

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 453

Senate Manufacturing and Labor Committee Substitute Adopted 6/10/91

Short Title: Clarify Labor Law.

(Public)

Sponsors:

Referred to:

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CLARIFYING CHANGES TO THE WAGE AND HOUR ACT.
3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 95-25.2 reads as rewritten:

5 **"§ 95-25.2. Definitions.**

6 In this Article, unless the context otherwise requires:

- 7 (1) 'Agriculture' includes farming in all its branches performed by a farmer
- 8 or on a farm as an incident to or in conjunction with farming
- 9 operations.
- 10 (2) 'Commissioner' means the Commissioner of Labor.
- 11 (3) 'Employ' means to suffer or permit to work.
- 12 (4) 'Employee' includes any individual employed by an employer.
- 13 (5) 'Employer' includes any person acting directly or indirectly in the
- 14 interest of an employer in relation to an employee.
- 15 (6) 'Establishment' means a physical location where business is conducted.
- 16 (7) 'The Fair Labor Standards Act' means the Fair Labor Standards Act of
- 17 1938, as amended and as the same may be amended from time to time
- 18 by the United States Congress.
- 19 (8) 'Hours worked' includes all time an employee is employed.
- 20 (9) 'Payday' means that day designated for payment of wages due by
- 21 virtue of the employment relationship.

- 1 (10) ~~'Pay period' means a period of seven or 14 calendar days, or a calendar~~
2 ~~month.~~ 'Pay periods' may be daily, weekly, biweekly, semimonthly, or
3 monthly.
- 4 (11) 'Person' means an individual, partnership, association, corporation,
5 business trust, legal representative, or any organized group of persons.
6 For the purposes of G.S. 95-25.2, G.S. 95-25.3, G.S. 95-25.14, and
7 G.S. 95-25.20, it also means the State of North Carolina, any city,
8 town, county, or municipality, or any State or local agency or
9 instrumentality of government. The Government of the United States
10 and any agency of the United States (including the United States Postal
11 Service and Postal Rate Commission) are not included as persons for
12 any purpose under this Article.
- 13 (12) 'Seasonal food service establishment' means a restaurant, food and
14 drink stand or other establishment generally recognized as a
15 commercial food service establishment, preparing and serving food to
16 the public but operating 180 days or less per year.
- 17 (13) 'Seasonal religious or nonprofit educational conference center or a
18 seasonal amusement or recreational establishment' means an
19 establishment which does not operate for more than seven months in
20 any calendar year, or during the preceding calendar year had average
21 receipts for any six months of such year of not more than thirty-three
22 and one-third percent (33 1/3%) of its average receipts for the other six
23 months of that year.
- 24 (14) 'Tipped employee' means any employee who customarily receives
25 more than twenty dollars (\$20.00) a month in tips.
- 26 (15) 'Tip' shall mean any money or part thereof over and above the actual
27 amount due a business for goods, food, drink, services or articles sold
28 which is paid in cash or by credit card, or is given to or left for an
29 employee by a patron or patrons of the business where the employee is
30 employed.
- 31 (16) 'Wage' paid to an employee means compensation for labor or services
32 rendered by an employee whether determined on a time, task, piece,
33 job, day, commission, or other basis of calculation, and the reasonable
34 cost as determined by the Commissioner of furnishing employees with
35 board, lodging, or other facilities. For the purposes of G.S. 95-25.6
36 through ~~G.S. 95-25.12, G.S. 95-25.13~~ 'wage' includes sick pay, vacation
37 pay, severance pay, commissions, bonuses, and other amounts
38 promised when the employer has a policy or a practice of making such
39 payments.
- 40 (17) 'Workweek' means any period of 168 consecutive hours.
- 41 (18) 'Enterprise' means the related activities performed either through
42 unified operations or common control by any person or persons for a
43 common business purpose and includes all such activities whether
44 performed in one or more establishments or by one or more corporate

1 units but shall not include the related activities performed for such
2 enterprise by an independent contractor or franchisee."

3 Sec. 2. G.S. 95-25.4 reads as rewritten:

4 **"§ 95-25.4. Overtime.**

5 (a) Every employer shall pay each employee who works longer than 45 hours in
6 any workweek at a rate of not less than time and one half of the regular rate of pay of
7 the employee for those hours in excess of 45 per week.

