

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30379-LRxfa-21B

Short Title: Economic Security for All.

(Public)

Sponsors: Representative Harrison.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ADVANCE ECONOMIC SECURITY FOR ALL IN NORTH CAROLINA BY
3 INCREASING THE STATE MINIMUM WAGE IN PHASES TO FIFTEEN DOLLARS
4 PER HOUR OVER FIVE YEARS; MANDATING EQUAL PAY FOR EQUAL WORK;
5 REQUIRING PAID SICK LEAVE AND FAMILY MEDICAL LEAVE; INCREASING
6 THE TIPPED MINIMUM WAGE; ENDING WAGE THEFT; REQUIRING THE FAIR
7 ASSESSMENT OF PERSONS WITH CRIMINAL HISTORIES BY "BANNING THE
8 BOX"; REPEALING PUBLIC EMPLOYEE COLLECTIVE BARGAINING
9 RESTRICTIONS; REENACTING THE EARNED INCOME TAX CREDIT AND TAX
10 CREDITS FOR CHILD AND DEPENDENT CARE EXPENSES; ELIMINATING
11 IMMUNITY FROM LIABILITY RELATING TO THE CORONAVIRUS PANDEMIC;
12 CREATING A REBUTTABLE PRESUMPTION THAT FIRST RESPONDERS, HEALTH
13 CARE WORKERS, AND ESSENTIAL SERVICE WORKERS INFECTED BY THE
14 CORONAVIRUS CONTRACTED THE DISEASE IN THE COURSE OF
15 EMPLOYMENT; REQUIRING THAT LOCAL GOVERNMENT EMPLOYERS CREDIT
16 FIRST RESPONDERS AND HEALTH CARE WORKERS FOR LEAVE TAKEN WHILE
17 QUARANTINED DURING THE CORONAVIRUS PANDEMIC; MANDATING
18 HAZARD PAY FOR ESSENTIAL STATE EMPLOYEES FIGHTING THE PANDEMIC
19 AND APPROPRIATING FUNDS FOR THAT PURPOSE; DIRECTING THE
20 LEGISLATIVE RESEARCH COMMISSION TO STUDY THE PROVISION OF
21 HAZARD PAY TO PRIVATE AND LOCAL GOVERNMENTAL EMPLOYEES; AND
22 APPROPRIATING FUNDS TO SETTLE PANDEMIC-RELATED STATE EMPLOYEE
23 WORKERS' COMPENSATION CLAIMS.

24 The General Assembly of North Carolina enacts:

25
26 **LIVING WAGE**

27 **SECTION 1.1.(a)** This act shall be known and may be cited as the "Economic
28 Security Act of 2021."

29 **SECTION 1.1.(b)** G.S. 95-25.3(a) reads as rewritten:

30 **"§ 95-25.3. Minimum wage.**

31 (a) Every employer shall pay to each employee who in any workweek performs any work,
32 wages of at least ~~six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in~~
33 ~~paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage~~
34 ~~may change from time to time, whichever is higher, except as otherwise provided in this~~
35 ~~section;~~ the following amounts:



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1 specified weight, or other reasonable differentiation, or factor or factors other than sex, when
2 exercised in good faith.

3 (c) An employer that is in violation of this section may not reduce the pay of any
4 employee in order to bring the employer into compliance with this Article.

5 (d) An employer shall not retaliate against any employee who seeks redress pursuant to
6 this Article or who participates in the investigation of a complaint under this Article.

7 **"§ 95-25.28. Complaints; enforcement; civil actions.**

8 (a) An affected employee may file with the Department of Labor a complaint that the
9 wages paid to the employee are less than the wages to which the employee is entitled under this
10 Article. The Department of Labor shall investigate the complaint and notify the employer and
11 employee of the results of the investigation.

12 (b) An employee receiving less than the wage to which the employee is entitled under
13 this section may recover in a civil action the balance of such wages, together with the costs and
14 attorneys' fees, notwithstanding any agreement to work for a lesser wage. The employee is not
15 required to exhaust administrative remedies before filing the civil action.

16 (c) A civil action pursuant to this section shall be instituted within two years after the
17 date that the alleged violation is discovered by the affected employee."

18 **SECTION 1.2.(b)** This section is effective when this act becomes law.

