

## Article 2A.

### Wage and Hour Act.

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

- (a) This Article shall be known and may be cited as the "Wage and Hour Act."
- (b) The public policy of this State is declared as follows: The wage levels of employees, hours of labor, payment of earned wages, and the well-being of minors are subjects of concern requiring legislation to promote the general welfare of the people of the State without jeopardizing the competitive position of North Carolina business and industry. The General Assembly declares that the general welfare of the State requires the enactment of this law under the police power of the State.
- (c) Repealed by Session Laws 2017-4, s. 1, effective March 30, 2017. (1937, c. 409, s. 2; 1979, c. 839, s. 1; 2016-3, 2nd Ex. Sess., s. 2.1; 2017-4, s. 1.)

#### **§ 95-25.2. Definitions.**

In this Article, unless the context otherwise requires:

- (1) "Agriculture" includes farming in all its branches performed by a farmer or on a farm as an incident to or in conjunction with farming operations.
- (2) "Commissioner" means the Commissioner of Labor.
- (3) "Employ" means to suffer or permit to work.
- (4) "Employee" includes any individual employed by an employer.
- (5) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.
- (6) "Establishment" means a physical location where business is conducted.
- (7) "The Fair Labor Standards Act" means the Fair Labor Standards Act of 1938, as amended and as the same may be amended from time to time by the United States Congress.
- (8) "Hours worked" includes all time an employee is employed.
- (9) "Payday" means that day designated for payment of wages due by virtue of the employment relationship.
- (10) "Pay periods" may be daily, weekly, biweekly, semimonthly, or monthly.
- (11) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons. For the purposes of G.S. 95-25.2, G.S. 95-25.3, G.S. 95-25.14, and G.S. 95-25.20, it also means the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government. The Government of the United States and any agency of the United States (including the United States Postal Service and Postal Rate Commission) are not included as persons for any purpose under this Article.
- (12) "Seasonal food service establishment" means a restaurant, food and drink stand or other establishment generally recognized as a commercial food service establishment, preparing and serving food to the public but operating 180 days or less per year.
- (13) "Seasonal religious or nonprofit educational conference center or a seasonal amusement or recreational establishment" means an establishment which does not operate for more than seven months in any calendar year, or during the preceding calendar year had average receipts for any six months of such year

of not more than thirty-three and one-third percent (33 1/3%) of its average receipts for the other six months of that year.

(14) "Tipped employee" means any employee who customarily receives more than twenty dollars (\$20.00) a month in tips.

(15) "Tip" shall mean any money or part thereof over and above the actual amount due a business for goods, food, drink, services or articles sold which is paid in cash or by credit card, or is given to or left for an employee by a patron or patrons of the business where the employee is employed.

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

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

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

### **§ 95-25.3. Minimum wage.**

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

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

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

(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (i) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are, receiving

Work First Family Assistance or who are receiving supplemental security benefits under Title XVI of the Social Security Act.

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

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

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

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

(g) Repealed by Session Laws 2006-259, s. 18, effective August 23, 2006. (1959, c. 475; 1963, c. 816; 1965, c. 229; 1969, c. 34, s. 1; 1971, c. 138; 1973, c. 802; 1975, c. 256, s. 1; 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; 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. 1; 2006-259, s. 18; 2011-401, s. 3.6; 2017-185, s. 3(b).)

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

#### **§ 95-25.4. Overtime.**

(a) Every employer shall pay each employee who works longer than 40 hours in any workweek at a rate of not less than time and one half of the regular rate of pay of the employee for those hours in excess of 40 per week.

(b) Repealed by Session Laws 1991, c. 330, s. 2, effective June 19, 1991. (1973, c. 685, s. 1; 1979, c. 839, s. 1; 1991, c. 330, s. 2; c. 492, s. 1; 2017-185, s. 3(c).)

