

1 Article 2A.  
2 Wage and Hour Act.

3 **§ 95-25.1. Short title and legislative purpose.**

4 (a) This Article shall be known and may be cited as the "Wage and Hour Act."

5 (b) The public policy of this State is declared as follows: The wage levels of employees,  
6 hours of labor, payment of earned wages, and the well-being of minors are subjects of concern  
7 requiring legislation to promote the general welfare of the people of the State without  
8 jeopardizing the competitive position of North Carolina business and industry. The General  
9 Assembly declares that the general welfare of the State requires the enactment of this law under  
10 the police power of the State. (1937, c. 409, s. 2; 1979, c. 839, s. 1.)

11  
12 **§ 95-25.2. Definitions.**

13 In this Article, unless the context otherwise requires:

- 14 (1) "Agriculture" includes farming in all its branches performed by a farmer or  
15 on a farm as an incident to or in conjunction with farming operations.
- 16 (2) "Commissioner" means the Commissioner of Labor.
- 17 (3) "Employ" means to suffer or permit to work.
- 18 (4) "Employee" includes any individual employed by an employer.
- 19 (5) "Employer" includes any person acting directly or indirectly in the interest of  
20 an employer in relation to an employee.
- 21 (6) "Establishment" means a physical location where business is conducted.
- 22 (7) "The Fair Labor Standards Act" means the Fair Labor Standards Act of  
23 1938, as amended and as the same may be amended from time to time by the  
24 United States Congress.
- 25 (8) "Hours worked" includes all time an employee is employed.
- 26 (9) "Payday" means that day designated for payment of wages due by virtue of  
27 the employment relationship.
- 28 (10) "Pay periods" may be daily, weekly, biweekly, semimonthly, or monthly.
- 29 (11) "Person" means an individual, partnership, association, corporation, business  
30 trust, legal representative, or any organized group of persons. For the  
31 purposes of G.S. 95-25.2, G.S. 95-25.3, G.S. 95-25.14, and G.S. 95-25.20, it  
32 also means the State of North Carolina, any city, town, county, or  
33 municipality, or any State or local agency or instrumentality of government.  
34 The Government of the United States and any agency of the United States  
35 (including the United States Postal Service and Postal Rate Commission) are  
36 not included as persons for any purpose under this Article.
- 37 (12) "Seasonal food service establishment" means a restaurant, food and drink  
38 stand or other establishment generally recognized as a commercial food  
39 service establishment, preparing and serving food to the public but operating  
40 180 days or less per year.
- 41 (13) "Seasonal religious or nonprofit educational conference center or a seasonal  
42 amusement or recreational establishment" means an establishment which  
43 does not operate for more than seven months in any calendar year, or during  
44 the preceding calendar year had average receipts for any six months of such  
45 year of not more than thirty-three and one-third percent (33 1/3%) of its  
46 average receipts for the other six months of that year.
- 47 (14) "Tipped employee" means any employee who customarily receives more  
48 than twenty dollars (\$20.00) a month in tips.
- 49 (15) "Tip" shall mean any money or part thereof over and above the actual  
50 amount due a business for goods, food, drink, services or articles sold which

1 is paid in cash or by credit card, or is given to or left for an employee by a  
2 patron or patrons of the business where the employee is employed.

3 (16) "Wage" paid to an employee means compensation for labor or services  
4 rendered by an employee whether determined on a time, task, piece, job,  
5 day, commission, or other basis of calculation, and the reasonable cost as  
6 determined by the Commissioner of furnishing employees with board,  
7 lodging, or other facilities. For the purposes of G.S. 95-25.6 through G.S.  
8 95-25.13 "wage" includes sick pay, vacation pay, severance pay,  
9 commissions, bonuses, and other amounts promised when the employer has  
10 a policy or a practice of making such payments.

11 (17) "Workweek" means any period of 168 consecutive hours.

12 (18) "Enterprise" means the related activities performed either through unified  
13 operations or common control by any person or persons for a common  
14 business purpose and includes all such activities whether performed in one  
15 or more establishments or by one or more corporate units but shall not  
16 include the related activities performed for such enterprise by an  
17 independent contractor or franchisee. (1959, c. 475; 1961, c. 652; 1969, c.  
18 34, s. 2; c. 218; 1971, c. 1231, s. 1; 1975, c. 413, s. 1; c. 605; 1977, c. 653; c.  
19 672, s. 1; c. 826, s. 1; 1979, c. 839, s. 1; 1981, c. 663, ss. 10, 11; 1983, c.  
20 708, s. 3; 1991, c. 330, s. 1.)  
21

### 22 § 95-25.3. Minimum wage.

23 (a) Every employer shall pay to each employee who in any workweek performs any  
24 work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set  
25 forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as  
26 that wage may change from time to time, whichever is higher, except as otherwise provided in  
27 this section.

28 (b) In order to prevent curtailment of opportunities for employment, the wage rate for  
29 full-time students, learners, apprentices, and messengers, as defined under the Fair Labor  
30 Standards Act, shall be ninety percent (90%) of the rate in effect under subsection (a) above,  
31 rounded to the lowest nickel.

32 (c) The Commissioner, in order to prevent curtailment of opportunities for employment,  
33 may, by regulation, establish a wage rate less than the wage rate in effect under section (a)  
34 which may apply to persons whose earning or productive capacity is impaired by age or  
35 physical or mental deficiency or injury, as such persons are defined under the Fair Labor  
36 Standards Act.

37 (d) The Commissioner, in order to prevent curtailment of opportunities for employment  
38 of the economically disadvantaged and the unemployed, may, by regulation, establish a wage  
39 rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect  
40 under subsection (a) which shall apply to all persons (i) who have been unemployed for at least  
41 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are,  
42 receiving Work First Family Assistance or who are receiving supplemental security benefits  
43 under Title XVI of the Social Security Act.

44 Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for  
45 such subminimum wage shall be issued by the Division of Employment Security.

