

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE DRH30299-LR-26A (01/08)

Short Title: WC/Amend "Employment" and "Employer" Defs. (Public)

Sponsors: Representative Wray.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE DEFINITIONS OF THE TERMS "EMPLOYMENT" AND
3 "EMPLOYER" UNDER THE NORTH CAROLINA WORKERS' COMPENSATION
4 ACT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 97-2 reads as rewritten:

7 "§ 97-2. Definitions.

8 When used in this Article, unless the context otherwise requires:

- 9 (1) Employment. – The term "employment" includes employment by the State
10 and all political subdivisions thereof, and all public and quasi-public
11 corporations therein and all private employments in which ~~three~~ one or more
12 employees are regularly employed in the same business or ~~establishment or~~
13 ~~in which one or more employees are employed in activities which involve~~
14 ~~the use or presence of radiation, establishment,~~ except agriculture and
15 domestic services, unless 10 or more full-time nonseasonal agricultural
16 workers are regularly employed by the employer and an individual sawmill
17 and logging operator with less than 10 employees, who saws and logs less
18 than 60 days in any six consecutive months and whose principal business is
19 unrelated to sawmilling or logging.
- 20 (2) Employee. – The term "employee" means every person engaged in an
21 employment under any appointment or contract of hire or apprenticeship,
22 express or implied, oral or written, including aliens, and also minors,
23 whether lawfully or unlawfully employed, but excluding persons whose
24 employment is both casual and not in the course of the trade, business,
25 profession, or occupation of his employer, and as relating to those so
26 employed by the State, the term "employee" shall include all officers and
27 employees of the State, including such as are elected by the people, or by the
28 General Assembly, or appointed by the Governor to serve on a per diem,
29 part-time or fee basis, either with or without the confirmation of the Senate;
30 as relating to municipal corporations and political subdivisions of the State,
31 the term "employee" shall include all officers and employees thereof,
32 including such as are elected by the people. The term "employee" shall
33 include members of the North Carolina National Guard while on State active
34 duty under orders of the Governor and members of the North Carolina State
35 Defense Militia while on State active duty under orders of the Governor. The
36 term "employee" shall include deputy sheriffs and all persons acting in the



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1 capacity of deputy sheriffs, whether appointed by the sheriff or by the
2 governing body of the county and whether serving on a fee basis or on a
3 salary basis, or whether deputy sheriffs serving upon a full-time basis or a
4 part-time basis, and including deputy sheriffs appointed to serve in an
5 emergency, but as to those so appointed, only during the continuation of the
6 emergency. The sheriff shall furnish to the board of county commissioners a
7 complete list of all deputy sheriffs named or appointed by him immediately
8 after their appointment and notify the board of commissioners of any
9 changes made therein promptly after such changes are made. Any reference
10 to an employee who has been injured shall, when the employee is dead,
11 include also the employee's legal representative, dependents, and other
12 persons to whom compensation may be payable: Provided, further, that any
13 employee, as herein defined, of a municipality, county, or of the State of
14 North Carolina, while engaged in the discharge of the employee's official
15 duty outside the jurisdictional or territorial limits of the municipality, county,
16 or the State of North Carolina and while acting pursuant to authorization or
17 instruction from any superior officer, shall have the same rights under this
18 Article as if such duty or activity were performed within the territorial
19 boundary limits of their employer.

20 ~~Every executive officer elected or appointed and empowered in~~
21 ~~accordance with the charter and bylaws of a corporation shall be considered~~
22 ~~as an employee of such corporation under this Article.~~

23 ~~Any such executive officer of a corporation may, notwithstanding any~~
24 ~~other provision of this Article, be exempt from the coverage of the~~
25 ~~corporation's insurance contract by such corporation's specifically excluding~~
26 ~~such executive officer in such contract of insurance, and the exclusion to~~
27 ~~remove such executive officer from the coverage shall continue for the~~
28 ~~period such contract of insurance is in effect, and during such period such~~
29 ~~executive officers thus exempted from the coverage of the insurance contract~~
30 ~~shall not be employees of such corporation under this Article.~~

31 The president, vice president, secretary, or treasurer of a corporation is
32 deemed an employee for the purposes of this Article. A partner with respect
33 to a partnership that employs the partner, a member or manager of a limited
34 liability company, and a sole proprietor with respect to such sole
35 proprietorship are employees covered by this Article if one or more
36 employees are regularly employed in the same business or establishment.

37 A president, vice president, secretary, or treasurer of a corporation who
38 owns a ten percent (10%) or more membership interest in the corporation or
39 a partner or sole proprietor by written agreement with that officer's insurer or
40 group self-insurance fund may elect, by name or position, not to be covered
41 by the provisions of this Article. The "ten percent (10%) or more"
42 requirement contained in this paragraph does not apply to a noncompensated
43 corporate officer of a not-for-profit corporation. The election shall not be
44 limited, but shall apply to all trades, businesses, or occupations conducted by
45 the corporation, partnership, limited liability company, or sole
46 proprietorship. The election shall be binding upon (i) the employing
47 corporation, partnership, limited liability company, or sole proprietorship
48 and (ii) the surviving spouse, relatives, personal representatives, heirs, or
49 dependents of the officer, partner, member, manager, or sole proprietor who
50 made the election. No salary or compensation received by a bona fide
51 corporate officer, partner, member, manager, or sole proprietor who made an

election under this subdivision shall be used in computing the premium rate for workers' compensation insurance.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term "employee" shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-1031(a) when performing duties in the course and scope of a State-approved mission pursuant to Subpart C of Part 5 of Article 13 of Chapter 143B of the General Statutes.

"Employee" shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

~~Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.~~

~~Employee~~—"Employee" shall include an authorized pickup firefighter of the North Carolina Forest Service of the Department of Agriculture and Consumer Services when that individual is engaged in emergency fire suppression activities for the North Carolina Forest Service. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the North Carolina Forest Service for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person.

...."

SECTION 2. G.S. 97-31.1 does not apply to this act.

SECTION 3. This act is effective when it becomes law.