

North Carolina Department of Labor  
Occupational Safety and Health Division  
Bureau of Compliance

Field Operations Manual  
Chapter X – Discrimination Complaints



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## Chapter X

### Discrimination Complaints

- A. **Scope.** This chapter sets forth guidelines for handling occupational safety and health discrimination complaints under North Carolina General Statute (NCGS) §95-240 to §95-245, the Retaliatory Employment Discrimination Act (REDA) and under Section 11(c) of the federal Occupational Safety and Health (OSH) Act that are referred to Retaliatory Employment Discrimination Bureau (REDB) for investigation pursuant to the North Carolina State Plan
- B. **Organization.**
1. **Commissioner of Labor.** The commissioner has overall responsibility for the investigation of discrimination complaints under REDA.
  2. **Retaliatory Employment Discrimination Bureau.** The commissioner has delegated the authority to investigate complaints alleging discrimination in violation of REDA to REDB.
  3. **Occupational Safety and Health Division.** The division works in cooperation with the REDB, assuring coordination of OSH activities which have a bearing on the REDB program. The OSH Division policy is to make the agency as accessible as possible to employees who have legitimate discrimination complaints.
- C. **Reference.** The REDB's Operations Desk Guide sets forth policy, procedures and other information relative to the handling of all discrimination complaints filed under REDA and Section 11(c) of the federal OSH Act.
- D. **Functional Responsibilities.**
1. **Director for Standards and Inspections.** The director for the Standards and Inspections Division supervises the REDB Administrator and makes management level policy decisions that affect and inform the work of the bureau.
  2. **REDB Administrator.** The REDB administrator has overall responsibility for the intake, assignment, investigation and proper closure of discrimination complaints filed under REDA and Section 11(c) complaints referred to REDB, including engaging the parties in settlement discussions and recommending litigation in appropriate cases. The administrator is responsible for the implementation of policies and procedures; setting bureau and staff goals and monitoring performance; and for the effective supervision of investigators, staff, and the investigative process.
  3. **REDB Discrimination Investigator Duties.**
    - a. Investigate cases assigned by the REDB administrator; maintain accurate records of all case activities; obtain and review relevant documentary evidence; conduct interviews; recommend determinations in each case; prepare written investigative reports; follow bureau policies and procedures; complete investigations and closing procedures consistent with investigator and bureau goals; and assist the administrator as required.

- b. While investigating complaints, investigators shall be alert to potential safety and/or health hazards and, make appropriate referrals as necessary.
- 4. REDB Administrative Support Staff.
  - a. Information Officer. The information officer serves as the chief intake officer of filed complaints; is responsible for case opening and assignment procedures; acts as office manager; maintains office data base systems; and assists the administrator and investigators as needed.
  - b. Administrative Specialist II. The administrative specialist has primary responsibility for handling all incoming calls to the help line; explaining the requirements of REDA; making appropriate referrals to other agencies as needed; conducting routine file audits; and assisting the information officer and administrator as needed.
- 5. OSH Director. The OSH director has overall responsibility for assuring continued federal Occupational Safety and Health Administration (OSHA) grant support and serves as liaison between the OSH Division and REDB.
- 6. OSH Complaint Desk. The complaint desk has the overall responsibility for assuring that discrimination complaints made in conjunction with safety/health complaints are expeditiously referred to the REDB . When a discrimination complaint is made concurrently with a safety/health complaint, every attempt will be made to assign priority to the safety/health inspection.
- 7. OSH Supervisors. The OSH supervisors have the overall responsibility for assuring that discrimination complaints received by the compliance safety and health officers (CSHOs) are expeditiously referred to the REDB. When a discrimination complaint has been made concurrently with a safety/health complaint, the supervisor will assign priority to that inspection.
- 8. CSHOs.
  - a. Attain a general knowledge of the protection provided under REDA, the OSH Act, and the Surface Transportation Assistance Act (STAA) in order to advise employers and employees of their rights granted under those acts. Protected activity under STAA and other related discrimination laws are described in Appendix X-A: Related OSHA Discrimination Acts.
  - b. Notify employers during closing conferences that discrimination against employees for exercising their rights under the act is prohibited.
  - c. Note or record in the inspection case file statements, documents, etc. which might be contradictory to or supportive of a discrimination complaint.
- 9. Planning, Statistics and Information Management (PSIM) Bureau. The PSIM Bureau has overall responsibility for providing computer generated reports (e.g., inspection history of employers) from the state or federal computer systems and for archiving OSH Division inspection reports. They will make available to discrimination investigator copies of inspection case files, establishment history, etc., for review and copying. PSIM is also responsible for redacting and processing for disclosure any REDB occupational safety or

health related file for non-public and public disclosure, following bureau procedures reflected in FOM Chapters XIII – Fatality and Catastrophe Investigations and XVI – Administrative File Activities.

E. Referrals.

1. Oral REDB Complaints. If an employee or employee representative makes an allegation orally to an OSH Division employee regarding REDA discrimination, the OSH Division employee will refer the complainant to the REDB Office at (919) 707-7941 or (800) NCLABOR or (800) 625-2267.
2. Written Complaints. If a written discrimination complaint is received by the OSH Division, the information will be scanned/emailed or faxed to the REDB at 1-888-533-0886 and the original complaint and envelope will be sent immediately to the REDB Administrator or her designee.

**Note:** Discrimination complaints falling outside REDB jurisdiction will be referred to the appropriate authorities. See Appendix X-B: Other Discrimination and Employment Law Related Agencies for a list of contact information.