#### **§ 95-25.5. Youth employment.**

(a) No youth under 18 years of age shall be employed by any employer in any occupation without a youth employment certificate unless specifically exempted. The Commissioner of Labor shall prescribe regulations for youths and employers concerning the issuance, maintenance and revocation of certificates. Certificates will be issued by the Commissioner, both directly and electronically.

(a1) During the regular school term, no youth under 18 years of age who is enrolled in school in grade 12 or lower may be employed between 11 P.M. and 5 A.M. when there is school for the youth the next day. This restriction does not apply to youths 16 and 17 years of age if the

employer receives written approval for the youth to work beyond the stated hours from the youth's parent or guardian and from the youth's principal or the principal's designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Under 16 years of age on the premises for any purpose, unless the youth is at least 14 years of age and each of the following conditions is met:
  - a. The person obtains the written consent of a parent or guardian of the youth.
  - b. The youth is employed to work on the outside grounds of the premises for a purpose that does not involve the preparation, serving, dispensing, or sale of alcoholic beverages.
- (2) Under 18 years of age to prepare, serve, dispense or sell any alcoholic beverages, including mixed beverages, except for sale of alcoholic beverages at the point-of-sale for only off-premises consumption.

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

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

(m) Notwithstanding any other provision of this section, youths who are enrolled at an institution of higher education may be employed by the institution provided the employment is

not hazardous. As used in this subsection, "institution of higher education" means any constituent institution of The University of North Carolina, any North Carolina community college, or any college or university that awards postsecondary degrees.

(n) Nothing in this section prohibits qualified youths under 18 years of age from participating in training through their fire department, the Office of State Fire Marshal, or the North Carolina Community College System. As used in this subsection, the term "qualified youth under 18 years of age" means an uncompensated fire department or rescue squad member who is at least the age of 15 and under the age of 18 and who is a member of a bona fide fire department, as that term is defined in G.S. 58-86-25, or of a rescue squad described in G.S. 58-86-30. (1937, c. 317, ss. 1-3, 6, 9, 18; 1943, c. 670; 1951, c. 1187, s. 1; 1967, cc. 173, 764; 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. 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; 1991 (Reg. Sess., 1992), c. 991, s. 1; 1993, c. 239, s. 1; 1995, c. 214, s. 1; 1999-237, s. 14.1; 2001-312, s. 3; 2001-515, s. 5; 2005-453, s. 15; 2009-21, s. 2; 2010-97, s. 9; 2015-221, s. 3.1; 2017-211, s. 14(a).)

#### **§ 95-25.6. Wage payment.**

Every employer shall pay every employee all wages and tips accruing to the employee on the regular payday. Pay periods may be daily, weekly, bi-weekly, semi-monthly, or monthly. Wages based upon bonuses, commissions, or other forms of calculation may be paid as infrequently as annually if prescribed in advance. (1975, c. 413, s. 3; 1977, c. 826, s. 3; 1979, c. 839, s. 1.)

#### **§ 95-25.7. Payment to separated employees.**

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

#### **§ 95-25.7A. Wages in dispute.**

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

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

#### **§ 95-25.8. Withholding of wages.**

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

- (1) The employer is required or empowered to do so by State or federal law;

(2) When the amount or rate of the proposed deduction is known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; (ii) indicates the reason for the deduction; and (iii) states the actual dollar amount or percentage of wages which shall be deducted from one or more paychecks. Provided, that if the deduction is for the convenience of the employee, the employee shall be given a reasonable opportunity to withdraw the authorization; or

(3) When the amount of the proposed deduction is not known and agreed upon in advance, the employer must have written authorization from the employee which (i) is signed on or before the payday(s) for the pay period(s) from which the deduction is to be made; and (ii) indicates the reason for the deduction. Prior to any deductions being made under this section, the employee must (i) receive advance written notice of the actual amount to be deducted; (ii) receive written notice of their right to withdraw the authorization; and (iii) be given a reasonable opportunity to withdraw the authorization in writing.