46 The regulation issued by the Commissioner shall not permit employment at the  
47 subminimum rate for a period in excess of 52 weeks.

48 (e) The Commissioner, in order to prevent curtailment of opportunities for employment,  
49 and to not adversely affect the viability of seasonal establishments, may, by regulation,  
50 establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage  
51 rate in effect under subsection (a) which shall apply to any employee employed by an

1 establishment which is a seasonal amusement or recreational establishment, or a seasonal food  
2 service establishment.

3 (f) Tips earned by a tipped employee may be counted as wages only up to the amount  
4 permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped  
5 employee is notified in advance, is permitted to retain all tips and the employer maintains  
6 accurate and complete records of tips received by each employee as such tips are certified by  
7 the employee monthly or for each pay period. Even if the employee refuses to certify tips  
8 accurately, tips may still be counted as wages when the employer complies with the other  
9 requirements of this section and can demonstrate by monitoring tips that the employee  
10 regularly receives tips in the amount for which the credit is taken. Tip pooling shall also be  
11 permissible among employees who customarily and regularly receive tips; however, no  
12 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling  
13 arrangement.

14 (g) Repealed by Session Laws 2006-259, s. 18, effective August 23, 2006. (1959, c.  
15 475; 1963, c. 816; 1965, c. 229; 1969, c. 34, s. 1; 1971, c. 138; 1973, c. 802; 1975, c. 256, s. 1;  
16 1977, c. 519; 1979, c. 839, s. 1; 1981, c. 493, s. 1; c. 663, s. 13; 1983, c. 708, s. 1; 1985, c. 97;  
17 1987, c. 79; 1991, c. 270, ss. 1, 2; c. 330, s. 5; 1997-146, s. 1; 1997-443, s. 12.25; 2006-114, s.  
18 1; 2006-259, s. 18; 2011-401, s. 3.6.)

19  
20 **§ 95-25.3A:** Repealed by Session Laws 2003-308, s. 8, effective July 1, 2003.

21  
22 **§ 95-25.4. Overtime.**

23 (a) Every employer shall pay each employee who works longer than 40 hours in any  
24 workweek at a rate of not less than time and one half of the regular rate of pay of the employee  
25 for those hours in excess of 40 per week; provided that employers of seasonal amusement or  
26 recreational establishment employees are required to pay those employees the overtime rate  
27 only for hours in excess of 45 per workweek.

28 (b) Repealed by Session Laws 1991, c. 330, s. 2. (1973, c. 685, s. 1; 1979, c. 839, s. 1;  
29 1991, c. 330, s. 2, c. 492, s. 1.)

30  
31 **§ 95-25.5. Youth employment.**

32 (a) No youth under 18 years of age shall be employed by any employer in any  
33 occupation without a youth employment certificate unless specifically exempted. The  
34 Commissioner of Labor shall prescribe regulations for youths and employers concerning the  
35 issuance, maintenance and revocation of certificates. Certificates will be issued, subject to  
36 review by the Department of Labor, by county directors of social services and such of their  
37 designees as are approved by the Commissioner; provided, the Commissioner may also issue  
38 certificates, both directly and electronically.

39 (a1) During the regular school term, no youth under 18 years of age who is enrolled in  
40 school in grade 12 or lower may be employed between 11 P.M. and 5 A.M. when there is  
41 school for the youth the next day. This restriction does not apply to youths 16 and 17 years of  
42 age if the employer receives written approval for the youth to work beyond the stated hours  
43 from the youth's parent or guardian and from the youth's principal or the principal's designee.

44 (b) No youth under 18 years of age may be employed by an employer in any occupation  
45 which the United States Department of Labor shall find and by order declare to be hazardous  
46 and without exemption under the Fair Labor Standards Act, or in any occupation which the  
47 Commissioner of Labor after public hearing shall find and declare to be detrimental to the  
48 health and well-being of youths.

49 (c) No youth 14 or 15 years of age may be employed by an employer in any occupation  
50 except those determined by the United States Department of Labor to be permitted occupations  
51 under the Fair Labor Standards Act; provided, such youths may be employed by employers:

- 1 (1) No more than three hours on a day when school is in session for the youth;
- 2 (2) No more than eight hours on a day when school is not in session for the
- 3 youth;
- 4 (3) Only between 7 A.M. and 7 P.M., except to 9 P.M. during the summer
- 5 (when school is not in session);
- 6 (4) No more than 40 hours in any one week when school is not in session for the
- 7 youth;
- 8 (5) No more than 18 hours in any one week when school is in session for the
- 9 youth; and
- 10 (6) Only outside school hours.

11 Notwithstanding the above, enrollees in high school apprenticeships or in work experience  
12 and career exploration programs as defined under the Fair Labor Standards Act may work up to  
13 23 hours in any one week when school is in session, any portion of which may be during school  
14 hours.

15 (d) No youth 13 years of age or less may be employed by an employer, except youths  
16 12 and 13 years of age may be employed outside school hours in the distribution of newspapers  
17 to the consumer but not more than three hours per day. An employment certificate shall not be  
18 required for any youth under 18 years of age engaged in the distribution of newspapers to the  
19 consumer outside of school hours.

20 (e) No youth under 16 years of age shall be employed for more than five consecutive  
21 hours without an interval of at least 30 minutes for rest. No period of less than 30 minutes shall  
22 be deemed to interrupt a continuous period of work.

23 (f) For any youth 13 years of age or older, the Commissioner may waive any provision  
24 of this section and authorize the issuance of an employment certificate when:

- 25 (1) He receives a letter from a social worker, court, probation officer, county
- 26 department of social services, a letter from the North Carolina Alcohol
- 27 Beverage Control Commission or school official stating those factors which
- 28 create a hardship situation and how the best interest of the youth is served by
- 29 allowing a waiver; and
- 30 (2) He determines that the health or safety of the youth would not be adversely
- 31 affected; and
- 32 (3) The parent, guardian, or other person standing in loco parentis consents in
- 33 writing to the proposed employment.

