

## SECTION .0100 - GENERAL PROVISIONS

### 13 NCAC 12 .0101 WAGE AND HOUR DIVISION

*History Note:* Authority G.S. 95-25.17;  
Eff. November 1, 1980;  
Amended Eff. November 1, 1988; July 1, 1988;  
Repealed Eff. April 1, 1999.

### 13 NCAC 12 .0102 STATE AND FEDERAL LAWS AND INTERPRETATIONS AVAILABLE

Copies of state and federal laws which are incorporated by reference in the Wage and Hour Act will be available for inspection in the office of the Department of Labor. Copies of judicial and administrative interpretations and rulings established under the federal law which will be used as a guide for interpreting the North Carolina law and which will be controlling for enforcement purposes will also be available for inspection in the office of the Department of Labor.

*History Note:* Authority G.S. 95-25.17; 95-25.19;  
Eff. November 1, 1980;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### 13 NCAC 12 .0103 FEDERAL LAW AS GUIDE

Where the legislature has adopted the language or terminology of the Fair Labor Standards Act (F.L.S.A.) for the purpose of facilitating and simplifying compliance by employers with both the federal and state labor laws, or has incorporated a federal act by reference, the Department of Labor will look to the judicial and administrative interpretations and rulings established under the federal law as a guide for interpreting the North Carolina law. Such federal interpretations will therefore be considered persuasive and will carry great weight as a guide to the meaning of the North Carolina provisions and will be controlling for enforcement purposes. However, where there are intentional differences in the language of the North Carolina statutes, or where the laws of this State or the authority granted to the Commissioner of Labor of North Carolina require a different interpretation, the federal decisions will not be binding on the Department.

*History Note:* Authority G.S. 95-25.17; 95-25.19;  
Eff. November 1, 1980;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### 13 NCAC 12 .0104 FORMS

*History Note:* Authority G.S. 95-25.3; 95-25.5; 95-25.17; 95-25.19; 95-25.22;  
Eff. November 1, 1980;  
Amended Eff. February 1, 1982;  
Repealed Eff. April 1, 1999.

## SECTION .0200 - SUBMINIMUM WAGES

### 13 NCAC 12 .0201 SUBMINIMUM WAGE: STUDENTS: LEARNERS: APPRENTICES: ETC.

*History Note:* Authority G.S. 95-25.3;  
Eff. November 1, 1980;  
Repealed Eff. February 1, 1982.

### 13 NCAC 12 .0202 DISABLED WORKER CERTIFICATION

(a) For purposes of this Rule, a "disabled worker" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work he is to perform.

(b) An application for the issuance of a disabled worker certificate establishing a subminimum wage rate for an individual for a particular job may be made by an employer with the Administrator of the Wage and Hour Bureau and must include:

- (1) the name, address and nature of the business of the employer;

- (2) a description of the occupation at which the worker is to be employed;
- (3) the nature of the worker's disability and its relation to his work;
- (4) the wage the employer proposes to pay the worker (as a percentage of the State minimum wage);
- (5) signatures of the employer and the worker; and
- (6) certification of the applicant's disability by the Division of Vocational Rehabilitation of the Department of Health and Human Services.

(c) If the proposed subminimum wage is less than 50 percent of the applicable minimum wage, the application and evidence must establish that the individual has multiple disabilities or is so severely impaired that his earning or productive capacity would not yield wages equal to at least 50 percent of the minimum wage if compensated at wage rates which are commensurate with those for non-disabled workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(d) To determine whether the facts justify the issuance of a certificate, the Administrator may require the submission of additional information and may require the worker to take a medical examination.

(e) A Disabled Worker Certificate shall be issued by the Administrator only if a proper application has been made and the facts show:

- (1) A special subminimum wage is necessary to prevent curtailment of the worker's opportunities for employment.
- (2) The earning or productive capacity of the worker for the work he is to perform is impaired by age or physical or mental deficiency or injury.
- (3) The wage rate requested reflects adequately the individual worker's earning or productive capacity and is not less than 50 percent of the applicable minimum wage, unless a lower rate is justified in accordance with (c) of this Rule.
- (4) In an establishment or a vicinity where non-disabled employees are employed at piece rates in the same occupation, the disabled worker will be paid at least the same piece rates or at the hourly rate specified in the certificate, whichever is greater.

(f) When a certificate is issued, the subminimum wage rate shall be established as a percentage of the State minimum wage, so that the disabled worker's wage rate will adjust automatically with changes in the State minimum wage without reissuance of a new certificate. Copies of the certificate shall be transmitted to the employer and the worker. The employer shall keep, maintain and have available for inspection a copy of the certificate.

(g) A certificate shall not be issued retroactively and shall be issued for a period of three years, subject to renewal by the Administrator. The terms of a certificate, including wage rate, may be amended by the Administrator upon written notice to the parties concerned, if the facts justify such an amendment. A certificate expires automatically when there is a substantial change in the job description, employment is terminated, or due to a change in circumstances the Administrator determines that the certificate or the subminimum wage rate set by the certificate no longer complies with the requirements of this Rule.

(h) Any person aggrieved by an action of the Administrator pursuant to this Rule may, within 15 days after such action, file with the Administrator a written petition for review setting forth the grounds. The Commissioner of Labor or his designated hearing officer may conduct a hearing and offer aggrieved persons the opportunity to present data and views pursuant to Chapter 150B, Article 3 of the North Carolina General Statutes. Any person adversely affected by the decision of the Commissioner or his designee may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

(i) Certificates providing subminimum wage rates for sheltered workshops for persons with disabilities may be issued in accordance with the rules and regulations promulgated under the F.L.S.A. regulating and allowing for the issuance of such certificates.

*History Note: Authority G.S. 95-25.3; 95-25.15; 95-25.17; 95-25.19; Eff. November 1, 1980; Amended Eff. January 1, 2007; February 1, 1982; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

## **SECTION .0300 – WAGES**

### **13 NCAC 12 .0301 BOARD: LODGING OR OTHER FACILITIES**

(a) "Wage" paid to an employee includes the reasonable cost of furnishing employees with board, lodging and other facilities where there is benefit to the employee and the benefit has been received by the employee.

(b) "Other facilities" under this Section must be in the nature of board or lodging. Other facilities include but are not limited to: meals furnished at company restaurants or by hospitals, hotels or restaurants to their employees; meals, dormitory rooms and tuition furnished by a college to its student employees; housing furnished for dwelling purposes; general merchandise furnished at company stores and commissaries (including articles of food, clothing and household effects); fuel furnished for the noncommercial personal use of the employee; transportation furnished employees between their homes and work where the travel time does not constitute compensable hours worked and such transportation is not an incident of and necessary to the employment.

(c) Reasonable cost under this Section does not include a profit to the employer or to an affiliated person.

(d) Items which are primarily for the benefit of the employer and which will not be computed as wages include but are not limited to: tools and equipment required by the employer; uniforms, where the business requires the employee to wear a unique or customized uniform; transportation charges where it is an incident of and necessary to the employment.