19
20 **SICK AND FAMILY MEDICAL LEAVE**

21 **SECTION 1.3.(a)** Chapter 95 of the General Statutes is amended by adding a new
22 Article to read:

23 "Article 3A.

24 "Healthy Families and Healthy Workplaces Act.

25 **"§ 95-31.1. Short title and legislative purpose.**

26 (a) This Article shall be known and may be cited as the "Healthy Families and Healthy
27 Workplaces Act."

28 (b) The public policy of this State is declared as follows:

29 (1) The health and safety needs of employees and their families and the protection
30 of employees from losing their jobs and pay while they seek medical care for
31 themselves and their family members are subjects of concern requiring
32 legislation to promote the general welfare of the people of the State without
33 jeopardizing the competitive position of North Carolina business and industry.

34 (2) The general welfare of the State requires the enactment of this law under the
35 police power of the State.

36 **"§ 95-31.2. Definitions.**

37 The following definitions apply in this Article:

38 (1) Child. – A biological, adopted, or foster child, stepchild, legal ward, or child
39 of a parent standing in loco parentis who is under 18 years of age, or 18 years
40 of age or older but incapable of earning wages because of a mental or physical
41 incapacity.

42 (2) Commissioner. – The Commissioner of Labor.

43 (3) Domestic violence. – As defined in G.S. 50B-1.

44 (4) Employ. – As defined by G.S. 95-25.2(3).

45 (5) Employee. – As defined by G.S. 95-25.2(4).

46 (6) Employer. – As defined by G.S. 95-25.2(5).

47 (7) Federal act. – The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601
48 to 2654 inclusive, as it may be amended.

49 (8) Health care provider. –

50 a. A Doctor of Medicine or Osteopathy licensed to practice medicine in
51 this State.

1 b. A physician assistant licensed in this State.

2 c. A family nurse practitioner licensed in this State.

3 (9) Immediate family member. – An employee's spouse, mother, father, brother,
4 sister, son, daughter, grandmother, grandfather, grandson, or granddaughter,
5 whether the relationship is a biological, foster, adoptive, step, half, or in-law
6 relationship.

7 (10) Paid sick time or paid sick days. – Time that is (i) compensated at the same
8 hourly rate and with the same benefits, including health care benefits, as the
9 employee normally earns during hours worked and (ii) provided by an
10 employer to an employee for the purposes described in G.S. 95-31.4(b) of this
11 Article.

12 (11) Parent. – A biological, foster, step, or adoptive parent of an employee or an
13 employee's spouse, or other person who stood in loco parentis during the
14 childhood of an employee or employee's spouse.

15 (12) Sexual assault. – As defined in Chapter 14 of the General Statutes.

16 (13) Small business. – An employer who employs 10 or fewer employees during
17 20 or more calendar workweeks in the current or preceding calendar year.

18 (14) Stalking. – As defined in Chapter 14 of the General Statutes.

19 **§ 95-31.3. Exemptions.**

20 (a) The provisions of this section do not apply to any bona fide volunteers in any
21 organization where an employer-employee relationship does not exist.

22 (b) The provisions of this section do not apply to any person exempted from the Wage
23 and Hour Act under G.S. 95-25.14(a)(2) through (8), 95-25.14(b), 95-25.14(b1), 95-25.14(c),
24 and 95-25.14(e), except that domestic workers are exempted only if they are employed in the
25 place of residence of their employer.

26 **§ 95-31.4. Accrual of paid sick time.**

27 (a) Except as provided by G.S. 95-31.3, any employee who works in this State and who
28 must be absent from work for the reasons set forth in G.S. 95-31.5(a) shall be entitled to paid
29 sick time.

30 (b) Paid sick time as provided in this section shall begin to accrue at the commencement
31 of employment. Paid sick time shall accrue at the rate of one hour of pay for every 30 hours
32 worked. Paid sick time may be used as accrued, or be loaned by the employer at its discretion, to
33 the employee in advance of accrual. Unless the employer and employee agree to designate
34 otherwise, for periods of paid sick time that are less than a normal workday, the time shall be
35 counted on an hourly basis or the smallest increment that the employer's payroll system uses to
36 account for absences or use of leave.

