

## CHAPTER 19 – RETALIATORY EMPLOYMENT DISCRIMINATION

### SECTION .0100 - GENERAL PROVISIONS

#### 13 NCAC 19 .0101 WORKPLACE RETALIATORY DISCRIMINATION OFFICE

The main office of the Workplace Retaliatory Discrimination (WORD) Office, which administers the provisions of Article 21 of G.S. 95, the Retaliatory Employment Discrimination Act (REDA), is maintained in the Raleigh office of the Department of Labor (the Department) at the Old Revenue Building, 111 Hillsborough Street, Raleigh, North Carolina. The mailing address of the main office is:

Workplace Retaliatory Discrimination Office  
North Carolina Department of Labor  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Amended Eff. September 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018;  
Amended Eff. August 1, 2020.

#### 13 NCAC 19 .0102 FORMS

Copies of current forms used by the WORD Office are available from the Raleigh office.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### SECTION .0200 – DEFINITIONS

#### 13 NCAC 19 .0201 DEFINITIONS

The following definitions are applicable throughout this Chapter:

- (1) "Complainant" is a person allegedly aggrieved by a violation of G.S. 95-241, who files a written complaint with the WORD Office.
- (2) "Employee" means those individuals protected from discrimination or retaliation by G.S. 95-241, and includes but is not limited to those individuals defined as employees in G.S. 97-2(2), G.S. 95-25.2(4), G.S. 95-127(9), miners as defined in G.S. 74-24.2, temporary, leased, or loaned employees, former employees, jointly employed employees, common law employees, and applicants.
- (3) "Interview" as used in these Rules includes privately speaking with an employee or witness on company time on the company premises.
- (4) "Open or pending in the trial court division" as set forth in G.S. 95-242(e) means the period beginning with the filing of a written complaint with the Department and ends with either the Commissioner's receipt of a final determination by the trial court on the Commissioner's civil action or closure of the file according to these Rules, whichever occurs later.
- (5) "Protected activity" or "activity" shall mean and include all the actions set forth in G.S. 95-241(a) and G.S. 127A-111.
- (6) "Respondent" is a person, as defined in G.S. 95-240(1), against whom a REDA complaint is filed.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## SECTION .0300 - INITIATION OF COMPLAINTS

### 13 NCAC 19 .0301 CONTENTS OF COMPLAINT

(a) A complaint filed by or on behalf of a complainant must contain the following information:

- (1) Name and address of the complainant;
- (2) Name and address of the respondent, or other information which sufficiently identifies the respondent;
- (3) Description of protected activity, trait or status covered by REDA;
- (4) Description of alleged retaliatory or discriminatory action;
- (5) Approximate date of alleged retaliatory or discriminatory action; and
- (6) Signature of complainant either on complaint form or on supporting documentation allowing the complaint to be filed on behalf of complainant.

(b) The complaint may be amended as needed to meet these requirements.

(c) Complaints and amendments may be filed on a WORD form or other document containing the information in Paragraph (a) of this Rule.

*History Note: Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### 13 NCAC 19 .0302 FILING OF COMPLAINTS

(a) A complaint is filed when it is received by the WORD Office. The complaint, faxed complaint, amendments, written authorizations, and faxed authorizations must be received by the WORD Office within 180 days of the alleged violation.

(b) A complaint may be filed by facsimile as long as a signed paper copy is received by the WORD Office within 10 calendar days of transmittal of the fax. If a signed paper copy of the complaint is not received as set forth in this Rule, the faxed complaint is subject to administrative closing as set out in these Rules.

(c) If a complaint is filed by anyone other than the complainant, including an attorney, the WORD Office must receive a written authorization, dated and signed by the complainant allowing such person to file the complaint on the complainant's behalf. The written authorization must be received by the WORD Office within 10 calendar days of receipt of the complaint. Such complaints not followed by written authorization are subject to administrative closing as set out in these Rules.

(d) A written authorization may be filed by facsimile as long as a signed paper copy is received by the WORD Office within 10 calendar days of transmittal of the fax. If a signed paper copy of the written authorization is not received as set forth in this Rule, the complaint is subject to administrative closing as set out in these Rules.