*History Note: Authority G.S. 95-25.2; 95-25.19;*

*Eff. November 1, 1980;*

*Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0302 COMPUTATION OF REASONABLE COST**

(a) For the purpose of calculating the wage paid to an employee, in an establishment which regularly provides meals to the public, the reasonable cost of furnishing employees meals will be computed as 50 percent of the established retail rate for the meals. In establishments without an established retail rate, the cost will be computed as 50 percent of the retail rate charged for comparable meals of like quality and kind within the community.

(b) With respect to lodging furnished to an employee, the employer may count as wages the full retail cost of the facilities furnished. Where there is no retail cost, the employer may compute the retail rate charged for comparable services of like quality within the community.

(c) In order to include the reasonable cost of board, lodging or other facilities as a wage paid to an employee, the employer must keep accurate and complete records of the board, lodging and other facilities provided to the employee. Obtaining the signature or initials of the employee monthly or for each pay period on a written record which specifies dollar amounts constitutes acknowledgement by the employee of receipt of such benefits, and subject to the other provisions of this Section, these costs will be computed as wage compensation. Where permanent lodging is provided for an employee, a blanket acknowledgement may be signed by the employee when the employee begins residence so long as the acknowledgement specifies a dollar amount which is to be credited as wages.

(d) Homes for dependent children with live-in employees who are exempt from overtime and recordkeeping provisions pursuant to G.S. 95-25.14(c)(6), may contract with any resident employee to pay such employee an annual wage of 2,080 times the minimum wage. Such a contract shall satisfy the requirements of the minimum wage law, but the employer shall not be entitled to any additional credits for meals and lodging.

*History Note: Authority G.S. 95-25.2; 95-25.15; 95-25.19;*

*Eff. November 1, 1980;*

*Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0303 TIPS AND TIP CREDITS**

(a) Tips are not wages. Tips may be counted toward wages only to the extent set forth in Paragraphs (e), (f) and (g) of this Rule.

(b) A tip shall not include a service charge which the employer requires the customer to pay, no matter what the charge is labeled.

(c) Tips belong to the employee for whom they were left by the customer. Employees and employers may not agree that the employee will surrender tips to the employer. However, if there is a tip pooling arrangement under 95-25.3(f), the employee may be required to surrender tips received for distribution in accord with the tip pooling arrangement.

(d) If a customer pays by credit, charge or debit card and includes a tip for an employee:

- (1) the tips so charged accrue to the employee at the time of the charge. The employer shall pay the employee the charged tip no later than the payday for the pay period in which the customer signs the charge; and
- (2) employers may retain from the tips an amount up to or equal to the pro rata portion of the fee charged by the card issuing company which is attributable to the tips. When employers make such retentions, they do so without violating G.S. 95-25.6 and without becoming disqualified from claiming the tip credit on the charged tip.

- (e) In order for an employer to claim a tip credit toward the minimum wage:
- (1) the employee must be a tipped employee within the meaning of the Act;
  - (2) the employer shall notify the employee in accordance with G.S. 95-25.13 if the employer intends to claim the tip credit; and
  - (3) the employee must retain all tips, subject to any valid tip pooling arrangement as described in Paragraph (h) of this Rule.
- (f) The following records shall be kept by the employer for each employee for whom a tip credit is claimed:
- (1) Complete and accurate records of the amount of tips received for each workweek as such tips are certified by the employee monthly or for each pay period. The employee certification is the employee's signature or initials on the employer's records. Certification shall occur either monthly or for each pay period. The sole exception to this requirement is set forth in Paragraph (g) of this Rule. An employee's acceptance of wages from the employer shall not constitute certification by the employee of tips received;
  - (2) The amount claimed by the employer as tip credit for each employee for each workweek;
  - (3) For each employee participating in a tip pool, for each workweek, the amount of contributions to the tip pool; and
  - (4) For each employee participating in a tip pool, for each workweek, the amount received from the tip pool.
- (g) If the employee refuses to certify or to certify accurately and completely the amount of tips received, a tip credit may be claimed if the employer:
- (1) meets the requirements of Paragraphs (e)(3) and (f) of this Rule; and
  - (2) can demonstrate with written documentation for each workweek for which a credit is claimed:
    - (A) that the tipped employee certifies having received tips in the amount for which the credit is taken, or
    - (B) that a similarly situated tipped employee received tips in the amount for which the credit is taken, or
    - (C) by other method which reliably establishes that the tipped employee regularly receives tips in the amount for which the credit is taken.
- (h) "Tip pooling" as used in G.S. 95-25.3(f) is an arrangement in which all or a part of the tips of the contributing employees are combined into a common pool and then divided among the participating employees according to a pre-determined formula. An employee's share of a tip pool is that portion of the total amount in the pool which the employee receives. A tip pooling arrangement is valid under G.S. 95-25.3(f) when:
- (1) the contributing employees are notified of the arrangement before the pay period in which it will be used;
  - (2) the share of each contributing employee is at least 85% of the employee's tips before the employee contributes to the tip pool; and
  - (3) only employees who customarily and regularly receive tips receive a share from the pool.
- The requirement of 95-25.6 that the employer pay "tips accruing to the employee" shall be satisfied if the employee in a tip pooling arrangement receives 85% of the employee's actual tips before pooling or the employee's share received from the pool, whichever is greater. By complying with Subparagraph (h)(2) of this Rule, the employer has also satisfied the provision of G.S. 95-25.3(f) requiring the employer to allow the tipped employee to retain all tips.

*History Note: Authority G.S. 95-25.3; 95-25.6; 95-25.13; 95-25.15; 95-25.19; Eff. November 1, 1980; Amended Eff. April 1, 1999; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0304 WITHHOLDING OF WAGES**

- (a) Employers shall furnish each employee an itemized statement indicating the amount and purpose of all deductions, diversions, payments or withholding of wages for each pay period in which deductions or recoupments are made.
- (b) "Criminal process," as that term is used in G.S. 95-25.8(e), means any citation, criminal summons, warrant for arrest, or order for arrest, issued by a justice, judge, magistrate, clerk of court, or law enforcement officer for the purpose of requiring a person to appear in court and answer to allegations of a cash shortage, inventory shortage, or damage to an employer's property based upon a showing of probable cause supported by oath or affirmation.

*History Note: Authority G.S. 95-25.8; 95-25.11; 95-25.13; 95-25.19; Eff. November 1, 1980; Amended Eff. January 1, 2007; April 1, 1999; February 1, 1982;*

*Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

**13 NCAC 12 .0305 AUTHORIZATION FOR WITHHOLDING OF WAGES**

(a) When an authorization is required by the Act, the monetary limitations and time requirements specified in G.S. 95-25.8 of the Wage and Hour Act apply and shall not be waived.

(b) Deductions for the convenience of the employee, as that term is used in G.S. 95-25.8, include savings plans, credit union installments, savings bonds, union or club dues, uniform rental or cleaning not required by the employer, parking and charitable contributions.

(c) A "reasonable opportunity to withdraw," as that term is used in G.S. 95-25.8(a), shall be at least three calendar days from the date of the employer's notice of the actual amount to be deducted or the employee's written notice of withdrawal of the authorization.