37 (c) For employees of small businesses, there shall be a limit of 32 hours of accrued paid
38 time in a calendar year. For employees of other employers, there shall be a limit of 56 hours of
39 accrued paid sick time in a calendar year. Accrued paid sick time for employees carries over from
40 year to year but is limited as provided in this subsection.

41 (d) When there is separation from employment and the employee is rehired within 90
42 days of separation by the same employer, any previously accrued paid sick time that had not been
43 used shall be reinstated. The employee shall be entitled to use accrued paid sick time and accrue
44 additional sick time at the recommencement of employment.

45 **§ 95-31.5. Use of paid sick time.**

46 (a) Paid sick time shall be provided to an employee by an employer for any of the
47 following reasons:

48 (1) To care for the employee's immediate family member who is suffering from a
49 physical or mental illness, injury, or medical condition that requires home
50 care, professional medical diagnosis or care, preventative medical care, or a
51 routine medical appointment, unless the care is covered under federal law.

1 (2) To care for the employee's own physical or mental illness, injury, or medical
2 condition that requires home care, professional medical diagnosis or care,
3 preventative medical care, or a routine medical appointment, unless the care
4 is covered under federal law.

5 (3) To allow an employee to address the psychological, physical, or legal effects
6 on himself or herself or an immediate family member of domestic violence,
7 sexual assault, or stalking.

8 (b) An employer may require certification of the qualifying illness, injury, health
9 condition, or violence when a paid sick time period covers more than three consecutive workdays.
10 Any reasonable documentation signed by a health care provider involved in following or treating
11 the illness, injury, or health condition and indicating the need for the amount of sick days taken
12 shall be deemed acceptable certification. Acceptable certification of domestic violence, sexual
13 assault, or stalking may include (i) law enforcement, court, or federal agency records or files, (ii)
14 documentation from a domestic violence or sexual assault program, or (iii) documentation from
15 a religious, medical, or other professional from whom assistance was sought in dealing with the
16 alleged domestic violence, sexual offense, or stalking.

17 (1) The employer shall not require certification from a health care provider
18 employed by the employer. The employer shall not delay the commencement
19 of time taken for purposes of subsection (a) of this section or pay for this
20 period on the basis that the employer has not yet received the certification.
21 Nothing in this section shall be construed to require an employee to provide
22 as certification any information from a health care provider that would be in
23 violation of section 1177 of the Social Security Act or the regulations
24 promulgated pursuant to section 264(c) of the Health Insurance Portability and
25 Accountability Act, 42 U.S.C. § 1320d-2.

26 (2) An employer may not require disclosure of details relating to domestic
27 violence, sexual assault, or stalking or the details of an employee's medical
28 condition as a condition of providing paid sick time under this Article. If an
29 employer possesses health information or information pertaining to domestic
30 violence, sexual assault, or stalking about an employee or employee's
31 immediate family member, such information shall be treated as confidential
32 and not disclosed except to the affected employee or with the permission of
33 the affected employee.

34 (c) When the use of sick time is foreseeable, the employee shall make a good-faith effort
35 to provide notice of the need for such time to the employer in advance of the use of the sick time
36 and shall make a reasonable effort to schedule the use of sick time in a manner that does not
37 unduly disrupt the operations of the employer.

38 (d) An employer may not require, as a condition of providing sick time under this act,
39 that the employee search for or find a replacement worker to cover the hours during which the
40 employee is on paid sick time.

41 (e) Nothing in this section shall be construed as requiring financial or other
42 reimbursement to an employee from an employer upon the employee's termination, resignation,
43 retirement, or other separation from employment for accrued paid sick days that have not been
44 used.

45 (f) Nothing in this section shall be construed to discourage employers from adopting or
46 retaining paid sick time policies more generous than policies that comply with the requirements
47 of this section, and nothing in this section shall be construed to diminish the obligation of an
48 employer to comply with any contract, collective bargaining agreement, or any employment
49 benefit program or plan that provides greater sick time leave rights to employees than the rights
50 established under this section.

1 (g) This Article provides minimum requirements pertaining to paid sick time and shall
2 not be construed to preempt, limit, or otherwise affect the applicability of any other law,
3 regulation, requirement, policy, agreement, or standard that provides for greater accrual or use
4 by employees of sick time, whether paid or unpaid, or that extends other protections to
5 employees.