34 (g) Youths employed as models, or as actors or performers in motion pictures or  
35 theatrical productions, or in radio or television productions are exempt from all provisions of  
36 this section except the certificate requirements of subsection (a).

37 (h) Youths employed by an outdoor drama directly in production-related positions such  
38 as stagehands, lighting, costumes, properties and special effects are exempt from all provisions  
39 of this section except the certificate requirements of subsection (a). Positions such as office  
40 workers, ticket takers, ushers and parking lot attendants have no exemption and are subject to  
41 all provisions of this section.

42 (i) Youth under 18 years of age employed by their parent, guardian, or other person  
43 standing in loco parentis are exempt from all provisions of this section, except for all of the  
44 following:

- 45 (1) The certificate requirements of subsection (a) of this section.
- 46 (2) The prohibition from hazardous or detrimental occupations of subsection (b)
- 47 of this section.
- 48 (3) The prohibitions of subsection (j)(2) of this section if the youths only work
- 49 at the establishment when another employee at least 21 years of age is in
- 50 charge of and present at the licensed premises.

1 (j) No person who holds any ABC permit issued pursuant to the provisions of Chapter  
2 18B of the General Statutes for the on-premises sale or consumption of alcoholic beverages,  
3 including any mixed beverages, shall employ a youth:

4 (1) Under 16 years of age on the premises for any purpose, unless the youth is at  
5 least 14 years of age and each of the following conditions is met:

6 a. The person obtains the written consent of a parent or guardian of the  
7 youth.

8 b. The youth is employed to work on the outside grounds of the  
9 premises for a purpose that does not involve the preparation, serving,  
10 dispensing, or sale of alcoholic beverages.

11 (2) Under 18 years of age to prepare, serve, dispense or sell any alcoholic  
12 beverages, including mixed beverages.

13 (k) Persons and establishments required to comply with or subject to regulation of child  
14 labor under the Fair Labor Standards Act are exempt from all provisions of this section, except  
15 the certificate requirements of subsection (a), the provisions of subsection (a1), the prohibition  
16 from occupations found and declared to be detrimental by the Commissioner of Labor pursuant  
17 to subsection (b), and the prohibitions of subsection (j). In addition, employment certificates  
18 will not be issued if such person's employment will be in violation of the applicable child labor  
19 provisions of the Fair Labor Standards Act. Such employers may also be assessed civil  
20 penalties pursuant to G.S. 95-25.23 for each violation of the provisions of this section or any  
21 regulation issued hereunder from which there is no exemption.

22 (l) Notwithstanding any other provision of this section, any youth who holds a North  
23 Carolina driver's license valid for the type of driving involved may be assigned as part of his  
24 employment to drive an automobile or truck not exceeding 6,000 pounds gross vehicle weight  
25 within a 25-mile radius of the principal place of employment, provided that the youth has  
26 completed a State-approved driver-education course, and provided that the assignment does not  
27 involve the towing of vehicles. "Gross vehicle weight" includes the truck chassis with  
28 lubricants, water and full tank or tanks of fuel, plus the weight of the cab or driver's  
29 compartment, body and special chassis and body equipment, and payload.

30 (m) Notwithstanding any other provision of this section, youths who are enrolled at an  
31 institution of higher education may be employed by the institution provided the employment is  
32 not hazardous. As used in this subsection, "institution of higher education" means any  
33 constituent institution of The University of North Carolina, any North Carolina community  
34 college, or any college or university that awards postsecondary degrees.

35 (n) Nothing in this section prohibits qualified youths under 18 years of age from  
36 participating in training through their fire department, the Office of State Fire Marshal, or the  
37 North Carolina Community College System. As used in this subsection, the term "qualified  
38 youth under 18 years of age" means an uncompensated fire department or rescue squad member  
39 who is at least the age of 15 and under the age of 18 and who is a member of a bona fide fire  
40 department, as that term is defined in G.S. 58-86-25, or of a rescue squad described in G.S.  
41 58-86-30. (1937, c. 317, ss. 1-3, 6, 9, 18; 1943, c. 670; 1951, c. 1187, s. 1; 1967, cc. 173, 764;  
42 1969, c. 962; 1973, c. 649, s. 1; c. 758, s. 1; 1977, c. 551, ss. 1-4; 1979, c. 839, s. 1; 1981, c.  
43 412, ss. 3, 4; c. 489, ss. 1-7; c. 747, s. 66; 1985, c. 97, s. 1; 1987, c. 154; 1991, c. 492, s. 2;  
44 1991 (Reg. Sess., 1992), c. 991, s. 1; 1993, c. 239, s. 1; 1995, c. 214, s. 1; 1999-237, s. 14.1;  
45 2001-312, s. 3; 2001-515, s. 5; 2005-453, s. 15; 2009-21, s. 2; 2010-97, s. 9.)

46  
47 **§ 95-25.6. Wage payment.**

48 Every employer shall pay every employee all wages and tips accruing to the employee on  
49 the regular payday. Pay periods may be daily, weekly, bi-weekly, semi-monthly, or monthly.  
50 Wages based upon bonuses, commissions, or other forms of calculation may be paid as

1 infrequently as annually if prescribed in advance. (1975, c. 413, s. 3; 1977, c. 826, s. 3; 1979, c.  
2 839, s. 1.)

3  
4 **§ 95-25.7. Payment to separated employees.**

5 Employees whose employment is discontinued for any reason shall be paid all wages due  
6 on or before the next regular payday either through the regular pay channels or by mail if  
7 requested by the employee. Wages based on bonuses, commissions or other forms of  
8 calculation shall be paid on the first regular payday after the amount becomes calculable when  
9 a separation occurs. Such wages may not be forfeited unless the employee has been notified in  
10 accordance with G.S. 95-25.13 of the employer's policy or practice which results in forfeiture.  
11 Employees not so notified are not subject to such loss or forfeiture. (1975, c. 413, s. 4; 1979, c.  
12 839, s. 1; 1981, c. 663, s. 1; 1993, c. 214, s. 1.)