(d) In accordance with G.S. 95-25.8(d), advances of wages to the employee or to a third party at the employee's request are considered to be prepayment of wages. A dated receipt, signed by the employee, for the advance of wages, shall be sufficient to show that the advance was requested and made.

(e) Loans from an employer to an employee that are considered to be an advance of wages pursuant to G.S. 95-25.8(d) may include credit advanced for purchasing from the employer items not primarily for the benefit of the employer and personal usage of the employer's property when designated for business use only. Personal loans from a supervisor to a subordinate or loans made by third parties to an employee with payroll deduction arrangements are not an advance of wages.

(f) If an employer underpays wages to an employee as a result of a miscalculation of wages or other bona fide error, the employer shall pay any such underpayment owed as soon as possible upon the discovery of the error and no later than the next regularly scheduled pay day, along with accrued interest at the legal rate set forth in G.S. 24-1 from the date the wages first became due.

(g) Authorizations for deductions that are not permitted by law are invalid. For example:

- (1) G.S. 97-21 invalidates agreements by an employee to pay any portion of a premium paid by his or her employer to a workers' compensation insurance carrier;
- (2) 13 NCAC 07F .0101(a)(2) requires the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job.

If an employer withholds or diverts wages for purposes not permitted by law, the employer shall be in violation of G.S. 95-25.6 or G.S. 95-25.7, or both, even if the employee authorizes the withholding in writing pursuant to G.S. 95-25.8(a), because that authorization is invalid.

(h) An employer may obtain a written authorization pursuant to G.S. 95-25.8(a) and include in the authorization a provision for deducting the balance of the unpaid amount from the employee's paycheck in the event the employee separates before the full amount has been collected. If the employer obtains such an authorization, the employer may deduct as much of the balance possible from the final paycheck without having to give the employee notice of the amount and a reasonable opportunity to withdraw his or her authorization as required by G.S. 95-25.8(a), subject to the withholding limitations of G.S. 95-25.8(b).

(i) A wage credit in the form of tips in accordance with Rule .0303 of this Section, or the reasonable costs of meals, lodging or other facilities in accordance with Rule .0301 of this Section, is not a withholding of wages and does not require written authorization pursuant to G.S. 95-25.8(a).

*History Note: Authority G.S. 95-25.8; 95-25.11; 95-25.13; 95-25.19; Eff. November 1, 1980; Legislative Objection Lodged Eff. March 27, 1981; Amended Eff. January 1, 2007; April 1, 1999; February 1, 1982; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

**13 NCAC 12 .0306 VACATION PAY**

(a) All vacation policies and practices shall address:

- (1) How and when vacation is earned so that the employees know the amount of vacation to which they are entitled;
- (2) Whether or not vacation time may be carried forward from one year to another, and if so, in what amount;
- (3) When vacation time must be taken;
- (4) When and if vacation pay may be paid in lieu of time off; and
- (5) Under what conditions vacation pay will be forfeited upon discontinuation of employment for any reason.

(b) Ambiguous policies and practices shall be construed against the employer and in favor of employees.

(c) Vacation benefits granted under a policy which does not establish an earning period cannot be reduced or eliminated as a result of a change in policy. An example of such a policy is: "Employees are entitled to one week of vacation per calendar year." If a policy which establishes an earning period or accrual rate is changed, employees are entitled to a pro rata share of the benefits earned under the original policy through the effective date of the change and of the benefits earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

*History Note:* Authority G.S. 95-25.2; 95-25.12; 95-25.13; 95-25.19;  
Eff. November 1, 1980;  
Legislative Objection Lodged Eff. March 27, 1981;  
Amended Eff. January 1, 2007; April 1, 2001; April 1, 1999; February 1, 1982;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0307 BONUSES, COMMISSIONS AND OTHER FORMS OF WAGE CALCULATION**

- (a) Employers may pay wages based on bonuses, commissions or other forms of calculation as infrequently as annually, if the employees are so notified before earning such wages.
- (b) Employers shall notify employees of the employers' policies and practices concerning pay, wages based on bonuses, commissions, or other forms of wage calculation.
- (c) Ambiguous policies and practices shall be construed against the employer and in favor of employees.
- (d) All policies or practices relating to bonuses, commissions, or other forms of calculation wages shall address:
- (1) How and when bonuses, commissions or other forms of calculation wages are earned so that the employees know the amount of bonuses, commissions or other forms of calculation wages to which they are entitled; and
  - (2) Under what conditions and in what amount bonuses, commissions or other forms of calculation wages will be paid upon discontinuation of employment.
- (e) Wages computed under a bonus, commission, or other forms of calculation policy or practice which does not establish specific earning criteria cannot be reduced or eliminated as a result of a change in policy or practice. An example of such a policy is: "Employees earn commissions of xx% on all 'sales' (where sales are not defined by the employer)." If the employer changes a policy or practice which establishes specific earning criteria, the employee is entitled to the bonus, commission or other forms of calculation wages earned under the original policy through the effective date of the change and is entitled to the bonus, commission or other forms of calculation wages earned under the new policy from the effective date forward, so long as the earning criteria are met under both policies.

*History Note:* Authority G.S. 95-25.6; 95-25.7; 95-25.13; 95-25.19;  
Eff. February 1, 1982;  
Amended Eff. January 1, 2007; April 1, 2001; April 1, 1999;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0308 FINAL PAY FOR SEPARATED EMPLOYEES**

- (a) For purposes of G.S. 95-25.7 and these Rules:
- (1) "Separated employees" are employees whose employment has been discontinued either voluntarily or involuntarily for any reason.
  - (2) "The next regular payday" is the payday for the pay period in which the separated employee's employment is discontinued, except for bonuses, commissions and other forms of compensation. "The next regular payday" for bonuses, commissions and other forms of compensation is the first regular payday for the pay period in which such wages become calculable.
- (b) If an employee requests that the employee's final paycheck be mailed, the employer shall mail the paycheck to the employee at the employer's expense. Employers shall not withhold the final paycheck because the employee refuses to come to the business office or place of employment to pick up the paycheck. The employer may require the employee to provide a notarized or witnessed written request for the mailing of the final paycheck.
- (c) If a final paycheck mailed at the employee's request:
- (1) Is lost or stolen before the employee receives it, the employer shall replace the paycheck upon request of the employee. The employer shall not deduct costs related to replacing the check without written authorization from the employee in accordance with Rule .0305 of this Section.
  - (2) Is lost or stolen after the employee receives it, the employer shall replace the paycheck upon request of the employee. The employer may deduct costs related to replacing the paycheck without a written authorization

from the employee. "Costs of replacing the paycheck" shall include the cost of stopping payment on the lost or stolen check.

(d) An employer owes the employee the wages due until the employee receives the final paycheck. However, if the check is dishonored by the financial institution against which it is drawn, then the employer's obligation to pay the wages remains.

*History Note:* Authority G.S. 95-25.2; 95-25.6; 95-25.7; 95-25.7A; 95-25.8; 95-25.19;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0309 FORM OF PAYMENT OF WAGES**

G.S. 95-25.6 and G.S. 95-25.7 do not require a specific form of payment. Therefore, the employer may select any legal form of payment, so long as payment is made in full on the designated payday, subject to authorized deductions and legal withholdings. Acceptable forms of payment include cash, money order, negotiable checks, and direct deposit into an institution whose deposits are insured by the United States government or an institution selected by the employee.

