

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH70251-LR-76A (03/25)

Short Title: State Government EEO.

(Public)

Sponsors: Representative Luebke.

Referred to:

A BILL TO BE ENTITLED

1 AN ACT AMENDING THE STATE PERSONNEL ACT TO INCLUDE SEXUAL
2 ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION TO THE
3 LIST OF CLASSIFICATIONS COVERED BY THE STATE'S EQUAL
4 EMPLOYMENT OPPORTUNITY LAW.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 126-16 reads as rewritten:

8 "**§ 126-16. Equal opportunity for employment and compensation by State**
9 **departments and agencies and local political subdivisions.**

10 All State departments and agencies and all local political subdivisions of North
11 Carolina shall give equal opportunity for employment and compensation, without regard
12 to race, religion, color, creed, national origin, sex, age, sexual orientation, gender
13 identity, gender expression, or handicapping condition as defined in G.S. 168A-3 to all
14 persons otherwise qualified, except where specific age, sex or physical requirements
15 constitute bona fide occupational qualifications necessary to proper and efficient
16 administration. This section with respect to equal opportunity as to age shall be limited
17 to individuals who are at least 40 years of age."

18 **SECTION 2.** G.S. 126-34.1 reads as rewritten:

19 "**§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

20 (a) A State employee or former State employee may file in the Office of
21 Administrative Hearings a contested case under Article 3 of Chapter 150B of the
22 General Statutes only as to the following personnel actions or issues:

- 23 (1) Dismissal, demotion, or suspension without pay based upon an alleged
24 violation of G.S. 126-35, if the employee is a career State employee.
25 (2) An alleged unlawful State employment practice constituting
26 discrimination, as proscribed by G.S. 126-36, including:

- 1 a. Denial of promotion, transfer, or training, on account of the
2 employee's age, sex, race, color, national origin, religion, creed,
3 political affiliation, sexual orientation, gender identity, gender
4 expression, or handicapping condition as defined by Chapter
5 168A of the General Statutes.
- 6 b. Demotion, reduction in force, or termination of an employee in
7 retaliation for the employee's opposition to alleged
8 discrimination on account of the employee's age, sex, race,
9 color, national origin, religion, creed, political affiliation, sexual
10 orientation, gender identity, gender expression, or handicapping
11 condition as defined by Chapter 168A of the General Statutes.
- 12 (3) Retaliation against an employee, as proscribed by G.S 126-17, for
13 protesting an alleged violation of G.S. 126-16.
- 14 (4) Denial of the veteran's preference granted in accordance with Article
15 13 of this Chapter in initial State employment or in connection with a
16 reduction in force, for an eligible veteran as defined by G.S. 126-81.
- 17 (5) Denial of promotion for failure to post or failure to give priority
18 consideration for promotion or reemployment, to a career State
19 employee as required by G.S. 126-7.1 and G.S. 126-36.2.
- 20 (6) Denial of an employee's request for removal of allegedly inaccurate or
21 misleading information from the employee's personnel file as provided
22 by G.S. 126-25.
- 23 (7) Any retaliatory personnel action that violates G.S. 126-85.
- 24 (8) Denial of promotion in violation of G.S. 126-14.2, where an initial
25 determination found probable cause to believe there has been a
26 violation of G.S. 126-14.2.
- 27 (9) Denial of employment in violation of G.S. 126-14.2, where an initial
28 determination found probable cause to believe that there has been a
29 violation of G.S. 126-14.2.
- 30 (10) Harassment in the workplace based upon age, sex, race, color, national
31 origin, religion, creed, sexual orientation, gender identity, gender
32 expression, or handicapping condition, whether the harassment is
33 based upon the creation of a hostile work environment or upon a quid
34 pro quo.
- 35 (11) Violation of any of the following federal statutes as applied to the
36 employee:
- 37 a. The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.
- 38 b. The Age Discrimination in Employment Act, 29 U.S.C. § 621,
39 et seq.
- 40 c. The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.
- 41 d. The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
- 42 (b) An applicant for initial State employment may file in the Office of
43 Administrative Hearings a contested case under Article 3 of Chapter 150B of the
44 General Statutes based upon:

- 1 (1) Alleged denial of employment in violation of G.S. 126-16.
2 (2) Denial of the applicant's request for removal of allegedly inaccurate or
3 misleading information from the personnel file as provided by G.S.
4 126-25.
5 (3) Denial of equal opportunity for employment and compensation on
6 account of the employee's age, sex, race, color, national origin,
7 religion, creed, political affiliation, sexual orientation, gender identity,
8 gender expression, or handicapping condition as defined by Chapter
9 168A of the General Statutes. This subsection with respect to equal
10 opportunity as to age shall be limited to persons who are at least 40
11 years of age. An applicant may not, however, file a contested case
12 where political affiliation was the reason for the person's nonselection
13 for (i) an exempt policymaking position as defined in G.S. 126-5(b)(3),
14 (ii) a chief deputy or chief administrative assistant position under G.S.
15 126-5(c)(4), or (iii) a confidential assistant or confidential secretary
16 position under G.S. 126-5(c)(2).
17 (4) Denial of the veteran's preference in initial State employment provided
18 by Article 13 of this Chapter, for an eligible veteran as defined by G.S.
19 126-81.
20 (5) Denial of employment in violation of G.S. 126-14.2, where an initial
21 determination found probable cause to believe that there has been a
22 violation of G.S. 126-14.2.

23 (c) In the case of a dispute as to whether a State employee's position is properly
24 exempted from the State Personnel Act under G.S. 126-5, the employee may file in the
25 Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of
26 the General Statutes.

27 (d) A State employee or applicant for State employment may file in the Office of
28 Administrative Hearings a contested case under Article 3 of Chapter 150B of the
29 General Statutes based upon a false accusation regarding, or disciplinary action relating
30 to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

31 (e) Any issue for which appeal to the State Personnel Commission through the
32 filing of a contested case under Article 3 of Chapter 150B of the General Statutes has
33 not been specifically authorized by this section shall not be grounds for a contested case
34 under Chapter 126."

35 **SECTION 3.** G.S. 126-36 reads as rewritten:

36 "**§ 126-36. Appeal of unlawful State employment practice.**

37 (a) Any State employee or former State employee who has reason to believe that
38 employment, promotion, training, or transfer was denied the employee or that demotion,
39 layoff, transfer, or termination of employment was forced upon the employee in
40 retaliation for opposition to alleged discrimination or because of the employee's age,
41 sex, race, color, national origin, religion, creed, political affiliation, sexual orientation,
42 gender identity, gender expression, or handicapping condition as defined by G.S.
43 168A-3 except where specific age, sex or physical requirements constitute a bona fide

1 occupational qualification necessary to proper and efficient administration, shall have
2 the right to appeal directly to the State Personnel Commission.

3 (b) Subject to the requirements of G.S. 126-34, any State employee or former
4 State employee who has reason to believe that the employee has been subjected to any
5 of the following shall have the right to appeal directly to the State Personnel
6 Commission:

7 (1) Harassment in the workplace based upon age, sex, race, color, national
8 origin, religion, creed, sexual orientation, gender identity, gender
9 expression, or handicapping condition, whether the harassment is
10 based upon the creation of a hostile work environment or upon a quid
11 pro quo.

12 (2) Retaliation for opposition to harassment in the workplace based upon
13 age, sex, race, color, national origin, religion, creed, sexual orientation,
14 gender identity, gender expression, or handicapping condition, whether
15 the harassment is based upon the creation of a hostile work
16 environment or upon a quid pro quo."

17 **SECTION 4.** This act is effective when it becomes law.