

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 or health discrimination complaints under NCGS §95-240 to §95-245, the Retaliatory Employment Discrimination Act (REDA).
- B. **Organization.**
1. **Commissioner of Labor.** The commissioner has overall responsibility for the investigation of discrimination complaints under REDA.
 2. **Employment Discrimination Bureau (EDB).** The commissioner has delegated to the EDB office the authority to investigate complaints alleging discrimination in violation of REDA.
 3. **Occupational Safety and Health Division.** The division will work in cooperation with the EDB Office, assuring coordination of OSH activities which have a bearing on the EDB program. The OSH Division policy is to make the agency as accessible as possible to employees who have legitimate discrimination complaints.
- C. **Reference.** The OSH Discrimination Manual of the EDB Bureau sets forth policy, procedures and other information relative to the handling of all discrimination complaints under REDA.
- D. **Responsibilities.**
1. **Director for Standards and Inspections.** The director for the Standards and Inspections Division supervises the EDB bureau chief, and makes policy decisions which need to be made at the management level.
 2. **EDB Bureau Chief.** The EDB bureau chief has overall responsibility for the investigation of discrimination complaints, dismissal of complaints without merit, settlement of meritorious cases, and referral for possible litigation or the issuance of a right- to-sue letter. The bureau chief is responsible for the implementation of policies and procedures, and for the effective supervision of field discrimination investigations and investigators.
 3. **EDB Discrimination Investigators .**
 - a. Investigate such cases as assigned by the EDB bureau chief and assist the bureau chief as required.
 - b. Make recommendations for disposition of discrimination complaints and make initial settlement attempts in cases which are determined to be meritorious.
 - c. Serve as information officer (IO), receiving and screening complaints, and making referrals, in the absence of the support staff.
 - d. Are on the alert, while screening and/or investigating complaints, for potential safety and/or health hazards and, when necessary, make appropriate referrals as soon as possible.
 4. **EDB Support Staff.** The support staff normally handles all inquiries acting in an IO capacity. They receive and screen complaints and make referrals, as appropriate, to other agencies. They input data to the computer system and handle EDB correspondence.

5. OSH Director. The OSH director has overall responsibility for assuring continued federal OSHA grant support and liaison between the OSH Division and EDB.
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 EDB Office. 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 CSHOs are expeditiously referred to the EDB Office. 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 A.
 - 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 EDB occupational safety or health related file for non-public and public disclosure, following bureau procedures reflected in FOM Chapters XIII and XVI.

E. Referrals.

1. Oral 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 EDB Office at (919) 807-2831 or 1(800) NCLABOR or 1 (800) 625-2267.
2. Written Complaints. If a written discrimination complaint is received by the OSH Division, the information will be scanned/mailed or faxed to the EDB Office at (919) 807-2824 and the original complaint and envelope will be sent immediately to the EDB bureau chief.

Note: Discrimination complaints falling outside EDB jurisdiction will be referred to the appropriate authorities. See Appendix B.

F. **Discrimination Complaints.**

1. **Discrimination Prohibited.** The act provides that no person will discriminate or take any retaliatory action 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 (Chapter 95, Article 16 of the General Statutes).
 - ii. The Wage and Hour Act of North Carolina (Chapter 95, Article 2A of the General Statutes).
 - iii. The Workers' Compensation Act of North Carolina (Chapter 97 of the General Statutes).
 - iv. The Mine Safety and Health Act of North Carolina (Chapter 74, Article 2A of the General Statutes).
 - v. Discrimination against Sickle Cell and Hemoglobin C carriers (G.S. 95-28.1).
 - vi. Genetic Testing Discrimination (G.S. 95-28.1A) .
 - vii. National Guard Discrimination (Chapter 127A, Article 16 of the General Statutes).
 - viii. Participation in Juvenile Justice System (Chapter 7B, Article 27 of the General Statutes).
 - ix. Pesticide Board (Article 52 of Chapter 143 of the General Statutes).
 - x. Domestic Violence Victims (G.S. 50B-5.5).
 - xi. Control of Potential Drug Paraphernalia Products (Chapter 90, Article 5F of the General Statutes)
 - 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 & Health Act of NC, the Wage & Hour Act of NC, or the Mine Safety & Health Act of NC.
2. **Filing a Complaint of Discrimination**
 - a. **Who May File.** Any employee allegedly aggrieved by a violation of REDA.
 - b. **Nature of Filing.** The complaint may be received in oral or written form per Chapter 2 of the EDB Discrimination Manual pertaining to occupational safety or health related discrimination activity.
 - c. **Place of Filing.** REDA provides that the signed written complaint may be filed with the commissioner of labor. Normally, complaints are received at the EDB Office, 1101 Mail Service Center, Raleigh, NC 27699-1101.
 - d. **Time for Filing.** The complaint must be filed within *180 calendar days* of the alleged discriminatory violation

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 & 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 (age, race, sex, religion, country of national origin, disability, maternity benefits)

Raleigh (800) 669-4000 or (919) 856-4064

Charlotte (800) 669-4000 or (704) 954-6423

Greensboro (800) 669-4000 or (336) 547-4097

- B. Office of Federal Contract Compliance (government contractors, Rehab Act):

Raleigh (919) 790-8248

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 Dept. of Labor (health insurance plans): (404) 302-3900

- F. Private Personnel Services Division, NC Dept. of Labor: (919) 807-2796

- G. Wage and Hour Division, US Dept. of Labor:

Raleigh (919) 790-2741 or (866) 487-9243

Charlotte (704) 749-3360

- H. Occupational Safety & Health Division, NC Dept. of Labor:

Main Office (800) NC-LABOR or (800) 625-2267

Interpretations, questions (919) 807-2875

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