*History Note:* Authority G.S. 95-25.2; 95-25.6; 95-25.7; 95-25.19;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0310 "OTHER AMOUNTS PROMISED" AS WAGES**

"Other amounts promised" as that term is used in G.S. 95-25.2(16) are those amounts which the employer has promised or has a policy or practice of paying and shall include, but are not limited to, travel expenses, holiday pay, birthday pay, jury duty pay, shift premium pay, prizes, moving expenses, educational expenses, or telephone expenses.

*History Note:* Authority G.S. 95-25.2; 95-25.6; 95-25.7; 95-25.19;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

## **SECTION .0400 - YOUTH EMPLOYMENT**

### **13 NCAC 12 .0401 CERTIFICATION OF YOUTHS**

(a) Unless exempted by the Wage and Hour Act, all employees under 18 years of age must obtain a youth employment certificate prior to starting work. Where there is no employer-employee relationship, a youth is not employed as a worker and a certificate is not required.

(b) Youths who reside in homes for dependent children may perform domestic activities without being considered employees. Such activities include personal care, maintenance of living quarters, work around the residence or its farm and other activities normally performed by children when living at home and under direct parental control.

(c) A youth employment certificate is valid only for the employer specified on the certificate. This certificate is valid at all locations of this employer. A new certificate must be obtained for each new employer. A certificate remains valid for a youth who terminates employment but then resumes work at the same place of employment.

*History Note:* Authority G.S. 95-25.5; 95-25.14; 95-25.19;  
Eff. November 1, 1980;  
Amended Eff. April 1, 2001; February 1, 1982;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0402 APPLICATION FOR A YOUTH EMPLOYMENT CERTIFICATE**

(a) A youth employment certificate may be obtained:

- (1) electronically from the Department of Labor; or
- (2) from the county director of social services' office in the county in which the youth resides or the county in which the youth intends to work, or from a designee outside the social services' office in the county in which the youth resides or the county in which the youth intends to work who has been approved to issue youth employment certificates pursuant to 13 NCAC 12 .0407.

(b) Proof of Age.

- (1) If the youth employment certificate is obtained electronically, the employer shall verify the age of the youth.
  - (2) If the youth employment certificate is not obtained electronically, the youth must provide proof of age by means of one of the following:
    - (A) A birth certificate;
    - (B) Evidence from the bureau of vital statistics in the state in which the youth was born;
    - (C) Any state driver's license, learner's permit, or state-issued identification card;
    - (D) Passport;
    - (E) School records or insurance records; or
    - (F) Other documentary evidence determined as equivalent by the Wage and Hour Bureau.
- (c) A youth employment certificate obtained pursuant to Paragraph (a) of this Rule shall not be valid unless it is signed by the youth and by a parent, guardian, custodian, or other person standing in loco parentis and by the employer. In the event that a final decree of emancipation has been issued for the youth by a court of competent jurisdiction pursuant to G.S. 7B, Article 35, the youth may sign the certificate without the approval of a parent, guardian or custodian, or other person standing in loco parentis.

*History Note: Authority G.S. 95-25.5; 95-25.19;  
 Eff. November 1, 1980;  
 Amended Eff. January 1, 2007; February 1, 2004; April 1, 2001;  
 Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0403 REVIEW: ISSUANCE AND MAINTENANCE OF CERTIFICATES**

- (a) The county director of social services, approved designee or the Department of Labor shall review the youth employment certificate to see that it is complete and shall ascertain the age of the youth by the means prescribed in Rule .0402 of this Section and the permissibility of employment based on type of employment and prohibitions in G.S. 95-25.5 and the child labor provisions of the F.L.S.A.
- (b) The county director of social services, approved designee or Department of Labor shall sign, date and issue the certificate. The employer's copy of the certificate shall be given to the youth. Certificates shall not be issued if:
  - (1) The proposed employment does not comply with all statutory requirements and prohibitions, and all rules adopted under this Section; or
  - (2) The proposed employment will be in violation of the F.L.S.A. and all rules promulgated thereunder.
- (c) The county director of social services shall send one copy of each certificate to the Wage and Hour Bureau within one week of issuance, and shall maintain one copy of each certificate on file for two years following the date of issuance.
- (d) The employer's copy of the youth employment certificate must be given to the employer by the youth on or before the first day of employment. The employer shall not employ a youth until the employer has received its copy of the issued certificate. The employer shall maintain the certificate on record where it is readily accessible to any person authorized to inspect or investigate youth employment. The employer shall maintain the certificate on record so long as the youth is employed thereunder and for two years after the employment terminates.
- (e) The employer or youth may request a review of the denial of a certificate by written or oral request to the Wage and Hour Bureau. Appeals of the review decisions rendered must be made in writing within 15 days to the Wage and Hour Administrator who shall issue a written decision. Any person adversely affected by the Administrator's decision may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

*History Note: Authority G.S. 95-25.5; 95-25.14; 95-25.15;  
 Eff. November 1, 1980;  
 Amended Eff. January 1, 2007; April 1, 2001; February 1, 1982;  
 Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0404 WAIVER**

- (a) When an application for a waiver of any youth employment provision is received, if the proposed employment is in the best interest of the youth and his health and safety will not be adversely affected, the Department shall issue a waiver for the youth.



(b) Any person adversely affected by a decision of the Department may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

*History Note:* Authority G.S. 95-25.5; 95-25.17;  
Eff. November 1, 1980;  
Amended Eff. January 1, 2007; July 1, 1988;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0405 REVOCATION**

(a) The Administrator of the Wage and Hour Bureau or his designated representative shall review the issuance of all youth employment certificates by county social services directors. If upon review, or because of any other circumstance, the Administrator determines a certificate has been issued in violation of the youth employment provisions or the rules adopted thereunder, he shall notify the youth, the county social service director and the employer of the youth that the certificate is being revoked and shall specify the reasons for the revocation.

(b) If the certificate is revoked, the employer shall cease to employ the youth and shall return the certificate to the Administrator of the Wage and Hour Bureau or to the county social service director, who shall forward it to the Wage and Hour Administrator.

(c) The employer or youth may object to the revocation by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes. Even if a petition for a hearing is filed, the certificate must be returned and the employment must cease pursuant to Paragraph (b) of this Rule.