13  
14 **§ 95-25.7A. Wages in dispute.**

15 (a) If the amount of wages is in dispute, the employer shall pay the wages, or that part  
16 of the wages, which the employer concedes to be due without condition, within the time set by  
17 this Article. The employee retains all remedies that the employee might otherwise be entitled  
18 to regarding any balance of wages claimed by the employee, including those remedies provided  
19 under this Article.

20 (b) Acceptance of a partial payment of wages under this section by an employee does  
21 not constitute a release of the balance of the claim. Further, any release of the claim required  
22 by an employer as a condition of partial payment is void. (1989, c. 687, s. 1.)

23  
24 **§ 95-25.8. Withholding of wages.**

25 (a) An employer may withhold or divert any portion of an employee's wages when:

- 26 (1) The employer is required or empowered to do so by State or federal law;  
27 (2) When the amount or rate of the proposed deduction is known and agreed  
28 upon in advance, the employer must have written authorization from the  
29 employee which (i) is signed on or before the payday(s) for the pay period(s)  
30 from which the deduction is to be made; (ii) indicates the reason for the  
31 deduction; and (iii) states the actual dollar amount or percentage of wages  
32 which shall be deducted from one or more paychecks. Provided, that if the  
33 deduction is for the convenience of the employee, the employee shall be  
34 given a reasonable opportunity to withdraw the authorization; or  
35 (3) When the amount of the proposed deduction is not known and agreed upon  
36 in advance, the employer must have written authorization from the employee  
37 which (i) is signed on or before the payday(s) for the pay period(s) from  
38 which the deduction is to be made; and (ii) indicates the reason for the  
39 deduction. Prior to any deductions being made under this section, the  
40 employee must (i) receive advance written notice of the actual amount to be  
41 deducted; (ii) receive written notice of their right to withdraw the  
42 authorization; and (iii) be given a reasonable opportunity to withdraw the  
43 authorization in writing.

44 (b) The withholding or diversion of wages owed for the employer's benefit must comply  
45 with the following requirements:

- 46 (1) In nonovertime workweeks, an employer may reduce wages to the minimum  
47 wage level.  
48 (2) In overtime workweeks, employers may reduce wages to the minimum wage  
49 level for nonovertime hours.  
50 (3) No reductions may be made to overtime wages owed.

1 (c) In addition to complying with the requirements in subsections (a) and (b) of this  
2 section, an employer may withhold or divert a portion of an employee's wages for cash  
3 shortages, inventory shortages, or loss or damage to an employer's property after giving the  
4 employee written notice of the amount to be deducted seven days prior to the payday on which  
5 the deduction is to be made, except that when a separation occurs the seven-day notice is not  
6 required.

7 (d) Notwithstanding subsections (a) and (b), above, an overpayment of wages to an  
8 employee as a result of a miscalculation or other bona fide error, advances of wages to an  
9 employee or to a third party at the employee's request, and the principal amount of loans made  
10 by an employer to an employee are considered prepayment of wages and may be withheld or  
11 deducted from an employee's wages. Deductions for interest and other charges related to loans  
12 by an employer to an employee shall require written authorization in accordance with  
13 subsection (a), above.

14 (e) Notwithstanding subsections (a) and (c), above, if criminal process has issued  
15 against an employee, an employee has been indicted, or an employee has been arrested  
16 pursuant to Articles 17, 20, and 32 of Chapter 15A of the General Statutes for a charge incident  
17 to a cash shortage, inventory shortage, or damage to an employer's property, an employer may  
18 withhold or divert a portion of the employee's wages in order to recoup the amount of the cash  
19 shortage, inventory shortage, or damage to the employer's property, without the written  
20 authorization required by this section, but the amount of such withholdings shall comply with  
21 the provisions of subsection (b) of this section. If the employee is not found guilty, then the  
22 amount deducted shall be reimbursed to the employee by the employer.

23 (f) For purposes of this section, a written authorization or written notice may be in the  
24 form of an electronic record in compliance with Article 40 of Chapter 66 (the Uniform  
25 Electronic Transactions Act).

26 (g) Nothing in this Article shall preclude an employer from bringing a civil action in the  
27 General Court of Justice to collect any amounts due the employer from the employee. (1975, c.  
28 413, s. 6; 1979, c. 839, s. 1; 1981, c. 663, s. 2; 2005-453, s. 16.)

29  
30 **§§ 95-25.9, 95-25.10:** Repealed by Session Laws 2005-453, ss. 17 and 18, effective October 1,  
31 2005.

32  
33 **§ 95-25.11. Employers' remedies preserved.**

34 (a) Repealed by Session Laws 2005-453, s. 19.

35 (b) Nothing in this Article shall preclude an employer from bringing a civil action in the  
36 General Court of Justice to collect any amounts due the employer from the employee. (1979, c.  
37 839, s. 1; 1981, c. 663, s. 5; 2005-453, s. 19.)