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

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

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

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

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

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

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

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

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

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

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

**§ 95-25.12. Vacation pay plans.**

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

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

Every employer shall:

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

**§ 95-25.14. Exemptions.**

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

- (1) Any person employed in an enterprise engaged in commerce or in the production of goods for commerce as defined in the Fair Labor Standards Act:

- a. Except as otherwise specifically provided in G.S. 95-25.5;
- b. Notwithstanding the above, any employee other than a learner, apprentice, student, or handicapped worker as defined in the Fair Labor Standards Act who is not otherwise exempt under the other provisions of this section, and for whom the applicable minimum wage under the Fair Labor Standards Act is less than the minimum wage provided in G.S. 95-25.3, is not exempt from the provisions of G.S. 95-25.3 or G.S. 95-25.4;
- c. Notwithstanding the above, any employer or employee exempt from the minimum wage, overtime, or child labor requirements of the Fair Labor Standards Act for whom there is no comparable exemption under this Article shall not be exempt under this subsection except that where an exemption in the Fair Labor Standards Act provides a method of computing overtime which is an alternative to the method required in 29 U.S.C.S. § 207(a), the employer or employee subject to that alternate method shall be exempt from the provisions of G.S. 95-25.4(a); provided that, persons not employed at an enterprise described in subdivision (1) of this subsection shall also be subject to the same alternative methods of overtime calculation in the circumstances described in the Fair Labor Standards Act exemptions providing those alternative methods;

- (2) Any person employed in agriculture, as defined under the Fair Labor Standards Act;
- (3) Any person employed as a domestic, including baby sitters and companions, as defined under the Fair Labor Standards Act;
- (4) Any person employed as a page in the North Carolina General Assembly or in the Governor's Office;
- (5) Bona fide volunteers in medical, educational, religious, or nonprofit organizations where an employer-employee relationship does not exist;
- (6) Persons confined in and working for any penal, correctional or mental institution of the State or local government;
- (7) Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio or television productions, as defined under the Fair Labor Standards Act, except as otherwise specifically provided in G.S. 95-25.5;
- (8) Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special effects, except as otherwise specifically provided in G.S. 95-25.5; but this exemption does not include such positions as office workers, ticket takers, ushers and parking lot attendants.

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

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

- (2) Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;
- (3) The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina;
- (4) Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act;
- (5) Repealed by Session Laws 1989, c. 687, s. 2.
- (6) Any person while participating in a ridesharing arrangement as defined in G.S. 136-44.21;
- (7) Any person who is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, as defined in the Fair Labor Standards Act.

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

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

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

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

- (1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair Labor Standards Act;
- (2) Taxicab drivers;
- (3) Seamen, employees of railroads, and employees of air carriers, as defined under the Fair Labor Standards Act;
- (4) Salespersons, mechanics and partsmen employed by automotive, truck, and farm implement dealers, as defined under the Fair Labor Standards Act;
- (5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under the Fair Labor Standards Act;
- (6) Live-in child care workers or other live-in employees in homes for dependent children;
- (7) Radio and television announcers, news editors, and chief engineers, as defined under the Fair Labor Standards Act.
- (8) Any employee of a seasonal amusement or recreational establishment.

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

- (1) The minimum wage provisions of G.S. 95-25.3;
- (2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable provisions;
- (3) The exemptions of subsections (a) and (b) of this section;
- (4) The complainant protection provisions of G.S. 95-25.20.

(e) Employment in a seasonal recreation program by the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage). (1937, c. 406; c. 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59; 1947, c. 825; 1949, c. 1057; 1959, cc. 475, 629; 1961, cc. 602, 1070; 1963, c. 1123; 1965, c. 724; 1967, c. 998; 1973, c. 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. 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; 1995, c. 509, s. 47; 1997-146, s. 2; 2002-113, s. 2; 2017-185, s. 3(a).)