*History Note:* Authority G.S. 95-25.5; 95-25.17;  
Eff. November 1, 1980;  
Amended Eff. January 1, 2007; July 1, 1988;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0406 DETRIMENTAL OCCUPATIONS**

(a) The following occupations are found and declared to be detrimental to the health and well-being of youths. No youth under 18 years of age may be employed by an employer in these detrimental occupations:

- (1) Welding, brazing and torch cutting as defined in the Occupational Safety and Health Administration (OSHA) General Industry Standards, 29 CFR 1910. 251 through 255 and OSHA Construction Standards, 29 CFR 1926.350 through 354;
- (2) Any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form;
- (3) Any work involving exposure to lead or any of its compounds in any form;
- (4) At any work involving exposure to benzene or any benzene compound which is volatile or which can penetrate the skin;
- (5) Occupations in canneries, seafood and poultry processing establishments which involve the use, setting up, adjusting, repairing, or cleaning of cutting or slicing machines, or freezing or packaging activities;
- (6) Any work which involves the risk of falling a distance of 10 feet or more, including the use ladders and scaffolds;
- (7) Any work as an electrician or electrician's helper;
- (8) Any work in confined spaces as defined by OSHA General Industry Standard, 29 CFR 1910.146 and OSHA Construction Standard, 29 CFR 1926.21;
- (9) Occupations in which the use of a respirator is required by OSHA General Industry Standard, 29 CFR 1910.134 or OSHA Construction Industry Standards, 29 CFR 1926.

(b) Youths and employers working under the supervision of bona fide apprenticeship and student-learner programs, as defined by the Fair Labor Standards Act and the rules and regulations promulgated thereunder, are exempt from the prohibition against employment of youths in detrimental occupations.

*History Note:* Authority G.S. 95-25.5; 95-25.19;  
Eff. February 1, 1982;  
Amended Eff. April 1, 2001;

*Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

**13 NCAC 12 .0407 DESIGNATION OF YOUTH EMPLOYMENT CERTIFICATE ISSUERS**

(a) County directors of social services may, subject to approval by the Commissioner of Labor, designate personnel outside their staffs to issue youth employment certificates. Requests for designee approval shall be made on the Department of Labor form provided to each DSS office.

(b) The Commissioner of Labor shall approve the designation only if:

- (1) The designee is an employee of a State or local government agency, a public, private or charter school, or a private non-profit organization which assists in placing youths into jobs at no cost to the youths;
- (2) The designee and the designee's employer have consented to the designation and the conditions for designation in Paragraph (c) of this Rule; and
- (3) The designee has received training provided by the Department of Labor or training which has been approved as equivalent by the Department.

(c) The Department of Labor approval of a designee shall be made upon the agreement of the designee and the designee's employer to the following conditions:

- (1) Neither the designee nor the designee's employer shall be entitled to receive any funding from the county department of social services or the Department of Labor for performing the functions of a designee;
- (2) The designee may not issue any youth employment certificate to a youth for a job with the designee's employer;
- (3) Neither the designee nor the designee's employer may charge a fee in connection with the issuance of any youth employment certificate; and
- (4) The designee shall take training provided by the Department of Labor or training which has been approved as equivalent by the Department.

(d) Department of Labor approval of a designee shall be terminated upon:

- (1) Failure of the designee or the designee's employer to abide by the conditions listed in Paragraph (c) of this Rule;
- (2) Written resignation by the designee;
- (3) Separation from employment with the agency, institution or organization with whom the designee was employed at the time of approval;
- (4) Written withdrawal of the designee's employer's consent;
- (5) Written withdrawal of the designation by the county director of social services; or
- (6) Written withdrawal of the approval by the Commissioner of Labor.

*History Note: Authority G.S. 95-25.5; 95-25.19;*

*Eff. April 1, 2001;*

*Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

**13 NCAC 12 .0408 DEFINITIONS RELATIVE TO ABC RESTRICTIONS**

(a) For purposes of G.S. 95-25.5(j) and the Rules in this Chapter, and in addition to the definitions promulgated by the NC Alcoholic Beverage Control Commission in 04 NCAC 02S, the following terms are defined:

- (1) Prepare: To make ready; or to put together by combining various elements or ingredients.
- (2) Serve: To supply; or to place before the customer.
- (3) Dispense: To pour; or to draw from a tap.
- (4) Sell: To offer; to accept the order for; to exchange or deliver for money or equivalent; or to handle payment.
- (5) Premises: The building or area of a building plus any other property immediately adjacent to it that forms a component or integral part of the business for which the permit was issued.
- (6) Outside Grounds: The land immediately adjacent to the building or area of a building that forms a component or integral part of the business for which the permit was issued.
- (7) ABC Permit for On-Premises Sale or Consumption: A written or printed authorization issued by the NC Alcoholic Beverage Control Commission pursuant to G.S. 18B and 04 NCAC 02, that authorizes the consumption of alcoholic beverages on the premises of the business for which the permit was issued.

*History Note: Authority G.S. 95-25.5; 95-25.19;*

*Eff. March 1, 2001;*

*Amended Eff. January 1, 2004;*

*Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0409 PARENTAL EXEMPTION**

*History Note: Authority G.S. 95-25.5; 95-25.19;*

*Eff. April 1, 2001;*

*Repealed Eff. January 1, 2007.*

### **SECTION .0500 - JURISDICTION AND EXEMPTIONS**

#### **13 NCAC 12 .0501 EXEMPTIONS**

(a) G.S. 95-25.14(a)(1) provides an exemption from the minimum wage, overtime, youth employment and related record keeping requirements of the Wage and Hour Act for any person employed in an "enterprise" as defined by the F.L.S.A. Persons who are not employed by an "enterprise", but who are subject to the F.L.S.A. because they are engaged in commerce or in the production of goods for commerce are subject to both the F.L.S.A. and the Wage and Hour Act, unless otherwise exempted.

(b) Pursuant to G.S. 95-25.14(a)(1)(c), where the F.L.S.A. provides an exemption from child labor, minimum wage, or overtime (other than an exemption providing for an alternate method of computing overtime), but the Wage and Hour Act does not provide the same exemption, the provisions of the Wage and Hour Act apply. Examples of such federal exemptions include:

- (1) Minimum wage and overtime exemptions under the F.L.S.A.:
  - (A) Seasonal amusement or recreational establishments as specified in 29 U.S.C. 213(a)(3);
  - (B) Small newspapers as specified in 29 U.S.C. 213(a)(8); and
  - (C) Small public telephone companies as specified in 29 U.S.C. 213(a)(10).
- (2) Overtime exemptions under the F.L.S.A.:
  - (A) Outside buyers of poultry, eggs, and milk as specified in 29 U.S.C. 213(b)(5);
  - (B) Small grain elevators as specified in 29 U.S.C. 213(b)(14);
  - (C) Maple sugar or syrup processors as specified in 29 U.S.C. 213(b)(15);
  - (D) Employees engaged in intra-state transportation of fruits or vegetables as specified in 29 U.S.C. 213(b)(16);
  - (E) Motion picture theaters as specified in 29 U.S.C. 213(b)(27);
  - (F) Small lumbering or forestry operations as specified in 29 U.S.C. 213(b)(28); and
  - (G) Newspaper carriers and makers of wreaths composed of natural materials as specified in 29 U.S.C. 213(d).