38  
39 **§ 95-25.12. Vacation pay plans.**

40 No employer is required to provide vacation pay plans for employees. However, if an  
41 employer provides these promised benefits for employees, the employer shall give all vacation  
42 time off or payment in lieu of time off in accordance with the company policy or practice.  
43 Employees shall be notified in accordance with G.S. 95-25.13 of any policy or practice which  
44 requires or results in loss or forfeiture of vacation time or pay. Employees not so notified are  
45 not subject to such loss or forfeiture. (1979, c. 839, s. 1; 1981, c. 663, s. 6; 2005-453, s. 20.)  
46

47 **§ 95-25.13. Notification, posting, and records.**

48 Every employer shall:

- 49 (1) Notify its employees, orally or in writing at the time of hiring, of the  
50 promised wages and the day and place for payment;

- 1 (2) Make available to its employees, in writing or through a posted notice  
2 maintained in a place accessible to its employees, employment practices and  
3 policies with regard to promised wages;
- 4 (3) Notify employees, in writing or through a posted notice maintained in a  
5 place accessible to its employees, at least 24 hours prior to any changes in  
6 promised wages. Wages may be retroactively increased without the prior  
7 notice required by this subsection; and
- 8 (4) Furnish each employee with an itemized statement of deductions made from  
9 that employee's wages under G.S. 95-25.8 for each pay period such  
10 deductions are made. (1975, c. 413, s. 7; 1979, c. 839, s. 1; 1981, c. 663, s.  
11 12; 1993, c. 203, s. 1; 2005-453, s. 21.)  
12

13 **§ 95-25.14. Exemptions.**

14 (a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), and  
15 G.S. 95-25.5 (Youth Employment), and the provisions of G.S. 95-25.15(b) (Record Keeping)  
16 as they relate to these exemptions, do not apply to:

- 17 (1) Any person employed in an enterprise engaged in commerce or in the  
18 production of goods for commerce as defined in the Fair Labor Standards  
19 Act:
  - 20 a. Except as otherwise specifically provided in G.S. 95-25.5;
  - 21 b. Notwithstanding the above, any employee other than a learner,  
22 apprentice, student, or handicapped worker as defined in the Fair  
23 Labor Standards Act who is not otherwise exempt under the other  
24 provisions of this section, and for whom the applicable minimum  
25 wage under the Fair Labor Standards Act is less than the minimum  
26 wage provided in G.S. 95-25.3, is not exempt from the provisions of  
27 G.S. 95-25.3 or G.S. 95-25.4;
  - 28 c. Notwithstanding the above, any employer or employee exempt from  
29 the minimum wage, overtime, or child labor requirements of the Fair  
30 Labor Standards Act for whom there is no comparable exemption  
31 under this Article shall not be exempt under this subsection except  
32 that where an exemption in the Fair Labor Standards Act provides a  
33 method of computing overtime which is an alternative to the method  
34 required in 29 U.S.C.S. § 207(a), the employer or employee subject  
35 to that alternate method shall be exempt from the provisions of G.S.  
36 95-25.4(a); provided that, persons not employed at an enterprise  
37 described in subdivision (1) of this subsection shall also be subject to  
38 the same alternative methods of overtime calculation in the  
39 circumstances described in the Fair Labor Standards Act exemptions  
40 providing those alternative methods;
- 41 (2) Any person employed in agriculture, as defined under the Fair Labor  
42 Standards Act;
- 43 (3) Any person employed as a domestic, including baby sitters and companions,  
44 as defined under the Fair Labor Standards Act;
- 45 (4) Any person employed as a page in the North Carolina General Assembly or  
46 in the Governor's Office;
- 47 (5) Bona fide volunteers in medical, educational, religious, or nonprofit  
48 organizations where an employer-employee relationship does not exist;
- 49 (6) Persons confined in and working for any penal, correctional or mental  
50 institution of the State or local government;

1 (7) Any person employed as a model, or as an actor or performer in motion  
2 pictures or theatrical, radio or television productions, as defined under the  
3 Fair Labor Standards Act, except as otherwise specifically provided in G.S.  
4 95-25.5;

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

10 (b) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and  
11 the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not  
12 apply to:

- 13 (1) Any employee of a boys' or girls' summer camp or of a seasonal religious or  
14 nonprofit educational conference center;
- 15 (2) Any person employed in the catching, processing or first sale of seafood, as  
16 defined under the Fair Labor Standards Act;
- 17 (3) The spouse, child, or parent of the employer or any person qualifying as a  
18 dependent of the employer under the income tax laws of North Carolina;
- 19 (4) Any person employed in a bona fide executive, administrative, professional  
20 or outside sales capacity, as defined under the Fair Labor Standards Act;
- 21 (5) Repealed by Session Laws 1989, c. 687, s. 2.
- 22 (6) Any person while participating in a ridesharing arrangement as defined in  
23 G.S. 136-44.21;
- 24 (7) Any person who is employed as a computer systems analyst, computer  
25 programmer, software engineer, or other similarly skilled worker, as defined  
26 in the Fair Labor Standards Act.

27 (b1) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and  
28 the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to the exemptions provided  
29 for in this subsection, do not apply to any of the following:

- 30 (1) Hours worked as a bona fide volunteer firefighter in an incorporated,  
31 nonprofit volunteer or community fire department.
- 32 (2) Hours worked as a bona fide volunteer rescue and emergency medical  
33 services personnel in an incorporated, nonprofit volunteer or community fire  
34 department, or an incorporated, nonprofit rescue squad.

35 Hours worked in accordance with this subsection shall not be considered hours worked for  
36 purposes of G.S. 95-25.3 or G.S. 95-25.4.

37 (c) The provisions of G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b)  
38 (Record Keeping) as they relate to this exemption, do not apply to:

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

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

4 (1) The minimum wage provisions of G.S. 95-25.3;

5 (2) The definition provisions of G.S. 95-25.2 necessary to interpret the  
6 applicable provisions;

7 (3) The exemptions of subsections (a) and (b) of this section;

8 (4) The complainant protection provisions of G.S. 95-25.20.

9 (e) Employment in a seasonal recreation program by the State of North Carolina, any  
10 city, town, county, or municipality, or any State or local agency or instrumentality of  
11 government, is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum  
12 Wage). (1937, c. 406; c. 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59; 1947, c. 825; 1949, c. 1057;  
13 1959, cc. 475, 629; 1961, cc. 602, 1070; 1963, c. 1123; 1965, c. 724; 1967, c. 998; 1973, c.  
14 600, s. 1; 1975, c. 19, s. 26; c. 413, s. 2; 1977, c. 146; 1979, c. 839, s. 1; 1981, c. 493, s. 2; c.  
15 606, s. 2; c. 663, s. 7; 1983, c. 708, s. 2; 1989, c. 687, s. 2; 1991, c. 330, s. 3; 1993, c. 214, s. 2;  
16 1995, c. 509, s. 47; 1997-146, s. 2; 2002-113, s. 2.)  
17

#### 18 **§ 95-25.15. Investigations and inspection of records; notice of law.**

19 (a) The Commissioner or his designated representative shall have the power and  
20 authority to enter any place of employment and gather such facts as are essential to determine  
21 whether or not the employer is covered by any provision of this Article.

