

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 1140

Short Title: Labor/Domestic Workers' Bill of Rights/Funds. (Public)

Sponsors: Representatives Hawkins and Alston (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

May 18, 2020

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LABOR LAWS TO ESTABLISH THE DOMESTIC WORKERS'
3 BILL OF RIGHTS AND APPROPRIATING FUNDS FOR ENFORCEMENT OF THOSE
4 RIGHTS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 95 of the General Statutes is amended by adding a new Article
7 to read:

8 "Article 24.

9 "Domestic Workers' Bill of Rights.

10 "**§ 95-274. Short title; purpose.**

11 This Article shall be known and may be cited as the "Domestic Workers' Bill of Rights."

12 "**§ 95-275. Definitions.**

13 The following definitions apply in this Article:

14 (1) Domestic worker or worker. – A person employed in a home or residence for
15 the purpose of caring for a child, serving as a companion to a sick,
16 convalescing or elderly person, housekeeping, or for any other domestic
17 service purpose. "Domestic worker" does not include any individual who is
18 engaged in providing companionship services, as defined in section
19 213(A)(15) of the Fair Labor Standards Act of 1938, and who is employed by
20 an employer or agency other than the family or household using his or her
21 services.

22 (2) Employer. – Any person who employs a domestic worker.

23 (3) Paid time off. – The days that the domestic worker is entitled to time off with
24 pay calculated at each domestic worker's regular rate of pay for his or her
25 regular hours worked on that day.

26 "**§ 95-276. Employment conditions.**

27 (a) A domestic worker is entitled to at least 24 consecutive hours of rest in each and every
28 calendar week. No domestic worker shall be required to work on his or her day of rest. In the
29 event that a domestic worker agrees to work on the worker's day of rest, he or she will be
30 compensated at the overtime rate for all hours worked on his or her day of rest or at twice his or
31 her regular rate if such hours constitute hours worked beyond 40 hours in a work week.

32 (b) A domestic worker is entitled to the following holidays:

33 (1) New Year's Day.

34 (2) Martin Luther King Jr.'s Birthday.

35 (3) Independence Day.



1 (4) Thanksgiving.

2 (5) Labor Day.

3 (6) Christmas Day.

4 (c) No domestic worker shall be required to work on a holiday. In the event that a
5 domestic worker agrees to work on a holiday, the worker will be compensated at the overtime
6 rate for all hours worked on the holiday or at twice his or her regular rate if such hours constitute
7 hours worked beyond 40 hours in a work week. Domestic workers are entitled to at least seven
8 sick days each year. Domestic workers are entitled to at least five vacation days per year which
9 shall be agreed upon with the employer at least 30 days in advance of the first vacation day.

10 (d) A domestic worker is entitled to written notice of termination 21 days before the
11 worker's final day of employment. An employer who fails to give notice as required by this
12 Article is liable to each employee entitled to notice who lost his or her employment for the
13 following:

14 (1) Back pay at the average regular rate of compensation received by the
15 employee during the last three years of his or her employment, or the
16 employee's final rate of compensation, whichever is higher.

17 (2) The value of the cost of any benefits to which the employee would have been
18 entitled.

19 Back pay and other liability under this section is calculated for the period of the employer's
20 violation, up to a maximum of 60 days, or one-half the number of days that the employee was
21 employed by the employer, whichever period is smaller.

22 **"§ 95-277. Remedies.**

23 Any employer or the employer's agent, or the officer or agent of any corporation, who pays
24 or provides or agrees to pay or provide to any domestic worker less than the wage, or benefits
25 applicable under this Article is subject to a civil enforcement action brought by the worker, the
26 Commissioner, or the Attorney General.

27 If any domestic worker is paid or provided by his or her employer less than the wages, or
28 benefits to which he or she is entitled under the provisions of this Article, he or she may recover
29 in a civil action the amount of any such underpayments of wages or the value of such benefits
30 costs and such reasonable attorney's fees as may be allowed by the court, and if such
31 underpayment of or failure to provide benefits was willful, an additional amount as liquidated
32 damages equal to twenty-five percent (25%) of the total of such underpayments or the value of
33 benefits found to be due him or her and any agreement between him or her and his or her
34 employer to work for less than such wage or without such benefits shall be no defense to such
35 action.

36 **"§ 95-278. Enforcement.**

37 The Commissioner or the Attorney General may bring a legal action on behalf of any
38 domestic worker paid or provided less than the wages, or benefits to which he or she is entitled
39 under the provisions of this Article, to collect such claim and the employer shall be required to
40 pay the costs and, if such underpayment of wages or failure to provide benefits was willful, an
41 additional amount as liquidated damages equal to twenty-five percent (25%) of the total of such
42 underpayments or the value of benefits found to be due him or her. Such claim, and liquidated
43 damages shall be paid to the domestic worker. An action to recover upon a liability imposed by
44 this Article must be commenced within six years.

45 If the Commissioner determines that an employer has violated a provision of this Article, the
46 Commissioner shall issue to the employer an order directing compliance therewith, which shall
47 describe particularly the nature of the alleged violation. In addition to directing payment of
48 wages, benefits or wage supplements found to be due, such order, if issued to an employer who
49 previously has been found in violation of those provisions, rules or regulations, or to an employer
50 whose violation is willful or egregious, shall direct payment to the commissioner of an additional
51 sum as a civil penalty in an amount equal to double the total amount found to be due. In no case

1 shall the order direct payment of an amount less than the total wages, benefits, or wage
2 supplements found by the commissioner to be due, plus the appropriate civil penalty. Where the
3 violation is for a reason other than the employer's failure to pay wages, benefits, or wage
4 supplements found to be due, the order shall direct payment to the commissioner of a civil penalty
5 in an amount not to exceed one thousand dollars (\$1,000) for a first violation, two thousand
6 dollars (\$2,000) for a second violation, or three thousand dollars (\$3,000) for a third or
7 subsequent violation. In assessing the amount of the penalty, the commissioner shall give due
8 consideration to the size of the violation, the history of previous violations and, in the case of
9 wages, benefits, or supplements violations, the failure to comply with record keeping or other
10 non-wage requirements.

11 **"§ 95-279. Severability.**

12 If any part or provision of this Article, or the application of this Article to any person or
13 circumstance is held invalid, the remainder of this Article including the application of such part
14 or provision to other persons or circumstances, shall not be affected and shall continue in full
15 force and effect."

16 **SECTION 2.(a)** There is appropriated from the General Fund to the Department of
17 Labor the sum of two hundred thousand dollars (\$200,000) for the 2020-2021 fiscal year to fund
18 educational efforts concerning, and enforcement efforts pertaining to, the provisions of this act.

19 **SECTION 2.(b)** There is appropriated from the General Fund to the Department of
20 Justice the sum of two hundred thousand dollars (\$200,000) for the 2020-2021 fiscal year to fund
21 educational efforts concerning, and enforcement efforts pertaining to, the provisions of this act.

22 **SECTION 3.** This act becomes effective July 1, 2020.