6 (h) Employers who have a paid time-off leave policy are not required to modify that
7 policy, if that policy offers an employee the option, at the employee's discretion, to take paid sick
8 time that is at least equivalent to the amounts and for the same purposes and under the same
9 conditions as provided under this section.

10 **"§ 95-31.6. Notification, posting, and records.**

11 Employers shall give notice that employees are entitled to paid sick time, the amount of paid
12 sick time and the terms of its use guaranteed under this section, that retaliation against employees
13 who request or use paid sick time is prohibited, and that each employee has the right to file a
14 complaint with the Commissioner of Labor or in the General Court of Justice if sick time as
15 required by this Article is denied by the employer or the employee is retaliated against for
16 requesting or taking paid sick time. Employers may comply with this section by supplying each
17 of their employees with a notice in English and Spanish that contains the information required
18 by this section or by displaying a poster in a conspicuous and accessible place in each
19 establishment where the employees are employed, which contains in English and Spanish all
20 information required by this section.

21 **"§ 95-31.7. Enforcement.**

22 (a) The Commissioner shall enforce and administer the provisions of this Article, and the
23 Commissioner or his or her authorized representative is empowered to hold hearings and to
24 institute civil proceedings hereunder.

25 (b) The Commissioner or the Commissioner's authorized representative shall have the
26 power to administer oaths and examine witnesses; issue subpoenas; compel the attendance of
27 witnesses and the production of papers, books, accounts, records, payrolls, and documents; and
28 take depositions and affidavits in any proceeding hereunder.

29 (c) Any employer who violates the provisions of this Article shall be liable to the
30 employee or employees affected in the amount of their unpaid sick time as the case may be, plus
31 interest at the legal rate set forth in G.S. 24-1 from the date each amount first came due.

32 (d) In addition to the amounts awarded pursuant to subsection (c) of this section, the court
33 shall award liquidated damages in an amount equal to the amount found to be due as provided in
34 subsection (c) of this section, provided that if the employer shows to the satisfaction of the court
35 that the act or omission constituting the violation was in good faith and that the employer had
36 reasonable grounds for believing that the act or omission was not a violation of this Article, the
37 court may, in its discretion, award no liquidated damages or may award any amount of liquidated
38 damages not exceeding the amount found due as provided in subsection (c) of this section.

39 (e) Action to recover such liability may be maintained in the General Court of Justice by
40 any one or more employees.

41 (f) The court, in any action brought under this Article, may, in addition to any judgment
42 awarded to the plaintiff, order costs and fees of the action and reasonable attorneys' fees to be
43 paid by the defendant. The court may order costs and fees of the action and reasonable attorneys'
44 fees to be paid by the plaintiff if the court determines that the action was frivolous.

45 (g) The Commissioner is authorized to determine and supervise the payment of the
46 amounts due under this section, including interest at the legal rate set forth in G.S. 24-1 from the
47 date each amount first came due, and the agreement to accept such amounts by the employee
48 shall constitute a waiver of the employee's right to bring an action under subsection (e) of this
49 section.

50 (h) Actions under this Article must be brought within two years pursuant to G.S. 1-53.

1 (i) The rights and remedies created by this Article are supplementary to all existing
2 common law and statutory rights and remedies.

3 **"§ 95-31.8. Rules.**

4 The Commissioner of Labor shall adopt rules to implement this Article.

5 **"§ 95-31.9. Severability.**

6 The provisions of this Article are severable. If any phrase, clause, sentence, or provision is
7 declared to be invalid or is preempted by federal law or regulation, the validity of the remainder
8 of this Article shall not be affected thereby."