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

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

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

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

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

(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article. This poster shall also include notice indicating the following in plain language:

- (1) Any worker who is defined as an employee by either G.S. 95-25.2(4), 143-786(a)(3), 96-1(b)(10), 97-2(2), or 105-163.1(4) shall be treated as an employee unless the individual is an independent contractor.
- (2) Any employee who believes that the employee has been misclassified as an independent contractor by the employee's employer may report the suspected misclassification to the Employee Classification Section within the Industrial Commission.
- (3) The physical location, mailing address, telephone number, and e-mail address where alleged incidents of employee misclassification occurred may be reported to the Employee Classification Section within the Industrial Commission. (1937, c. 317, ss. 5, 19; 1959, c. 475; 1971, c. 1231, 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. 2; 2017-203, s. 3.)

### **§ 95-25.16. Enforcement.**

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

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

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

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

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

(d) Subsection (c) of this section applies only to those states that extend comity to this 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; c. 475; 1979, c. 839, s. 1; 1989, c. 687, s. 3.)

### **§ 95-25.17. Wage and Hour Division established.**

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

### **§ 95-25.18. Legal representation.**

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

### **§ 95-25.19. Rules.**

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

### **§ 95-25.20. Records.**

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

### **§ 95-25.21. Illegal acts.**

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

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

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

### **§ 95-25.22. Recovery of unpaid wages.**

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

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

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

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

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

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

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

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

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

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

(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for the first violation and not to exceed one thousand dollars (\$1,000) for each subsequent violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B.

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

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

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

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

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

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

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

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

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

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

#### **§ 95-25.23B. Civil penalty collection.**

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

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

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

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

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

(c) Report. – No later than February 1 of each year, the Commissioner shall submit a written report to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division of the General Assembly on the Department of Labor's investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to youth employment. Each report submitted pursuant to this subsection shall contain data and

information about the calendar year preceding the date on which the last written report was submitted. The report shall include at least all of the following:

- (1) All activities the Department of Labor has sponsored or participated in for the purpose of educating employers about their responsibilities under the Wage and Hour Act.
- (2) The total number of complaints received by the Department of Labor alleging youth employment violations under the Wage and Hour Act, or any regulations issued under the Wage and Hour Act, or both.
- (3) The specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the Department of Labor.
- (4) The total number of investigations conducted by the Department of Labor concerning alleged youth employment violations, the length of the investigations, and the number of investigators assigned to conduct the investigations. For purposes of this subdivision, the Commissioner shall provide a separate analysis of (i) investigations initiated by the Department in response to a complaint, (ii) investigations initiated by the Department in the absence of a complaint, and (iii) alleged record-keeping violations pertaining to youth employment.
- (5) The total number of administrative proceedings involving youth employment violations.
- (6) The total number and identity of employers cited for youth employment violations and the industries or occupations that received the greatest and the least number of complaints alleging youth employment violations.
- (7) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23 and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.
- (8) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23A and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.
- (9) An explanation of any obstacles that prevented the Department of Labor from enforcing any provision of the Wage and Hour Act as it pertains to youth employment, any recommended changes to the Wage and Hour Act to strengthen the Department of Labor's oversight and enforcement of youth employment laws and regulations in this State, and any other information related to the Department of Labor's enhanced enforcement of the State's youth employment laws and regulations.
- (10) Recommendations about the funding needed by the Department to (i) eliminate any identified obstacles to enforcement of youth employment laws

and regulations and (ii) effectively implement any recommended changes. (2009-139, s. 1; 2011-291, s. 2.21; 2017-57, s. 14.1(nn).)

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

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

**§ 95-25.24A. Franchisee status.**

Neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purposes, including, but not limited to, this Article and Chapters 96, 97, and 105 of the General Statutes. For purposes of this section, "franchisee" and "franchisor" have the same definitions as set out in 16 C.F.R. § 436.1. (2017-10, s. 1.1.)

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

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