(e) Computation of time for filing and other deadlines shall be in accordance with G.S. 1A-1, Rule 6(a).

*History Note: Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

## SECTION .0400 - CONDUCT OF INVESTIGATIONS

### 13 NCAC 19 .0401 INVESTIGATION

(a) The Commissioner may, in addition to other actions, interview witnesses, examine and obtain copies of documents, and visit workplaces in determining whether or not there is reasonable cause to believe that the allegations of the complaint are true.

(b) The respondent has 30 days from notification of the complaint to respond to the allegations of the complaint. The respondent's failure to timely respond shall not prevent the investigation from proceeding to a determination.

(c) The complainant shall cooperate during the course of the investigation. Cooperation shall include, but is not limited to:

- (1) notifying the WORD Office, as soon as possible, of changes in address, name or telephone number;

- (2) providing all information requested by the investigator in the time and manner specified by the investigator;
- (3) attending meetings or conferences scheduled by the investigator;
- (4) meeting reasonable deadlines established by the investigator;
- (5) returning required forms; and
- (6) returning telephone calls.

Failure to cooperate may result in dismissal of the complaint pursuant to Rule .0603 of this Chapter.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **13 NCAC 19 .0402 INTERVIEWS**

- (a) All witnesses shall be interviewed in private, except as provided in Paragraphs (b) and (c) of this Rule.
- (b) Witnesses may be accompanied by their own attorney, representative, or interpreter.
- (c) Witnesses whose statements can legally bind a respondent may be accompanied by that respondent's attorney.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **SECTION .0500 - RIGHT-TO-SUE LETTERS**

### **13 NCAC 19 .0501 RIGHT-TO-SUE LETTERS**

A right-to-sue letter may be requested by the complainant after a determination of reasonable cause to believe that the allegations of the complaint are true and notice of conciliation failure. The request may be granted unless the Commissioner intends to file a civil action pursuant to G.S. 95-243. If the request for a right-to-sue letter is granted, the case shall be closed.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **13 NCAC 19 .0502 REQUESTS FOR RIGHT-TO-SUE LETTERS**

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Expired Eff. August 1, 2018 pursuant to G.S. 150B-21.3A.

## **SECTION .0600 - CLOSING OF CASES**

### **13 NCAC 19 .0601 ADMINISTRATIVE CLOSINGS**

A complaint may be administratively closed without investigation if it does not contain the information specified in Rule .0301 of this Chapter. In the event that the case is administratively closed, the intended respondent shall not be notified and the complainant shall not receive a right-to-sue letter.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **13 NCAC 19 .0602 WITHDRAWALS**

The complainant may withdraw the complaint, in writing, at any time prior to the Department's determination that there is reasonable cause to believe that the allegations of the complaint are true.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **13 NCAC 19 .0603 RIGHT-TO-SUE DISMISSALS**

Complaints may be dismissed and a right-to-sue letter issued for the following reasons:

- (1) Insufficient evidence to support the allegations of the complaint; or
- (2) Complainant's failure to cooperate during the investigation.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **13 NCAC 19 .0604 RIGHT-TO-SUE CLOSURE**

Upon the issuance of a right-to-sue letter, the Commissioner shall close the case file.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **13 NCAC 19 .0605 SETTLEMENTS**

Upon settlement of the case and compliance with the terms of any approved settlement agreement, the Commissioner shall close the case file.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

## **SECTION .0700 - SETTLEMENTS AND LITIGATION**

### **13 NCAC 19 .0701 SETTLEMENT**

Except in those cases where the complaint has been withdrawn, or a right-to-sue letter has been issued, the Commissioner shall be a party to all settlements of complaints filed with the Commissioner pursuant to REDA.

*History Note:* Authority G.S. 95-245;  
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### **13 NCAC 19 .0702 LITIGATION**

In determining whether to file a civil action or issue a right-to-sue letter, the Commissioner shall consider the interests of both the public and the individual complainant. If the Commissioner elects to file a civil action, the Commissioner shall control all aspects of the litigation, which shall include the acceptance of any proposed settlement.

*History Note:* Authority G.S. 95-245;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