9 **SECTION 1.3.(b)** G.S. 95-241(a) reads as rewritten:

10 "(a) No person shall discriminate or take any retaliatory action against an employee
11 because the employee in good faith does or threatens to do any of the following:

- 12 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
13 proceeding or other action, or testify or provide information to any person
14 with respect to any of the following:
- 15 a. Chapter 97 of the General Statutes.
 - 16 b. ~~Article 2A~~ Article 2A, ~~Article 3A~~, or Article 16 of this Chapter.
 - 17 c. Article 2A of Chapter 74 of the General Statutes.
 - 18 d. G.S. 95-28.1.
 - 19 e. Article 16 of Chapter 127A of the General Statutes.
 - 20 f. G.S. 95-28.1A.
 - 21 g. Article 52 of Chapter 143 of the General Statutes.
 - 22 h. Article 5F of Chapter 90 of the General Statutes.
- 23 (2) Cause any of the activities listed in subdivision (1) of this subsection to be
24 initiated on an employee's behalf.
- 25 (3) Exercise any right on behalf of the employee or any other employee afforded
26 by ~~Article 2A~~ Article 2A, ~~Article 3A~~, or Article 16 of this Chapter, by Article
27 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter 143 of
28 the General Statutes.
- 29 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
30 Statutes.
- 31 (5) Exercise rights under Chapter 50B. Actions brought under this subdivision
32 shall be in accordance with the provisions of G.S. 50B-5.5."

33 **SECTION 1.3.(c)** This section becomes effective July 1, 2021, applies only to
34 covered employment on or after that date, and does not apply to any collective bargaining
35 agreement entered into before July 1, 2021, that is still in effect on that date.

36
37 **INCREASE TIPPED MINIMUM WAGE**

38 **SECTION 1.4.(a)** Effective until December 31, 2021, G.S. 95-25.3(f) reads as
39 rewritten:

40 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount
41 ~~permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped~~
42 ~~employee is notified in advance, is permitted to retain all tips and the employer maintains~~
43 ~~accurate and complete records of tips received by each employee as such tips are certified by the~~
44 ~~employee monthly or for each pay period. Even if the employee refuses to certify tips accurately,~~
45 ~~tips may still be counted as wages when the employer complies with the other requirements of~~
46 ~~this section and can demonstrate by monitoring tips that the employee regularly receives tips in~~
47 ~~the amount for which the credit is taken. of five dollars (\$5.00) per hour. Tip pooling shall also~~
48 ~~be is permissible among employees who customarily and regularly receive tips; however, no~~
49 ~~employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling~~
50 ~~arrangement."~~

1 **SECTION 1.4.(b)** Effective January 1, 2022, G.S. 95-25.3(f), as amended by
2 subsection (a) of this section, reads as rewritten:

3 "(f) Tips earned by a tipped employee ~~may be counted as wages only up to the amount of~~
4 ~~five dollars (\$5.00) per hour.~~ shall not be counted as wages. Tip pooling is permissible among
5 employees who customarily and regularly receive tips; however, no employee's tips may be
6 reduced by more than fifteen percent (15%) under a tip pooling arrangement."

7 **SECTION 1.4.(c)** Except as otherwise provided, this section is effective when this
8 act becomes law.

9 10 **WAGE THEFT**

11 **SECTION 1.5.(a)** G.S. 95-25.2 reads as rewritten:

12 **"§ 95-25.2. Definitions.**

13 ~~In this Article, unless the context otherwise requires:~~ The following definitions apply in this
14 Article:

- 15 (1) ~~"Agriculture" includes farming.~~ Agriculture. – Farming in all its branches
16 performed by a farmer or on a farm as an incident to or in conjunction with
17 farming operations.
- 18 (2) ~~"Commissioner" means the Commissioner.~~ The Commissioner of Labor.
- 19 (3) ~~"Employ" means to employ.~~ To suffer or permit to work.
- 20 (4) ~~"Employee" includes any Employee.~~ Any individual employed by an
21 employer.
- 22 (5) ~~"Employer" includes any Employer.~~ Any person acting directly or indirectly
23 in the interest of an employer in relation to an employee.
- 24 (5a) Employment status. – The status of an individual, under the usual common
25 law rules applicable in determining the employee-employer relationship, as an
26 employee or as an independent contractor (or another individual who is not an
27 employee).
- 28 (5b) Enterprise. – The related activities performed either through unified
29 operations or common control by any person or persons for a common
30 business purpose and includes all such activities whether performed in one or
31 more establishments or by one or more corporate units but shall not include
32 the related activities performed for such enterprise by an independent
33 contractor or franchisee.
- 34 (6) ~~"Establishment" means a~~ Establishment. – A physical location where business
35 is conducted.
- 36 (7) ~~"The Fair Labor Standards Act" means the Fair Labor Standards Act. – The~~
37 ~~Fair Labor Standards Act of 1938, as amended and as the same may be~~
38 ~~amended from time to time by the United States Congress.~~
- 39 (8) ~~"Hours worked" includes all~~ Hours worked. – All time an employee is
40 employed.
- 41 (8a) Intentional. – The employer consciously committed the act which violated the
42 statute.
- 43 (9) ~~"Payday" means that~~ Payday. – That day designated for payment of wages due
44 by virtue of the employment relationship.
- 45 (10) ~~"Pay periods" may~~ Pay periods. – May be daily, weekly, biweekly,
46 semimonthly, or monthly.
- 47 (11) ~~"Person" means an~~ Person. – An individual, partnership, association,
48 corporation, business trust, legal representative, or any organized group of
49 persons. For the purposes of G.S. 95-25.2, G.S. 95-25.3, G.S. 95-25.14, and
50 G.S. 95-25.20, it also means the State of North Carolina, any city, town,
51 county, or municipality, or any State or local agency or instrumentality of