(c) Pursuant to G.S. 95-25.14(a)(1)(c), where an F.L.S.A. exemption provides an alternate method for computing overtime, persons subject to that exemption are also exempted from the overtime provisions of the Wage and Hour Act. Moreover, persons covered only by the overtime provisions of the Wage and Hour Act are subject to the same alternate methods of overtime calculation. Examples of such F.L.S.A. exemptions include:

- (1) Petroleum distributors as specified in 29 U.S.C. 207(b)(3);
- (2) Employees who work irregular hours and are paid a guaranteed salary as specified in 29 U.S.C. 207(f);
- (3) Piece rate workers as specified in 29 U.S.C. 207(g);
- (4) Commissioned inside salespersons in retail as specified in 29 U.S.C. 207(i);
- (5) Employees of hospitals, nursing homes, old age homes as specified in 29 U.S.C. 207(j);
- (6) Seasonal employees at tobacco warehouses and auctions as specified in 29 U.S.C. 207(m);
- (7) Bus drivers as specified in 29 U.S.C. 207(n);
- (8) Employees of concessionaires in national parks as specified in 29 U.S.C. 213(b)(29);
- (9) Seasonal employees in cotton ginning, sugarcane or sugar beet processing as specified in 29 U.S.C. 213(h);
- (10) Seasonal employees in local cotton ginning as specified in 29 U.S.C. 213(i); and
- (11) Seasonal employees in sugar processing as specified in 29 U.S.C. 213(j).

(d) The statutory exemption from certain wage and hour provisions for the spouse, child, parent or dependent of the employer applies equally to the spouse, child, parent or dependent of corporate officers. For the purposes of this Section only, corporate officers are those who directly head the establishment and:

- (1) are majority stockholders, or
- (2) are principal stockholders with voting control, or

- (3) are in voting control through stock ownership or with joint ownership of spouse or family.
- (e) Homes for dependent children pursuant to G.S. 95-25.14(c)(6) include institutions and group homes for dependent children.

*History Note:* Authority G.S. 95-25.14; 95-25.19;  
Eff. November 1, 1980;  
Amended Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0502 COUNTING EMPLOYEES**

*History Note:* Authority G.S. 95-25.14; 95-25.19;  
Eff. November 1, 1980;  
Amended Eff. July 1, 1988;  
Repealed Eff. April 1, 1999.

## **SECTION .0600 - INVESTIGATION AND ENFORCEMENT**

### **13 NCAC 12 .0601 COMPLAINTS**

The complaint required by G.S. 95-25.15 to initiate a wage payment investigation of an F.L.S.A. covered establishment shall be made by contacting the Wage and Hour Bureau's complaint desk. All complaints shall be reduced to written form by the Wage and Hour Bureau.

*History Note:* Authority G.S. 95-25.15; 95-25.19;  
Eff. November 1, 1980;  
Amended Eff. May 1, 2007;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0602 INVESTIGATIONS**

(a) The Commissioner shall afford the employer an opportunity to bring to the Commissioner's attention any information pertinent to the possible violations under investigation and any computation of wages possibly due an employee. The employer's failure to timely bring to the Commissioner's attention such information will not prevent the Commissioner from proceeding to a determination.

(b) The Commissioner shall notify the employer of the Commissioner's findings in accordance with Rule .0604 of this Section.

*History Note:* Authority G.S. 95-25.15; 95-25.16; 95-25.17; 95-25.19;  
Eff. November 1, 1980;  
Amended Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0603 SUPERVISION OF PAYMENT**

*History Note:* Authority G.S. 95-25.16; 95-25.17; 95-25.19; 95-25.22;  
Eff. November 1, 1980;  
Repealed Eff. April 1, 1999.

### **13 NCAC 12 .0604 ADMINISTRATIVE REMEDIES**

(a) For purposes of 95-25.22(g), "exhausting administrative remedies" means that the Commissioner shall:

- (1) Investigate the alleged violations of the Act and afford the employer the opportunity to present evidence in its defense during such investigation; and
- (2) Notify the employer and complainant(s), after completion of the investigation, of:
  - (A) The violations found and amounts found due; and
  - (B) The employer's right to be heard further in the matter; and

- (3) Hear any additional evidence presented by the employer exercising its right to be heard further as set forth in Paragraphs (b) and (c) of this Rule; and
- (4) Notify the employer of any pending action.
- (b) Employers wishing to exercise the right to be heard further shall:
  - (1) Notify the Commissioner, within 14 days from the date the Commissioner notified the employer of the findings. The 14 days begins on the date the Commissioner mailed notification to the employer pursuant to Subparagraph (a)(2) of this Rule. The employer may notify the Commissioner either orally or in writing.
  - (2) Present additional evidence to the Commissioner on disputed issues within 14 days from the date the employer notified the Commissioner of its intent to exercise the right to be heard further.
- (c) The employer shall waive its right to be heard further if it:
  - (1) fails to notify the Commissioner in accordance with Subparagraph (b)(1) of this Rule; or
  - (2) fails to submit evidence in accordance with Subparagraph (b)(2) of this Rule; or
  - (3) agrees to remedy the violations found and to pay in full the amounts found due.
- (d) If the employer presents additional evidence in accordance with Paragraph (b) of this Rule, the Commissioner shall notify the employer and complainant(s) of any modifications which are made to the Commissioner's findings.
- (e) For purposes of G.S. 95-25.22(g) and this Rule, the Commissioner shall make all notifications to the last known addresses of the employer and complainants.

*History Note:* Authority G.S. 95-25.16; 95-25.17; 95-25.19; 95-25.22; Eff. November 1, 1980; Amended Eff. April 1, 1999; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0605 LITIGATION**

*History Note:* Authority G.S. 95-25.15; 95-25.17; 95-25.19;. 95-25.20; 95-25.21; 95-25.22; Eff. November 1, 1980; Repealed Eff. April 1, 1999.

## **SECTION .0700 - CIVIL MONEY PENALTIES**

### **13 NCAC 12 .0701 CIVIL PENALTIES**

- (a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment), G.S. 95-25.15(b) (Record Keeping) or these Rules is subject to a civil penalty for each violation.
- (b) Any person or establishment required to comply with or subject to regulation of child labor under the F.L.S.A. who violates the non-exempt provisions of G.S. 95-25.5, or these Rules is subject to a civil penalty for each violation.
- (c) The Commissioner shall determine the amount of all civil penalties in accordance with Rule .0702 of this Section.
- (d) In civil penalty cases, the Commissioner shall notify the employer by certified mail of the following:
  - (1) the nature of the violation;
  - (2) the amount of the civil penalty; and
  - (3) that the civil penalty will be final, unless the employer takes exception to the penalty as set forth in G.S. 95-25.23 and G.S. 95-23A of the penalty from the Commissioner.