8 ~~(b) Hospital and nursing home employers may elect to pay overtime after eight~~
9 ~~hours per day or 80 hours in a 14-day work period, if the employee is notified in~~
10 ~~advance and is paid not less than one and one-half times the regular rate of pay of the~~
11 ~~employee for those hours in excess of eight per day or 80 in such 14-day work period."~~

12 Sec. 3. G.S. 95-25.14 reads as rewritten:

13 **"§ 95-25.14. Exemptions.**

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

18 (1) ~~Any person or establishment required to comply with or subject to the~~
19 ~~regulation of wages, overtime, child labor and related record keeping~~
20 ~~under employed in an enterprise engaged in commerce or in the~~
21 ~~production of goods for commerce as defined in the Fair Labor~~
22 ~~Standards Act, except: Act:~~

23 a. ~~Except As as~~ otherwise specifically provided in ~~G.S. 95-25.5;~~
24 ~~and; G.S. 95-25.5.~~

25 b. ~~That Notwithstanding the above,~~ any employee other than a
26 learner, ~~apprentice~~ apprentice, student, or handicapped worker as
27 defined in the Fair Labor Standards Act who is not otherwise
28 exempt under the other provisions of this section, and for whom
29 the applicable minimum wage under the Fair Labor Standards
30 Act is less than the minimum wage provided in G.S. 95-25.3, is
31 not exempt from the provisions of G.S. 95-25.3 or G.S. 95-25.4;

32 (2) Any person employed in agriculture, as defined under the Fair Labor
33 Standards Act;

34 (3) Any person employed as a domestic, including baby sitters and
35 companions, as defined under the Fair Labor Standards Act;

36 (4) Any person employed as a page in the North Carolina General
37 Assembly or in the Governor's Office;

38 (5) Bona fide volunteers in medical, educational, religious, or nonprofit
39 organizations where an employer-employee relationship does not exist;

40 (6) Persons confined in and working for any penal, correctional or mental
41 institution of the State or local government;

42 (7) Any person employed as a model, or as an actor or performer in
43 motion pictures or theatrical, radio or television productions, as

1 defined under the Fair Labor Standards Act, except as otherwise
2 specifically provided in G.S. 95-25.5;

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

8 (b) The provisions of G.S. 95-25.3 (~~Minimum Wage~~), (Minimum Wage) and G.S.
9 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (~~Record Keeping~~) as it relates
10 (Record Keeping) as they relate to these ~~exemptions~~ exemptions, do not apply to:

11 (1) Any employee of a boys' or girls' summer camp or of a seasonal
12 religious or nonprofit educational conference center;

13 (2) Any person employed in the catching, processing or first sale of
14 seafood, as defined under the Fair Labor Standards Act;

15 (3) The spouse, child, or parent of the employer or any person qualifying
16 as a dependent of the employer under the income tax laws of North
17 Carolina;

18 (4) Any person employed in a bona fide executive, administrative,
19 professional or outside sales capacity, as defined under the Fair Labor
20 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
23 in G.S. 136-44.21.

24 (c) The provisions of G.S. 95-25.4 (~~Overtime~~), (Overtime), and the provisions of
25 G.S. 95-25.15(b) (Record Keeping) as it relates they relate to this ~~exemption~~ exemption,
26 do not apply to:

27 (1) Drivers, drivers' helpers, loaders and mechanics, as defined under the
28 Fair Labor Standards Act;

29 (2) Taxicab drivers;

30 (3) Seamen, employees of railroads, and employees of air carriers, as
31 defined under the Fair Labor Standards Act;

32 (4) Salespersons, mechanics and partsmen employed by automotive, truck,
33 and farm implement dealers, as defined under the Fair Labor Standards
34 Act;

35 (5) Salespersons employed by trailer, boat, and aircraft dealers, as defined
36 under the Fair Labor Standards Act;

37 (6) Live-in child care workers or other live-in employees in homes for
38 dependent children;

39 (7) Radio and television announcers, news editors, and chief engineers, as
40 defined under the Fair Labor Standards Act.

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

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

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

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

9 Sec. 4. G.S. 95-25.24 reads as rewritten:

10 **"§ 95-25.24. Restraint of violations.**

11 The General Court of Justice has jurisdiction and authority upon application of the
12 Commissioner to enjoin or restrain violations of this ~~Article~~ Article, including the
13 restraint of any withholding of payment of unpaid wages, minimum wages, or overtime
14 compensation found by the court to be due to employees under this Article (except sums
15 which employees are barred from recovering, at the time of the commencement of the
16 action to restrain the violations, by virtue of the applicable statute of limitations)."

17 Sec. 5. G.S. 95-25.3(f) reads as rewritten:

18 "(f) Tips earned by a tipped employee may be counted as wages only up to fifty
19 percent (50%) of the applicable minimum wage for each hour worked if the tipped
20 employee is notified in advance, is permitted to retain all tips and the employer
21 maintains accurate and complete records of tips received by each employee as such tips
22 are certified by the employee monthly or for each pay period. Even if the employee
23 refuses to certify tips accurately, tips may still be counted as wages when the employer
24 complies with the other requirements of this section and can demonstrate by monitoring
25 tips that the employee regularly receives tips in the amount for which the credit is taken.
26 Tip pooling shall also be permissible among employees who customarily and regularly
27 receive tips; however, no employee's tips may be reduced by more than fifteen percent
28 (15%) under a tip pooling arrangement."

29 Sec. 6. This act is effective upon ratification.