22 With respect to any provision of this Article under which the employer is covered, the  
23 Commissioner or the Commissioner's designated representative may inspect such places and  
24 such records, make transcriptions of any and all such records, question employees and  
25 investigate such facts, conditions, practices, or matters as are necessary to determine whether  
26 the employer has violated said provision of this Article.

27 With respect to the provisions of G.S. 95-25.6 through 95-25.12 (Wage Payment) as those  
28 provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his  
29 designated representative shall have no authority under this subsection unless the  
30 Commissioner or his designated representative has received a complaint from an employee of  
31 the covered establishment.

32 (b) Except as otherwise provided in this Article, every employer subject to any  
33 provision of this Article shall make, keep, and preserve such records of the persons employed  
34 by the employer, including the ages of employees, and of the wages, hours, and other  
35 conditions and practices of employment which are essential to the enforcement of this Article  
36 and are prescribed by regulation of the Commissioner, except that the Commissioner shall have  
37 no authority to prescribe records for the State of North Carolina, a city, town, county or other  
38 municipality or agency or instrumentality of government.

39 (c) A poster summarizing the major provisions of this Article shall be displayed in  
40 every establishment subject to this Article. (1937, c. 317, ss. 5, 19; 1959, c. 475; 1971, c. 1231,  
41 s. 2; 1973, c. 649, s. 4; 1975, c. 413, ss. 7, 9; 1979, c. 839, s. 1; 2005-453, s. 22; 2009-351, s.  
42 2.)  
43

#### 44 **§ 95-25.16. Enforcement.**

45 (a) The Commissioner shall enforce and administer the provisions of this Article, and  
46 the Commissioner or his authorized representative is empowered to hold hearings and to  
47 institute criminal and civil proceedings hereunder.

48 (b) The Commissioner or his authorized representative shall have power to administer  
49 oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the  
50 production of papers, books, accounts, records, payrolls, documents, and take depositions and  
51 affidavits in any proceeding hereunder.

1 (c) The Commissioner is empowered to enter into reciprocal agreements with the labor  
2 department or corresponding agency of any other state or with the person, board, officer, or  
3 commission authorized to act on behalf of the department or agency, for the collection in the  
4 other state of claims and judgments for wages based upon investigations and findings made by  
5 the Commissioner or his authorized representative.

6 The Commissioner may, to the extent provided for by any reciprocal agreement entered into  
7 by law or with an agency of another state, as provided in this section, maintain actions in the  
8 courts of any other state for the collection of claims or judgments for wages and may assign the  
9 claims and judgments to the labor department or agency of the other state for collection to the  
10 extent that such an assignment may be permitted or provided for by the law of that state or by  
11 reciprocal agreement.

12 Except as provided in subsection (d) of this section, the Commissioner may, upon the  
13 written consent of the labor department or corresponding agency of any other state or of any  
14 person, board, officer, or commission authorized to act on behalf of the department or agency,  
15 maintain actions in the courts of this State upon assigned claims and judgments for wages  
16 arising in the other state in the same manner and to the same extent that these actions by the  
17 Commissioner are authorized when arising in this State.

18 (d) Subsection (c) of this section applies only to those states that extend comity to this  
19 State. (1937, c. 317, s. 19; c. 409, s. 7; 1971, c. 1231, s. 2; 1973, c. 649, s. 4; 1975, c. 473, s. 9;  
20 c. 475; 1979, c. 839, s. 1; 1989, c. 687, s. 3.)

21  
22 **§ 95-25.17. Wage and Hour Division established.**

23 The Commissioner of Labor is charged with enforcement of this Article. The  
24 Commissioner shall appoint a Wage and Hour Director and any other employees the  
25 Commissioner deems necessary for enforcement of this Article. The Commissioner shall  
26 continue to prescribe the powers, duties, and responsibilities of the Director and employees  
27 engaged in the administration of this Article. (1979, c. 839, s. 1; 2005-453, s. 23.)

28  
29 **§ 95-25.18. Legal representation.**

30 It shall be the duty of the Attorney General of North Carolina, when requested, to represent  
31 the Department of Labor in actions or proceedings in connection with this Article. (1979, c.  
32 839, s. 1.)

33  
34 **§ 95-25.19. Rules.**

35 The Commissioner may adopt rules needed to implement this Article. (1937, c. 317, s. 18;  
36 1975, c. 413, s. 12; 1979, c. 839, s. 1; 1987, c. 827, s. 262.)

37  
38 **§ 95-25.20. Records.**

39 Files and other records relating to investigations and enforcement proceedings pursuant to  
40 this Article, or pursuant to Article 21 of this Chapter with respect to Wage and Hour Act  
41 violations, shall not be subject to inspection and examination as authorized by G.S. 132-6 while  
42 such investigations and proceedings are pending. Nothing under this section shall impede the  
43 right to discovery under G.S. 1A-1, Rules of Civil Procedure. (1979, c. 839, s. 1; 1981, c. 663,  
44 s. 8; 1991 (Reg. Sess., 1992), c. 1021, s. 3.)

45  
46 **§ 95-25.21. Illegal acts.**

47 (a) It shall be unlawful for any person to interfere unduly with, hinder, or delay the  
48 Commissioner or any authorized representative in the performance of official duties or refuse  
49 to give the Commissioner or his authorized representative any information required for the  
50 enforcement of this Article.