*History Note:* Authority: G.S. 95-25.5; 95-25.14; 95-25.17; 95-25.19; 95-25.23; 95-25.23A; Eff. November 1, 1980; Amended Eff. April 1, 1999; February 1, 1982; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0702 CIVIL PENALTY ASSESSMENT**

- (a) If the Commissioner finds that an employer has violated any of the provisions of G.S. 95-25.5, G.S. 95-25.15(b) or these Rules, the Commissioner may assess a civil penalty for each violation.
- (b) The maximum amount of a civil penalty will be based on the nature and the gravity of the violation or violations. Matters which are indications of the gravity of a violation include, but are not limited to:
  - (1) the likelihood of injury and the seriousness of the potential injuries to which a youth has been exposed;
  - (2) multiple violations by a business or employer;

- (3) recurring violations;
  - (4) employment of any youth in a hazardous or detrimental occupation without a waiver from the Commissioner;
  - (5) violations involving youths under fourteen years of age.
- (c) The Commissioner shall assess a penalty of:
- (1) two hundred fifty dollars (\$250.00) if a youth employment certificate would not have been issued because the employment was for a hazardous or detrimental occupation.
  - (2) one hundred twenty-five dollars (\$125.00) if the certificate would not have been issued, but the employment was non-hazardous or non-detrimental.
  - (3) fifty dollars (\$50.00) if a certificate would have been issued but the employer did not have or maintain the certificate.
- (d) Reductions in the penalty amount may be made based on the size of a business (number of employees and gross volume) and its past record of compliance with the Wage and Hour Act.

*History Note:* Authority G.S. 95-25.17; 95-25.19; 95-25.23; 95-25.23A;  
 Eff. November 1, 1980;  
 Amended Eff. April 1, 1999; February 1, 1982;  
 Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0703 EXCEPTIONS TO CIVIL PENALTY**

An employer may take an exception to a civil penalty determination by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes. The penalty shall be final unless the employer takes exception to the civil penalty determination within 15 days after the employer's receipt of notification of the civil penalty.

*History Note:* Authority G.S. 95-25.19; 95-25.23;  
 Eff. November 1, 1980;  
 Amended Eff. April 1, 2007; July 1, 1988;  
 Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

## **SECTION .0800 – RECORDKEEPING**

### **13 NCAC 12 .0801 RECORDS TO BE MAINTAINED**

(a) Every employer shall maintain complete and accurate records which contain the following information for each employee in each workweek, unless the employee is specifically exempted:

- (1) Name in full;
- (2) Home address, including zip code and phone number;
- (3) Date of birth if under 20;
- (4) Occupation in which employed or job title;
- (5) Time of day and day of week the employee's workweek begins (a group of employees working the same workweek may have one record keeping for the entire group);
- (6) Regular rate of pay;
- (7) Hours worked each workday;
- (8) Total hours worked each workweek;
- (9) Total straight-time earnings each workweek;
- (10) Total overtime earnings each workweek;
- (11) Total additions to or deductions from wages;
- (12) Total gross wages paid each pay period;
- (13) Date of each payment.

(b) All other records required by statute or rule for the enforcement of any provision of the Wage and Hour Act must also be maintained by the employer. Such records include, but are not limited to, the following: tip credits; costs of meals, lodging or other facilities; start and end time for youth under age 18; youth employment certificates; wage deductions; vacation and sick leave policies; policies and procedures relating to promised wages; and records required to compute wages as defined by G.S. 95-25.2(16).

*History Note:* Authority G.S. 95-25.13; 95-25.15; 95-25.19;  
Eff. November 1, 1980;  
Amended Eff. April 1, 2001; February 1, 1982;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0802 RECORD RETENTION**

All records, posted notices and writings required by the Wage and Hour Act and the rules and regulations promulgated thereunder must be retained by employers for three years, unless a different period of time is specifically stated elsewhere in this Chapter.

*History Note:* Authority G.S. 95-25.15; 95-25.19;  
Eff. November 1, 1980;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0803 SCOPE OF PROMISED WAGES**

For the purposes of G.S. 95-25.13, the term "promised wages" includes all forms of wages as defined in G.S. 95-25.2(16), and any policy or practice that may affect the rate, amount or payment of wages.

*History Note:* Authority G.S. 95-25.2; 95-25.13; 95-25.19;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0804 NOTIFICATION AT TIME OF HIRING**

An employee's signature on an employer's written notice of the promised wages which bears the date on which the employee was provided with the notice shall be presumptive evidence of the employer's notification in accordance with G.S. 95-25.13(1).

*History Note:* Authority G.S. 95-25.13; 95-25.19;  
Eff. April 1, 1999;  
Amended Eff. April 1, 2007;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0805 NOTIFICATION DURING EMPLOYMENT**

(a) Employers shall satisfy the notice requirements of G.S. 95-25.13(2) by posting or making available to its employees in writing all policies and practices relating to promised wages in a manner, place and time which ensures that employees have ready access to those policies and practices throughout their tenure with the employer and are able to use that information.

(b) Acceptable means of ensuring that the policies and practices are readily accessible to the employees include, but are not limited to:

- (1) Providing employees with an up-to-date employee handbook or other written statement of policies and practices with regard to promised wages;
- (2) Providing employees with payroll records, including check stubs, for wages promised in the form of hourly pay or salary or other form whose terms are readily identifiable from the payroll records.

(c) The employer shall pay the promised wages to the employee even if the employer has failed to comply with the requirements of G.S. 95-25.13(2). For purposes of G.S. 95-25.13(2) and these Rules, "promised wages" includes wages promised in accordance with an unwritten policy or practice with regard to the wages. The only exception to this Rule is that an employer shall not enforce an unwritten policy or practice resulting in the loss or forfeiture of vacation time or pay, commissions, bonuses or other forms of calculation. The employer shall not deny to any employee any vacation time or pay, commissions, bonuses or other forms of calculation on the basis of the application of an unwritten forfeiture or loss policy or practice.

*History Note:* Authority G.S. 95-25.6; 95-25.7; 95-25.13; 95-25.15; 95-25.19;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0806 MEANING OF "MAINTAINED IN A PLACE ACCESSIBLE"**

For the purposes of G.S. 95-25.13(2) and (3) and these Rules, the phrase "maintained in a place accessible" applies to the posting and to the writing. "Accessible" with respect to posting means "easily approached and viewed for reading," at a place designated for such purposes and regularly frequented by the affected employees. "Accessible" with respect to the writing means "easily and promptly obtained or viewed for reading" at a place designated for maintaining such writings.

*History Note:* Authority G.S. 95-25.13; 95-25.19;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0807 METHODS OF PROVIDING EMPLOYEES WITH ITEMIZED STATEMENT OF DEDUCTIONS**

The employer may provide the itemized statement required by G.S. 95-25.13(4) of deductions under G.S. 95-25.8:

- (1) in writing; or
- (2) by electronic mail, but only if such a transmission is capable of being printed out as a paper copy by the employee; or
- (3) by any other means which supplies the required information in a form the employees can retain in written form.