- 1 government. The Government of the United States and any agency of the
 2 United States (including the United States Postal Service and Postal Rate
 3 Commission) are not included as persons for any purpose under this Article.
- 4 (12) ~~"Seasonal food service establishment"~~ means a Seasonal food service
 5 establishment. – A restaurant, food and drink stand or other establishment
 6 generally recognized as a commercial food service establishment, preparing
 7 and serving food to the public but operating 180 days or less per year.
- 8 (13) ~~"Seasonal religious or nonprofit educational conference center or a seasonal~~
 9 ~~amusement or recreational establishment"~~ means an Seasonal religious or
 10 nonprofit educational conference center or a seasonal amusement or
 11 recreational establishment. – An establishment which does not operate for
 12 more than seven months in any calendar year, or during the preceding calendar
 13 year had average receipts for any six months of such year of not more than
 14 thirty-three and one-third percent (33 1/3%) of its average receipts for the
 15 other six months of that year.
- 16 (14) ~~"Tipped employee"~~ means any Tipped employee. – Any employee who
 17 customarily receives more than twenty dollars (\$20.00) a month in tips.
- 18 (15) ~~"Tip" shall mean any Tip.~~ – Any money or part thereof over and above the
 19 actual amount due a business for goods, food, drink, services or articles sold
 20 which is paid in cash or by credit card, or is given to or left for an employee
 21 by a patron or patrons of the business where the employee is employed.
- 22 (16) ~~"Wage"~~ Wage. – Wage paid to an employee means compensation for labor or
 23 services rendered by an employee whether determined on a time, task, piece,
 24 job, day, commission, or other basis of calculation, and the reasonable cost as
 25 determined by the Commissioner of furnishing employees with board,
 26 lodging, or other facilities. For the purposes of G.S. 95-25.6 through
 27 G.S. 95-25.13 "wage" includes sick pay, vacation pay, severance pay,
 28 commissions, bonuses, and other amounts promised when the employer has a
 29 policy or a practice of making such payments.
- 30 (16a) Willful. – The employer knew or showed reckless disregard for the issue of
 31 whether the employer's conduct was prohibited.
- 32 (17) ~~"Workweek"~~ means any Workweek. – Any period of 168 consecutive hours.
- 33 (18) ~~"Enterprise"~~ means the related activities performed either through unified
 34 operations or common control by any person or persons for a common
 35 business purpose and includes all such activities whether performed in one or
 36 more establishments or by one or more corporate units but shall not include
 37 the related activities performed for such enterprise by an independent
 38 contractor or franchisee."

39 **SECTION 1.5.(b)** G.S. 95-25.13 reads as rewritten:

40 **"§ 95-25.13. Notification, posting, and records.**

41 Every employer shall:

- 42 (1) Notify its ~~employees, orally or~~ employees in writing at the time of hiring, and
 43 upon any material change, of the following information:
- 44 a. The promised wages and the day-basis upon which the promised wages
 45 will be calculated (for example, per hour or per piece).
- 46 b. The method, day, and place for ~~payment;~~ payment of wages.
- 47 c. The full name, mailing address, and telephone number of the employer
 48 and the federal and State tax identification number of each employer
 49 who is not a natural person.