1 (b) It shall be unlawful for any person to make any statement or report, or keep or file  
2 any record pursuant to this Article or regulations issued thereunder, knowing such statement,  
3 report, or record to be false in a material respect.

4 (c) Any person who violates this section shall be guilty of a Class 2 misdemeanor.  
5 (1937, c. 409, ss. 6, 8; 1979, c. 839, s. 1; 1993, c. 539, s. 661; 1994, Ex. Sess., c. 24, s. 14(c).)

6  
7 **§ 95-25.22. Recovery of unpaid wages.**

8 (a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage), G.S.  
9 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to the  
10 employee or employees affected in the amount of their unpaid minimum wages, their unpaid  
11 overtime compensation, or their unpaid amounts due under G.S. 95-25.6 through 95-25.12, as  
12 the case may be, plus interest at the legal rate set forth in G.S. 24-1, from the date each amount  
13 first came due.

14 (a1) In addition to the amounts awarded pursuant to subsection (a) of this section, the  
15 court shall award liquidated damages in an amount equal to the amount found to be due as  
16 provided in subsection (a) of this section, provided that if the employer shows to the  
17 satisfaction of the court that the act or omission constituting the violation was in good faith and  
18 that the employer had reasonable grounds for believing that the act or omission was not a  
19 violation of this Article, the court may, in its discretion, award no liquidated damages or may  
20 award any amount of liquidated damages not exceeding the amount found due as provided in  
21 subsection (a) of this section.

22 (b) Action to recover such liability may be maintained in the General Court of Justice  
23 by any one or more employees.

24 (c) Action to recover such liability may also be maintained in the General Court of  
25 Justice by the Commissioner at the request of the employees affected. Any sums thus recovered  
26 by the Commissioner on behalf of an employee shall be held in a special deposit account and  
27 shall be paid directly to the employee or employees affected.

28 (d) The court, in any action brought under this Article may, in addition to any judgment  
29 awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by  
30 the defendant. In an action brought by the Commissioner in which a default judgment is  
31 entered, the clerk shall order attorneys' fees of three hundred dollars (\$300.00) to be paid by the  
32 defendant.

33 The court may order costs and fees of the action and reasonable attorneys' fees to be paid by  
34 the plaintiff if the court determines that the action was frivolous.

35 (e) The Commissioner is authorized to determine and supervise the payment of the  
36 amounts due under this section, including interest at the legal rate set forth in G.S. 24-1, from  
37 the date each amount first came due, and the agreement to accept such amounts by the  
38 employee shall constitute a waiver of the employee's right to bring an action under subsection  
39 (b) of this section.

40 (f) Actions under this section must be brought within two years pursuant to G.S. 1-53.

41 (g) Prior to initiating any action under this section, the Commissioner shall exhaust all  
42 administrative remedies, including giving the employer the opportunity to be heard on the  
43 matters at issue and giving the employer notice of the pending action. (1959, c. 475; 1975, c.  
44 413, s. 11; 1979, c. 839, s. 1; 1989, c. 687, s. 4; 1991, c. 298.)

45  
46 **§ 95-25.23. Violation of youth employment; civil penalty.**

47 (a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or  
48 any regulation issued thereunder, shall be subject to a civil penalty not to exceed five hundred  
49 dollars (\$500.00) for the first violation and not to exceed one thousand dollars (\$1,000) for  
50 each subsequent violation. In determining the amount of such penalty, the appropriateness of  
51 such penalty to the size of the business of the person charged and the gravity of the violation

1 shall be considered. The determination by the Commissioner shall be final, unless within 15  
2 days after receipt of notice thereof by certified mail with return receipt, by signature  
3 confirmation as provided by the U.S. Postal Service, by a designated delivery service  
4 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the  
5 person charged with the violation takes exception to the determination, in which event final  
6 determination of the penalty shall be made in an administrative proceeding pursuant to Article  
7 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B.

8 (b) The amount of such penalty when finally determined may be recovered in the  
9 manner set forth in G.S. 95-25.23B.

10 (c) The clear proceeds of civil penalties provided for in this section shall be remitted to  
11 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

12 (d) Assessment of penalties under this section shall be subject to a two-year statute of  
13 limitations commencing at the time of the occurrence of the violation. (1979, c. 839, s. 1;  
14 1981, c. 663, s. 9; 1989, c. 687, s. 6; 1993, c. 225, s. 1; 1998-215, s. 107; 2003-308, s. 1;  
15 2007-231, s. 4; 2009-351, s. 1.)

16  
17 **§ 95-25.23A. Violation of record-keeping requirement; civil penalty.**

18 (a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation  
19 issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred  
20 fifty dollars (\$250.00) per employee with the maximum not to exceed two thousand dollars  
21 (\$2,000) per investigation by the Commissioner or the Commissioner's authorized  
22 representative. In determining the amount of the penalty, the Commissioner shall consider each  
23 of the following:

- 24 (1) The appropriateness of the penalty for the size of the business of the  
25 employer charged.  
26 (2) The gravity of the violation.  
27 (3) Whether the violation involves an employee under 18 years of age.

28 The determination by the Commissioner shall be final, unless within 15 days after receipt of  
29 notice thereof by certified mail with return receipt, by signature confirmation as provided by  
30 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §  
31 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation  
32 takes exception to the determination, in which event final determination of the penalty shall be  
33 made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial  
34 proceeding pursuant to Article 4 of Chapter 150B.

35 (b) The amount of the penalty when finally determined may be recovered in the manner  
36 set forth in G.S. 95-25.23B.

37 (c) The clear proceeds of civil penalties provided for in this section shall be remitted to  
38 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

39 (d) Assessment of penalties under this section shall be subject to a two-year statute of  
40 limitations commencing at the time of the occurrence of the violation. (1989, c. 687, s. 5;  
41 1993, c. 225, s. 2; 1998-215, s. 108; 2003-308, s. 2; 2007-231, s. 5; 2009-351, s. 3.)

