General Statutes.

9 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for
10 protesting an alleged violation of G.S. 126-16.

11 (4) Denial of the veteran's preference granted in accordance with Article
12 13 of this Chapter in initial State employment or in connection with a
13 reduction in force, for an eligible veteran as defined by G.S. 126-81.

14 (5) Denial of promotion for failure to post or failure to give priority
15 consideration for promotion or reemployment, to a career State
16 employee as required by G.S. 126-7.1 and G.S. 126-36.2.

17 (6) Denial of an employee's request for removal of allegedly inaccurate or
18 misleading information from the employee's personnel file as provided
19 by G.S. 126-25.

20 (7) Any retaliatory personnel action that violates G.S. 126-85.

21 (8) Denial of promotion in violation of G.S. 126-14.2, where an initial
22 determination found probable cause to believe there has been a
23 violation of G.S. 126-14.2.

24 (9) Denial of employment in violation of G.S. 126-14.2, where an initial
25 determination found probable cause to believe that there has been a
26 violation of G.S. 126-14.2.

27 (10) Harassment in the workplace based upon age, sex, race, color, national
28 origin, religion, creed, sexual orientation, or handicapping condition,
29 whether the harassment is based upon the creation of a hostile work
30 environment or upon a quid pro quo.

31 (11) Violation of any of the following federal statutes as applied to the
32 employee:

33 a. The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.

34 b. The Age Discrimination in Employment Act, 29 U.S.C. § 621,
35 et seq.

36 c. The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.

37 d. The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.

38 (b) An applicant for initial State employment may file in the Office of
39 Administrative Hearings a contested case under Article 3 of Chapter 150B of the
40 General Statutes based upon:

41 (1) Alleged denial of employment in violation of G.S. 126-16.

42 (2) Denial of the applicant's request for removal of allegedly inaccurate or
43 misleading information from the personnel file as provided by
44 G.S. 126-25.

- 1 (3) Denial of equal opportunity for employment and compensation on
2 account of the employee's age, sex, race, color, national origin,
3 religion, creed, political affiliation, sexual orientation, or handicapping
4 condition as defined by Chapter 168A of the General Statutes. This
5 subsection with respect to equal opportunity as to age shall be limited
6 to persons who are at least 40 years of age. An applicant may not,
7 however, file a contested case where political affiliation was the reason
8 for the person's nonselection for (i) an exempt policymaking position
9 as defined in G.S. 126-5(b)(3), (ii) a chief deputy or chief
10 administrative assistant position under G.S. 126-5(c)(4), or (iii) a
11 confidential assistant or confidential secretary position under
12 G.S. 126-5(c)(2).
- 13 (4) Denial of the veteran's preference in initial State employment provided
14 by Article 13 of this Chapter, for an eligible veteran as defined by
15 G.S. 126-81.
- 16 (5) Denial of employment in violation of G.S. 126-14.2, where an initial
17 determination found probable cause to believe that there has been a
18 violation of G.S. 126-14.2.

19 (c) In the case of a dispute as to whether a State employee's position is properly
20 exempted from the State Personnel Act under G.S. 126-5, the employee may file in the
21 Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of
22 the General Statutes.

23 (d) A State employee or applicant for State employment may file in the Office of
24 Administrative Hearings a contested case under Article 3 of Chapter 150B of the
25 General Statutes based upon a false accusation regarding, or disciplinary action relating
26 to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

27 (e) Any issue for which appeal to the State Personnel Commission through the
28 filing of a contested case under Article 3 of Chapter 150B of the General Statutes has
29 not been specifically authorized by this section shall not be grounds for a contested case
30 under Chapter 126."

31 **SECTION 3.** G.S. 126-36 reads as rewritten:

32 "**§ 126-36. Appeal of unlawful State employment practice.**

33 (a) Any State employee or former State employee who has reason to believe that
34 employment, promotion, training, or transfer was denied the employee or that demotion,
35 layoff, transfer, or termination of employment was forced upon the employee in
36 retaliation for opposition to alleged discrimination or because of the employee's age,
37 sex, race, color, national origin, religion, creed, political affiliation, sexual orientation,
38 or handicapping condition as defined by G.S. 168A-3 except where specific age, sex or
39 physical requirements constitute a bona fide occupational qualification necessary to
40 proper and efficient administration, shall have the right to appeal directly to the State
41 Personnel Commission.

42 (b) Subject to the requirements of G.S. 126-34, any State employee or former
43 State employee who has reason to believe that the employee has been subjected to any

1 of the following shall have the right to appeal directly to the State Personnel
2 Commission:

3 (1) Harassment in the workplace based upon age, sex, race, color, national
4 origin, religion, creed, sexual orientation, or handicapping condition,
5 whether the harassment is based upon the creation of a hostile work
6 environment or upon a quid pro quo.

7 (2) Retaliation for opposition to harassment in the workplace based upon
8 age, sex, race, color, national origin, religion, creed, sexual orientation,
9 or handicapping condition, whether the harassment is based upon the
10 creation of a hostile work environment or upon a quid pro quo."

11 **SECTION 4.** G.S. 12-3 is amended by adding a new subdivision to read:

12 "(14) 'Sexual orientation'. – The words 'sexual orientation' mean actual or
13 perceived heterosexuality, homosexuality, or bisexuality, or
14 gender-related identity or expression."

15 **SECTION 5.** Nothing in this act shall be construed as requiring the State, or
16 any employer, employment agency, or labor organization to give preferential treatment
17 or special rights based on sexual orientation, as defined by G.S. 12-3(14), or to
18 implement special affirmative action policies or programs based on sexual orientation.

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