

Top 10 things to know about North Carolina Wage and Hour Act

Many employers are familiar with the basic requirements of federal wage-and-hour law—the minimum wage, how to calculate overtime and who must receive it. But the North Carolina Wage and Hour Act is often a mystery to employers and employees alike.

Here are the top 10 things you should know about the act.

1 Where to find the act. The act is codified in the General Statutes, beginning with section 95-25.1 and continuing through section 95-25.25. The act and the North Carolina Department of Labor's interpretive regulations are both available online at www.nclabor.com/wh/Wage_Hour_Act_Packet.pdf.

2 What is the minimum wage? North Carolina's minimum wage isn't simply a regurgitation of the federal minimum. Instead, the act requires paying whichever is higher: \$6.15 per hour or the federal minimum wage of \$5.85 per hour. So, North Carolina employees must receive at least \$6.15 per hour. But the federal minimum increases to \$6.55 per hour on July 24, 2008.

3 Notifications regarding wages. At the time of hire, employers must notify newly hired employees—either orally or in writing—of promised wages and scheduled paydays. Employment practices or policies regarding promised wages must be provided in writing or in a posted notice. Employees must receive at least 24 hours' advance notice, in writing or in a posted notice, of any reduction in promised wages. For each pay period, employees must receive a written statement that itemizes all deductions made from that period's paycheck.

4 Method of payment. An employer may select any legal form of payment, as long as payment is made on the designated payday. Acceptable forms of payment include cash, money order, negotiable checks, direct deposit to an institution whose deposits are insured

by the federal government or direct deposit to an institution the employee selects. An employee may be required to accept payment by direct deposit.

5 Withholdings. Handling withholdings, particularly those not required by law, can get complicated. Pay careful attention to both the statutory language (N.C. Gen. Stat. § 95-25.8) and to the interpretive regulations (13 N.C. Admin. Code § 12.0305).

Basically, an employer may withhold a portion of an employee's wages (1) when required or empowered to do so by state or federal law or (2) when the employee has provided a written authorization, signed on or before the payday for the pay period from which the deduction is to be made, indicating the reason for the deduction.

An authorization may be *specific* (when the amount of the deduction is known in advance) or *blanket* (when the amount of the deduction is not known in advance).

6 Withdrawal of withholding authorization. Employees must be allowed at least three calendar days prior to withholding to withdraw *specific* authorizations, if such deductions are for their convenience. Those deductions include withholding for savings plans, credit union installments, savings bonds, club dues, uniform rental and cleaning, parking and charitable contributions. Before an employer may withhold pursuant to a *blanket* authorization, the employee must be given notice of the amount of the proposed withholding and allowed at least three calendar days from the date of notice to withdraw the blanket authorization.

7 Advances of wages and employee loans. Advances of wages to an employee or a third party at the employee's request are considered prepayment. A dated receipt for the advanced wages (signed by the employee) is sufficient to show that the advance was requested and made, and no withholding authorizations are required when the advance

is later withheld from a paycheck. In the absence of an executed loan document, the principal of an employee loan is considered an advance of wages. However, withholdings related to interest and other related loan charges require written authorization.

8 Disputed wages. When the amount of wages is in dispute, the employer must nevertheless pay the amount the employer acknowledges is due. An employee's acceptance of a partial wage payment does not release any claim for the balance of the wages, and the employer may not demand such a release.

9 Last paycheck. A terminated employee must be paid all wages due on or before the next regular payday following termination. However, commissions and bonuses due must be paid on the first regular payday after they become calculable. A final paycheck may be delivered either through regular pay channels or by mail if the employee requests it. If an employee requests sending the paycheck by mail, the employer may require notarized or witnessed consent. Regular pay channels or mail are the *only* two allowable delivery options. A friend picking up the check is not acceptable.

10 Who can help if an employer is confused? Of course, your attorney is always a good resource when addressing these issues. Also, the state Department of Labor offers some useful basic resources on its web site. Wage and Hour Bureau information can be found at www.nclabor.com/wh/wh.htm.

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