1 d. The employment status of the employee. Such notification or
2 classification by the employer is not determinative of the employee's
3 actual employment status.

4 (2) Make available to its employees, in writing or through a posted notice
5 maintained in a place accessible to its employees, employment practices and
6 policies with regard to promised wages;

7 (3) Notify employees, in writing or through a posted notice maintained in a place
8 accessible to its employees, at least 24 hours prior to any changes in promised
9 wages. Wages may be retroactively increased without the prior notice required
10 by this subsection; and

11 (4) Furnish each employee with an itemized statement of deductions made from
12 that employee's wages under G.S. 95-25.8 and with the information required
13 by 13 NCAC 12 .0801(6) and 13 NCAC 12 .0801(8) through (13) for each
14 pay period such deductions are made period."

15 **SECTION 1.5.(c)** G.S. 95-25.22 reads as rewritten:

16 "**§ 95-25.22. Recovery of unpaid wages.**

17 (a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage),
18 G.S. 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to
19 the employee or employees affected in the amount of their unpaid minimum wages, their unpaid
20 overtime compensation, or their unpaid amounts due under G.S. 95-25.6 through G.S. 95-25.12,
21 as the case may be, plus interest at the legal rate set forth in G.S. 24-1, from the date each amount
22 first came due.

23 (a1) In addition to the amounts awarded pursuant to subsection (a) of this section, the court
24 shall award liquidated damages in an amount equal to twice the amount found to be due as
25 provided in subsection (a) of this section, provided that if the employer shows to the satisfaction
26 of the court that the act or omission constituting the violation was in good faith and that the
27 employer had reasonable grounds for believing that the act or omission was not a violation of
28 this Article, the court may, in its discretion, award no liquidated damages or may award any
29 amount of liquidated damages not exceeding twice the amount found due as provided in
30 subsection (a) of this section.

31 (a2) Any employer who violates the provisions of G.S. 95-25.13 or any rule adopted under
32 that section shall be liable to the employee or employees affected in the amount of their actual
33 damages, including, but not limited to, lost wages and benefits plus interest.

34 (a3) In addition to the amounts awarded pursuant to subsections (a), (a1), and (a2) of this
35 section, if the court finds that the employer has intentionally violated any provision of this Article
36 or any regulation issued pursuant to this Article, the court shall award statutory damages of up to
37 five hundred dollars (\$500.00) per employee per violation. Factors to be considered in setting the
38 number of statutory damages include the nature and persistence of the violations and the extent
39 of the employer's culpability.

40 (b) Action to recover such liability may be maintained in the General Court of Justice by
41 any one or more employees.

42 (c) Action to recover such liability may also be maintained in the General Court of Justice
43 by the Commissioner at the request of the employees affected. Any sums thus recovered by the
44 Commissioner on behalf of an employee shall be held in a special deposit account and shall be
45 paid directly to the employee or employees affected.

46 (d) The court, in any action brought under this Article ~~may, shall,~~ in addition to any
47 judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to
48 be paid by the defendant. In an action brought by the Commissioner in which a default judgment
49 is entered, the clerk shall order attorneys' fees of three hundred dollars (\$300.00) to be paid by
50 the defendant.

1 The court may order costs and fees of the action and reasonable attorneys' fees to be paid by
2 the plaintiff if the court determines that the action was frivolous.

3 (e) The Commissioner is authorized to determine and supervise the payment of the
4 amounts due under this section, including interest at the legal rate set forth in G.S. 24-1, from the
5 date each amount first came due, and the agreement to accept such amounts by the employee
6 shall constitute a waiver of the employee's right to bring an action under subsection (b) of this
7 section.

8 (f) Actions under this section must be brought within two years pursuant to
9 ~~G.S. 1-53~~G.S. 1-53, except that an action arising out of a willful violation may be brought within
10 three years. Actions may also be brought within one year after notification to the employee of
11 final disposition by the State of a complaint for the same violation.

12 (g) Prior to initiating any action under this section, the Commissioner shall exhaust all
13 administrative remedies, including giving the employer the opportunity to be heard on the matters
14 at issue and giving the employer notice of the pending action."

