

27 NCAC 01D .3505 STANDARDS FOR CERTIFICATION AS A SPECIALIST IN EMPLOYMENT LAW

Each applicant for certification as a specialist in Employment Law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet following standards for certification in Employment Law:

(a) Licensure and Practice - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

(b) Substantial Involvement - An applicant shall affirm to the Board that the applicant has experience through substantial involvement in Employment Law.

- (1) Substantial involvement shall mean that, during the 5 years immediately preceding the application, the applicant devoted an average of at least 700 hours a year to the practice of Employment Law but not fewer than 400 hours in any 1 year.
- (2) Practice shall mean substantive legal work in Employment Law done primarily for the purpose of providing legal advice or representation, including the activities described in paragraph (3) below, or a practice equivalent as described in paragraph (4) below.
- (3) Substantive legal work in Employment Law focuses on the practice of law as it applies to employers and employees and their respective rights and obligations to one another in accordance with myriad federal and state laws. The practice requires proficiency in federal and North Carolina statutes and related regulations, including but not limited to those laws listed above in ".3502 Definition of Specialty" as well as common law pertaining to employer and employee rights. The specialist must be able to competently advise and represent clients in counseling and before administrative agencies or in court-based litigation (provided, that proficiency in civil litigation is not required); recognize employment laws and spot related issues and risks that are or may be presented by the client's circumstances; know when the laws of states other than those of North Carolina may apply; know when the advice of lawyers who are conversant with other legal fields (such as taxation, business law and professional licensing requirements) may be required; and recognize ethical issues that can arise in the course of relationship with the client.
- (4) "Practice equivalent" shall mean: Service as a law professor concentrating in the teaching of Employment Law for up to three years during the five years prior to application may be substituted for an equivalent number of years of experience necessary to meet the five-year requirement set forth in Rule .3505(b)(1).

(c) Continuing Legal Education - To be certified as a specialist in Employment Law, an applicant must have earned no less than 36 hours of accredited continuing legal education credits in Employment Law and related fields during the three years preceding application. The 36 hours must include at least 27 hours in Employment Law; the remaining 9 hours may be in related-field CLE. Related fields include contract law; administrative law; alternative dispute-resolution; workers' compensation law; the law of trade secrets and data privacy; business law/corporate governance law; employment benefits; tax law as regards compensation of employees; employment-related investigations; and civil litigation/trial advocacy. The applicant may request recognition of an additional field as related to Employment Law practice for the purpose of meeting the CLE standard.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of 10 lawyers and/or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

- (1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.
- (2) The references shall be given on standardized forms provided by the board with the application for certification in the specialty field. These forms shall be returned directly to the specialty committee.

(e) Examination - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of Employment Law to justify the representation of special competence to the legal profession and the public.

- (1) Terms - The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the specialty committee.
- (2) Subject Matter - The examination shall cover the applicant's knowledge and application of Employment Law as defined and described in "Section .3502 Definition of Specialty", including but not limited to the following:
 - (A) Fair Labor Standards Act
 - (B) Family and Medical Leave Act
 - (C) Americans with Disabilities Act
 - (D) Title VII of the Civil Rights Act
 - (E) Equal Pay Act
 - (F) Genetic Information Nondiscrimination Act
 - (G) Section 504 of the Rehabilitation Act of 1973
 - (H) Age Discrimination in Employment Act
 - (I) Older Workers' Benefits Protection Act
 - (J) Worker Adjustment and Retraining Notification Act
 - (K) Pregnancy Discrimination Act
 - (L) Occupational Safety and Health Act (only as regards scope of "general duty" clause)
 - (M) National Labor Relations Act (only as regards employees' right to engage in Section 7 protected "concerted activity" and related unfair labor practices)
 - (N) Uniformed Services Employment and Reemployment Rights Act
 - (O) Section 1981 of the Civil Rights Act of 1866
 - (P) North Carolina Retaliatory Employment Discrimination Act
 - (Q) North Carolina Wage and Hour Act
 - (R) North Carolina statutes and common law regarding restrictive covenants (e.g., non-competition, non-solicitation, and non-disclosure agreements)
 - (S) North Carolina Persons With Disabilities Protection Act
 - (T) North Carolina State Human Resources Act

History Note: Authority G.S. 84-23;
Approved by the Supreme Court March 20, 2024.