

Legal News for Your Business

FROM CHARLOTTE, NORTH CAROLINA'S

Litigation, Employment, Healthcare & Tax Law

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GENERAL BUSINESS ALERT

Important changes for NC employers regarding employee pay

On July 8, 2021, Governor Roy Cooper signed **Senate Bill 208** - which changes certain provisions of the North Carolina Wage and Hour Act (NCWHA).

Employers should be aware of the following key changes:

- Employers must notify their employees, in writing at the time of hiring, of the promised wages and the day and place for payment. Before this amendment, an employer could provide notice orally.
- Employers must notify employees, in writing, at least one pay period prior to any changes in promised wages. North Carolina law formerly required only 24 hours' notice.
- Employers must send final paychecks either through regular pay channels or, an employee may request in writing that their last paycheck be sent by trackable mail. Final wages are still due on or before the next regular payday, and wages based on bonuses, commissions or other amounts that cannot be calculated by the next regular payday must be paid on the first regular payday after they become calculable. Senate Bill 208 modifies these requirements so that an employee's request for final payment by mail must be in writing, and the paycheck so requested must be sent by the employer in "trackable mail."

The North Carolina Department of Labor has not released updated regulations or guidance to correspond with the amended provisions.

If you have questions or need assistance with the amended provisions to the NCWHA, contact employment team members **Nicole Gardner**, **Erin Ball** or **Jackie Kinni**.

GENERAL BUSINESS ALERT

Not mandating the COVID vaccine? You still need to know who in your workforce is vaccinated.

We are seeing a consistent pattern of increasing vaccine mandates. Even if your business doesn't plan to mandate vaccination, be aware that many of your clients and customers may issue a mandate that affects your workforce. Many businesses are finding

that their clients will only accept vaccinated workers onsite. Others are finding that clients and customers refuse to come to them unless they are meeting with only vaccinated employees. We therefore recommend that all of our clients determine who in their workforce is vaccinated – even if they don't intend to mandate the vaccine. This will give businesses the information they need to pivot quickly if a large customer mandates vaccination, or if a new government mandate affects their workforce.

Can clients demand that only vaccinated employees enter their facility?

Yes. And indeed, many are doing just that.

Can I ask my employees if they are vaccinated?

Employers are allowed by law to ask whether employees are vaccinated. If an employee is not vaccinated, however, federal government guidance suggests that you should not ask the reason. We recommend that employers actually require proof of vaccination and keep that information on file.

What kind of vaccine documentation should employers request?

A COVID vaccine card should be considered sufficient proof of an employee's vaccination status. The employer should make a copy and securely store it with that employee's confidential medical information. An employee vaccinated in North Carolina is also likely listed on the state registry. The employee can access the registry information and print it out.

Make sure to store vaccination information appropriately.

Employers should keep employee vaccination records in a medical file that is separate from the employee's personnel file. Other medical information—such as whether the employee has ever contracted COVID-19—should also be kept here. These records are subject to ADA confidentiality rules, which means that the employer can be liable if an employee's private medical information is inappropriately disclosed.

Speaking of disclosure, what if my customers or clients ask if my employees are vaccinated?

You cannot disclose to a client the vaccination status of any particular employee because the law considers this to be confidential medical information. You can, however, say something like the following: "90% of my employees are fully vaccinated." Or, "25 out of 28 of my employees are fully vaccinated." In addition, some clients may demand to only work with individuals who are vaccinated. While you cannot disclose any one individual employee's status, you can promise customers that any individuals working with the client will be vaccinated.

If you have questions about how COVID-19 affects your workplace, contact **Nicole Gardner** or **Erin Ball**.

GENERAL BUSINESS ALERT

Are you giving paid leave to employees for

COVID vaccination or for recovery from vaccine side effects? If so – get your tax credits!

In April 2021, the Treasury Department and the IRS announced that eligible employers could receive paid leave tax credits under the American Rescue Plan Act of 2021 (ARP) for providing leave for employees receiving the vaccine and for the time needed to recover from the vaccine from April 1, 2021, through September 30, 2021.

On July 29, 2021, the Treasury Department and the Internal Revenue Service (IRS) expanded the ability to claim tax credits to circumstances where employees use emergency paid leave to accompany an immediate family member or dependent to obtain a COVID-19 vaccine and/or to care for an immediate family member or dependent recovering from the COVID-19 vaccine. The credits reimburse eligible employers for the cost of providing paid sick and family leave for reasons related to COVID-19.