42  
43 **§ 95-25.23B. Civil penalty collection.**

44 The Commissioner may file in the office of the clerk of the superior court of any county a  
45 certified copy of an assessment, either unappealed from or affirmed in whole or in part upon  
46 appeal, of a civil money penalty under G.S. 95-25.23 or G.S. 95-25.23A. Upon such filing, the  
47 clerk shall enter judgment in accordance with the unappealed or affirmed portion of the  
48 assessment and shall notify the parties. Such judgment shall have the same effect, and all  
49 proceedings in relation to the judgment shall thereafter be the same, as though the judgment  
50 had been rendered in a suit duly heard and determined by the superior court of the General  
51 Court of Justice. (1993, c. 225, s. 3.)

1  
2 **§ 95-25.23C. Report on youth employment enforcement activities.**

3 (a) Findings. – The General Assembly finds that:

- 4 (1) There is an increasing need to protect the educational opportunities of youths  
5 under age 18 and to prohibit their employment in jobs and under conditions  
6 that are detrimental to their health and well-being.  
7 (2) Although the statutory protections available for youths under age 18 who are  
8 employed in this State are comprehensive, those protections are rendered  
9 meaningless without effective enforcement.  
10 (3) It is in the best interest of the State and its youngest workers to ensure that  
11 North Carolina employers are in full compliance with the youth employment  
12 laws and regulations enacted under the Wage and Hour Act.

13 (b) Intent. – Recognizing that the Department of Labor is the State agency charged with  
14 enforcing the Wage and Hour Act as it pertains to youth employment, the General Assembly  
15 intends to review the Department's education and enforcement activities on a regular basis in  
16 order to identify effective measures for enhancing youth employment protections in this State.

17 (c) Report. – No later than February 1 of each year, the Commissioner shall submit a  
18 written report to the General Assembly, the Joint Legislative Education Oversight Committee,  
19 and the Fiscal Research Division of the General Assembly on the Department of Labor's  
20 investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to  
21 youth employment. Each report submitted pursuant to this subsection shall contain data and  
22 information about the calendar year preceding the date on which the last written report was  
23 submitted. The report shall include at least all of the following:

- 24 (1) All activities the Department of Labor has sponsored or participated in for  
25 the purpose of educating employers about their responsibilities under the  
26 Wage and Hour Act.  
27 (2) The total number of complaints received by the Department of Labor  
28 alleging youth employment violations under the Wage and Hour Act, or any  
29 regulations issued under the Wage and Hour Act, or both.  
30 (3) The specific types of youth employment violations alleged and the ages of  
31 the youths referenced in the complaints received by the Department of  
32 Labor.  
33 (4) The total number of investigations conducted by the Department of Labor  
34 concerning alleged youth employment violations, the length of the  
35 investigations, and the number of investigators assigned to conduct the  
36 investigations. For purposes of this subdivision, the Commissioner shall  
37 provide a separate analysis of (i) investigations initiated by the Department  
38 in response to a complaint, (ii) investigations initiated by the Department in  
39 the absence of a complaint, and (iii) alleged record-keeping violations  
40 pertaining to youth employment.  
41 (5) The total number of administrative proceedings involving youth employment  
42 violations.  
43 (6) The total number and identity of employers cited for youth employment  
44 violations and the industries or occupations that received the greatest and the  
45 least number of complaints alleging youth employment violations.  
46 (7) The total number and dollar amount of civil penalties assessed pursuant to  
47 G.S. 95-25.23 and the total number and dollar amount of civil penalties  
48 actually collected pursuant to that section. For purposes of this subdivision,  
49 the Commissioner shall provide a detailed, itemized list of each civil penalty  
50 represented in the total number and dollar amounts reported pursuant to this

1 subdivision and indicate whether each civil penalty is the result of a  
2 complaint.

3 (8) The total number and dollar amount of civil penalties assessed pursuant to  
4 G.S. 95-25.23A and the total number and dollar amount of civil penalties  
5 actually collected pursuant to that section. For purposes of this subdivision,  
6 the Commissioner shall provide a detailed, itemized list of each civil penalty  
7 represented in the total number and dollar amounts reported pursuant to this  
8 subdivision and indicate whether each civil penalty is the result of a  
9 complaint.

10 (9) An explanation of any obstacles that prevented the Department of Labor  
11 from enforcing any provision of the Wage and Hour Act as it pertains to  
12 youth employment, any recommended changes to the Wage and Hour Act to  
13 strengthen the Department of Labor's oversight and enforcement of youth  
14 employment laws and regulations in this State, and any other information  
15 related to the Department of Labor's enhanced enforcement of the State's  
16 youth employment laws and regulations.

17 (10) Recommendations about the funding needed by the Department to (i)  
18 eliminate any identified obstacles to enforcement of youth employment laws  
19 and regulations and (ii) effectively implement any recommended changes.  
20 (2009-139, s. 1; 2011-291, s. 2.21.)  
21

22 **§ 95-25.24. Restraint of violations.**

23 The General Court of Justice has jurisdiction and authority upon application of the  
24 Commissioner to enjoin or restrain violations of this Article, including the restraint of any  
25 withholding of payment of unpaid wages, minimum wages, or overtime compensation found by  
26 the court to be due to employees under this Article (except sums which employees are barred  
27 from recovering, at the time of the commencement of the action to restrain the violations, by  
28 virtue of the applicable statute of limitations). (1979, c. 839, s. 1; 1991, c. 330, s. 4.)  
29

30 **§ 95-25.25. Construction of Article and severability.**

31 This Article shall receive a liberal construction to the end that the welfare of adult and  
32 minor workers may be protected. If any provisions of this Article or the application thereof to  
33 any person or circumstance is held to be invalid, such invalidity shall not affect the provisions  
34 or application of the Article which can be given effect without the invalid provision or  
35 application, and to this end the provisions of this Article are severable. (1979, c. 839, s. 1.)