*History Note:* Authority G.S. 95-25.13; 95-25.19;  
Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

## **SECTION .0900 – E-VERIFY**

### **13 NCAC 12 .0901 SCOPE AND ADDRESS**

- (a) The Commissioner of Labor or her designee administers the provisions of Chapter 64, Article 2 of the North Carolina General Statutes and is responsible for receiving and investigating complaints, conducting hearings and issuing and enforcing orders as required by G.S. 64-27 through G.S. 64-34.
- (b) Correspondence relating to Chapter 64, Article 2 of the North Carolina General Statutes or this Section shall be addressed to:

North Carolina Department of Labor  
Attn: E-Verify Complaint Administrator  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101

*History Note:* Authority G.S. 64-37;  
Eff. October 1, 2012;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

### **13 NCAC 12 .0902 DEFINITIONS**

In addition to the definitions contained in G.S. 64-25, the following definitions apply throughout this Section:

- (1) "Anonymous" means having an unknown or unacknowledged name or origin;
- (2) "Date of hire" means the first day that an individual meets the definition of being an "employee" of an "employer" as set forth in G.S. 64-25. When calculating an employee's "date of hire", the days between the employer's offer and the employee's first day of work performance are not counted.
- (3) "Determines that the complaint is not false and frivolous," as stated in G.S. 64-30, means the Commissioner or her designee determines there is evidence, beyond mere suspicion or allegation and not based solely on race, religion, gender, ethnicity, or national origin, that the employer has in fact violated G.S. 64-26;
- (4) "Employs 25 or more employees" in G.S. 64-25(4), means the employer employs 25 or more employees in this State as of the date of hire of the person for whom it has been alleged that E-Verify was not used for verification of work authorization. When calculating the number of employees, seasonal temporary workers shall not be counted if those workers meet the requirements for exemption as set forth in G.S. 64-26(c);



- (5) "Good faith belief" means having some basis in fact or credible information to believe that the employer has violated the provisions of G.S. 64-26.

*History Note: Authority G.S. 64-37;  
Eff. October 1, 2012;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0903 PRESUMPTION OF COMPLIANCE**

(a) The Commissioner or her designee shall presume that an employer has complied with the provisions of G.S. 64-26 and this Section if the employer verified the work authorization of an employee using E-Verify within three employer business days after the employee's date of hire.

(b) If the Commissioner of Labor or her designee finds that a presumption of compliance exists in accordance with Paragraph (a) of this Rule, the complaint shall be closed by the Commissioner or her designee.

*History Note: Authority G.S. 64-37;  
Eff. October 1, 2012;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0904 FILING OF COMPLAINTS**

(a) Complaints may be made on the form available at [www.nclabor.com](http://www.nclabor.com), or verbally by contacting the North Carolina Department of Labor at 1-800-625-2267.

(b) All verbal complaints or complaints filed on a form other than the one prescribed in this Rule shall include the following information:

- (1) Complainant's name, address, telephone number, email address (if applicable), and relationship to the employer, unless the complaint is filed anonymously;
- (2) Employer's name;
- (3) Employer's physical address, mailing address, and telephone number, if available;
- (4) Name of business owner or other contact, telephone number, and email address, if available;
- (5) Approximate number of employees employed by the employer in the State of North Carolina;
- (6) Name(s) of the employee(s) in North Carolina whom the complainant is alleging the employer failed to verify the work authorization of in accordance with G.S. 64-26, if available;
- (7) Information which leads the complainant to believe that the employer failed to verify work authorization(s) in accordance with G.S. 64-26; and
- (8) Any additional information the complainant considers relevant to support the allegations set forth in the complaint.

(c) A complaint shall not be investigated if:

- (1) it is filed against an employer who employs less than 25 employees;
- (2) it is based solely on race, religion, gender, ethnicity, or national origin;
- (3) sufficient information to proceed with an investigation is not provided at the time of filing pursuant to the provisions of Chapter 64, Article 2 of the North Carolina General Statutes and the provisions of this Section;
- (4) within 48 hours of being notified that a complaint has been filed, the employer provides the Commissioner or her designee with written proof of compliance with Chapter 64, Article 2 of the North Carolina General Statutes and the provisions of this Section;
- (5) it is based solely upon an employee who was hired prior to the effective date of G.S. 64, Article 2; or
- (6) it is based solely upon an employee who meets the criteria of a seasonal temporary worker as set forth in G.S. 64-26(c).

*History Note: Authority G.S. 64-37;  
Eff. October 1, 2012;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0905 HEARINGS**

(a) If after an investigation the Commissioner or her designee determines that a complaint is not false and frivolous, the matter shall be referred to hearing before a hearing officer designated by the Commissioner. The hearing officer shall conduct a hearing to determine if a violation of G.S. 64-26 has occurred.

(b) If, after a hearing, it is determined that a violation of G.S. 64-26 has occurred, one of the following actions shall be taken:

- (1) If the employee is currently employed, or has been discharged since commencement of the investigation, and it is found that the employer verified the employee's work authorization through the use of E-Verify after initiation of the investigation, the hearing officer shall:
  - (A) Issue a written order setting forth the violation;
  - (B) Order the employer to file the affidavit required by G.S. 64-31(a); and
  - (C) Order payment of any applicable civil penalty as set forth in G.S. 64-31 through G.S. 64-33.
- (2) If the employee is currently employed by the employer and the employer has not verified the employee's work authorization through the use of E-Verify since initiation of the investigation, the hearing officer shall:
  - (A) Issue a written order setting forth the violation;
  - (B) Order the employer to file the affidavit required by G.S. 64-31(a); and
  - (C) Order payment of any applicable civil penalty as set forth in G.S. 64-31 through G.S. 64-33.
- (3) If the employee is no longer employed by the employer and it is found during the investigation that the employer did not verify the employee's work authorization through the use of E-Verify at any time, the hearing officer shall:
  - (A) Issue a written order setting forth the violation;
  - (B) Order the employer to file, within three business days, a signed sworn affidavit stating that the employee is no longer employed by the employer, setting forth the employee's beginning and ending dates of employment, and acknowledging that the employer did not verify the employee's work authorization through the use of E-Verify during the period of employment or otherwise; and
  - (C) Order payment of any applicable civil penalty as set forth in G.S. 64-31 through G.S. 64-33.

(c) When an order is issued in accordance with Paragraph (b) of this Rule and the employer fails to submit the affidavit required by G.S. 64-31(a) or Part (b)(3)(B) of this Rule within three business days, the hearing officer shall issue a written order for the employer to pay a civil penalty in accordance with G.S. 64-31(b).

(d) If the hearing officer determines that no violation of G.S. 64-26(a) exists, the complaint shall be dismissed. Written evidence of the dismissal shall be entered into the case file, the file shall be closed, and no further action shall be taken.

(e) Hearings may be conducted in person or via telephone, at the discretion of the hearing officer.

*History Note: Authority G.S. 64-37; 64-38;*

*Eff. October 1, 2012;*

*Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

### **13 NCAC 12 .0906 CIVIL PENALTIES**

(a) In civil penalty cases, the Commissioner shall notify the employer by certified mail of the following:

- (1) the nature of the violation;
- (2) the amount of the civil penalty; and
- (3) that the civil penalty is final, unless the employer takes exception to the penalty determination as set forth in G.S. 64-36 and Paragraph (b) of this Rule.

(b) An employer may take an exception to a civil penalty determination by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

(c) An employer who takes exception in accordance with Paragraph (b) of this Rule to a civil penalty determination shall serve a copy of the written petition for a contested case on the Commissioner of Labor at the following address:

N.C. Department of Labor  
Attn: Commissioner of Labor/2nd Floor, Labor Building  
1101 Mail Service Center  
Raleigh, N.C. 27699-1101

*History Note: Authority G.S. 64-37;*

*Eff. October 1, 2012;*

*Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*