Eligible employers include certain private employers with less than 500 employees and certain public employers that voluntarily provide employees with emergency paid leave for reasons related to COVID-19.

As always, the tax rules are complex. If you have questions or need assistance with this recent development, contact [Nicole Gardner](#) or [Fred Parker](#).

GENERAL BUSINESS ALERT

Important news for employers in the city of Charlotte - Charlotte City Council expands local nondiscrimination law

In early August, the Charlotte City Council unanimously passed an amendment to the city's nondiscrimination ordinance ("NDO"). The expanded ordinance applies to businesses of all sizes and provides protections not otherwise provided under state and federal law.

Who does the NDO apply to?

The NDO applies to businesses of all sizes that operate in the city of Charlotte. This goes beyond state and federal laws, which apply to businesses with 15 or more employees.

The NDO does not apply to (1) religious organizations with paid employees where a condition of employment requires adherence to tenets of the religion, (2) private clubs, or (3) membership-based groups that are generally not considered open to the public.

Who does the NDO protect?

The amended NDO protects against discrimination based on a person's race, color,

gender, religion, national origin, ethnicity, age, **familial status**, **sexual orientation**, **gender identity**, **gender expression**, **veteran status**, **pregnancy**, **natural hairstyle**, or disability (“Protected Class”). (Those in bold are newly added.)

Customer Protections

The NDO provides protections for customers, stating businesses cannot refuse customers service or advertise that certain patrons are unwelcome in places of public accommodations because of a Protected Class.

Employment Protections

It is also unlawful for an employer to fail or refuse to hire a person, or otherwise discriminate against them in any employment matter on the basis of their Protected Class.

Complaints filed with the Charlotte-Mecklenburg Community Relations Committee (CRC) will be reviewed to determine if it should be forwarded to the state or federal level. If the federal or state agencies choose not to take up an employee’s complaint against an employer with at least 15 employees, the CRC may provide the employee alternative options at the local level. If the employer has less than 15 employees, the CRC conciliation division may directly address an employee’s complaint against the employer.

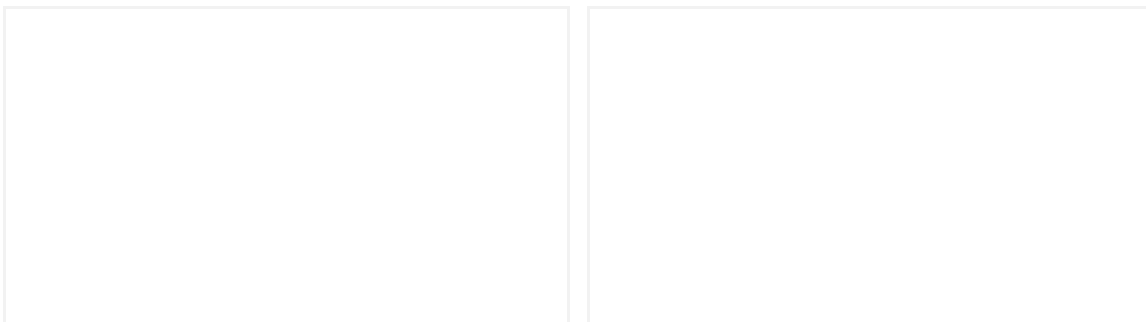
Complaint Process

The CRC complaint process will be similar to the process of resolving complaints in the Federal EEOC.

Once a complaint is received, the CRC will coordinate a conciliation process to resolve issues that fall under the NDO. The CRC can take up complaints filed within 180 days of an incident. An investigator with the CRC will conduct an investigation and submit their finding to the CRC director for final determination. If the director determines a violation occurred but is not ongoing, the conciliation division will create a plan to have the alleged discrimination voluntarily eliminated. If there is reasonable cause to believe discrimination persists, the CRC will refer the complaint to the city attorney for appropriate action.

The city’s Budget and Effectiveness Committee is working to assess options to issue fines and penalties up to \$500 for violators of nondiscrimination policies in addition to existing enforcement options.

If you need help navigating this new ordinance or ensuring your business complies, contact employment team members **Nicole Gardner**, **Erin Ball** or **Jackie Kinni**.





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Do you have more post pandemic workplace questions? Join us!

September 15th at 3:00 PM CST

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THE NAMWOLF 30



The Post Pandemic Workforce Demands
Greater Flexibility. How Should Employers
Respond?



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