F. Discrimination Complaints.

1. Discrimination Prohibited. REDA provides that no person shall discriminate or retaliate against an employee because the employee in good faith does or threatens to do any of the following:
  - a. File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person (not necessarily to an investigative agency) with respect to any of the following:
    - i. The Occupational Safety and Health Act of North Carolina (NCGS Chapter 95, Article 16).
    - ii. The Wage and Hour Act of North Carolina (NCGS Chapter 95, Article 2A).
    - iii. The Workers' Compensation Act of North Carolina (NCGS Chapter 97).
    - iv. The Mine Safety and Health Act of North Carolina (NCGS Chapter 74, Article 2A).
    - v. Discrimination against Sickle Cell and Hemoglobin C carriers (NCGS Chapter 95-28.1).
    - vi. Genetic Testing Discrimination (NCGS Chapter 95-28.1A).
    - vii. National Guard Discrimination (NCGS Chapter 127A, Article 16).
    - viii. Participation in Juvenile Justice System (NCGS Chapter 7B, Article 27).
    - ix. Pesticide Board (NCGS Article 52 of Chapter 143).
    - x. Domestic Violence Victims (NCGS Chapter 50B-5.5).
    - xi. Control of Potential Drug Paraphernalia Products (NCGS Chapter 90, Article 5F).
  - b. Cause any of the activities listed in subparagraph F.1.a. above to be initiated on an employee's behalf.

- c. Exercise any right on behalf of the employee or any other employee afforded by the Occupational Safety and Health Act of NC, the Wage and Hour Act of NC, or the Mine Safety and Health Act of NC.
2. Retaliation Defined. “Retaliatory action” means the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment.
3. Filing a REDA Complaint.
  - a. Who May File? Any employee allegedly aggrieved by a violation of REDA. “Employee” means those individuals protected against discrimination under REDA and includes both private and public sector workers, temporary or leased employees, former employees, jointly employed employees, and common law employees.
  - b. Who is a Person under REDA? “Person” means any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency or other entity of government. Both private and public sector employers are persons under REDA.
  - c. Nature of Filing. The complaint shall be submitted in writing by facsimile, electronic mail, express delivery, first-class mail, or hand delivery and must be signed by the employee. A complaint with an original signature must be submitted within 10 days of a faxed or emailed complaint.
  - d. Time for Filing. The complaint must be filed within 180 calendar days of the date of the last alleged adverse action against the employee. File date is the date of a facsimile or email transmission, the postmark on first-class mail envelope, the issuance date of an express mail package, or the date of hand delivery.

**APPENDIX X-A: Related OSHA Discrimination Acts**

- A. The following provides a brief discussion of related discrimination acts (besides the OSH Act) that are covered under federal OSHA discrimination, Section 11(c) of the Act.
1. Section 405 of the Surface Transportation Assistance Act (STAA). STAA provides discrimination protection similar to protection provided under Section 11(c) of the Act. This protection is limited to employees of most commercial motor carriers engaged in interstate or intrastate operations who, in the course of their employment, directly affect motor carrier safety. This section provides that an employee may file a complaint within 180 calendar days after the alleged violation occurs. Federal OSHA Regional Offices have overall responsibility for the investigation of these complaints.
  2. Section 211 of the Asbestos Hazard Emergency Response Act (AHERA). AHERA provides discrimination protection similar to protection provided under Section 11(c) of the Act, except that protected activity involves asbestos in elementary and secondary school systems. The EDB Office will treat asbestos-related discrimination complaints as occupational safety and health protected activity under REDA, except where federal OSHA has jurisdiction, i.e., on military bases/installations or Indian reservations.
  3. Section 7 of the International Safe Container Act (ISCA). ISCA establishes uniform structural requirements for intermodal cargo containers designed to be transported interchangeably by sea and land carriers, and moving in, or designed to move in, international trade. The secretary of labor was delegated responsibility for the investigation and disposition of discrimination complaints filed under Section 7 of ISCA, which is similar to Section 11(c) of the Act. This section provides that an employee may file a complaint within 60 calendar days after the alleged violation occurs. Federal OSHA Regional Offices have overall responsibility for the investigation of these complaints.

**APPENDIX X-B: Other Discrimination and Employment Law Related Agencies**

- A. Equal Employment Opportunity Commission (e.g., age, race, sex, religion, country of national origin, disability, maternity benefits):
  - 1. Raleigh: (800) 669-4000 or (919) 856-4064
  - 2. Charlotte: (800) 669-4000 or (704) 954-6423
  - 3. Greensboro: (800) 669-4000 or (336) 547-4097
- B. Office of Federal Contract Compliance (government contractors, Rehabilitation Act):
  - 1. Raleigh: (919) 790-8248
  - 2. Charlotte: (704) 749-3380
- C. National Labor Relations Board (union or protected concerted activity): (336) 631-5201
- D. Governor's Advocacy Council for the Disabled: (919) 856-2195 or (877) 235-4210
- E. Employee Benefits Security Administration (EBSA), US Department of Labor (health insurance plans): (404) 302-3900
- F. Private Personnel Services Division, NC Department of Labor: (919) 807-2796
- G. Wage and Hour Division, US Department of Labor:
  - 1. Raleigh: (919) 790-2741 or (866) 487-9243
  - 2. Charlotte: (704) 749-3360
- H. Occupational Safety and Health Division, NC Department of Labor:
  - 1. Main Office: (800) NC-LABOR or (800) 625-2267
  - 2. Standards Interpretations, Questions: (919) 707-7874
  - 3. Complaints, Accident/Fatality Reports: (919) 779-8560 or (800) NCLABOR and (919) 733-3333 (after hours, and holidays)
- I. Social Security Administration: (800) 772-1213
- J. NC Department of Commerce, Division of Employment Security (unemployment): (888) 737-0259
- K. NC Industrial Commission (workers' compensation): (919) 807-2501