15 **SECTION 1.5.(d)** G.S. 95-25.23 reads as rewritten:

16 "**§ 95-25.23. Violation of provisions on minimum wage, overtime, wage payment,**
17 **withholding of wages, notification, and youth employment; civil penalty.**

18 (a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage),
19 G.S. 95-25.4 (Overtime), G.S. 95-25.5 (Youth Employment)-Employment), G.S. 95-25.6 (Wage
20 Payment), or G.S. 95-25.13 (Notification), or any regulation issued thereunder, shall be subject
21 to a civil penalty not to exceed five hundred dollars (\$500.00) for the first violation and not to
22 exceed one thousand dollars (\$1,000) for each subsequent violation. In determining the amount
23 of such penalty, the appropriateness of such penalty to the size of the business of the person
24 charged and the gravity of the violation shall be considered. The determination by the
25 Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified
26 mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a
27 designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt,
28 or via hand delivery, the person charged with the violation takes exception to the determination,
29 in which event final determination of the penalty shall be made in an administrative proceeding
30 pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of
31 Chapter 150B.

32 (b) The amount of such penalty when finally determined may be recovered in the manner
33 set forth in G.S. 95-25.23B.

34 (c) The clear proceeds of civil penalties provided for in this section shall be remitted to
35 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

36 (d) Assessment of penalties under this section shall be subject to a ~~two-year~~three-year
37 statute of limitations commencing at the time of the occurrence of the violation."

38 **SECTION 1.5.(e)** Article 2A of Chapter 95 of the General Statutes is amended by
39 adding a new section to read:

40 "**§ 95-25.23D. Wage claims; liens; collections.**

41 (a) For the purposes of wage claims and collections under this Article, an employee is
42 entitled to a lien upon:

43 (1) All property of the employer, real or personal, located in this State; and

44 (2) All property upon which the employee has performed work at the instance of
45 the owner or of any person acting by the employer's authority or under him or
46 her as contractor or otherwise, for the full amount of the wages and any
47 statutory penalties owed.

48 (b) Both a wage claim and an action to enforce a lien under this section may be brought
49 by the employee individually or by the Commissioner or any representative of the employee on
50 behalf of the employee, including collective bargaining representatives.

1 (c) If no lien has been recorded at the time the employee files his or her complaint with
2 the Commissioner, the Commissioner shall record and provide notice of the lien on behalf of the
3 employee.

4 (d) Any number of wage claims or wage deficiencies against the same employer may be
5 joined in a single proceeding, but the court may order separate trials or hearings. If the proceeds
6 of the sale of the property subject to a lien are insufficient to pay all the claimants, whether or
7 not such claims have been joined together, the court shall order the claimants to be paid in
8 proportion to the amount due each claimant.

9 (e) An employee's lien upon personal property shall be limited to such property as can be
10 made subject to a security interest under the Commercial Code by the filing of a financing
11 statement.

12 (f) In order to enforce a lien under this section upon real property, a claim of lien must
13 be recorded with the county recorder in the county where the property is located, as follows:

14 (1) The claim shall include all of the applicable information set forth under
15 G.S. 44A-12.

16 (2) The notice of lien shall be served on the property owner in the manner
17 prescribed by G.S. 44A-11.

18 A lien under this section is perfected as soon as notice is provided as required by this
19 subsection.

20 (g) In order to enforce a lien under this section upon personal property, the
21 Commissioner, employee representative, or employee shall file the notice of the lien in the office
22 of the Secretary of State and serve a copy of the notice by personal service to the employer in the
23 same manner as a summons or by mail. The office of the Secretary of State shall place the notice
24 of the lien in the same file as the financing statements pursuant to G.S. 25-9-310. The notice shall
25 specify the nature and amount of the claim, describe the property on which the lien is made, and
26 state that the person filing the notice claims a lien on that property.

27 (h) The lien may be filed at any time prior to the expiration of the statute of limitations
28 for a wage claim on the same wages pursuant to G.S. 95-25.22(f).

29 (i) Mistakes or errors in the claimed amount owed shall not invalidate the lien unless
30 made with the intent to defraud.

31 (j) If a lien is recorded pursuant to subsection (f) of this section and an action to recover
32 unpaid wages has been filed, then that action shall also be deemed an action to foreclose upon
33 any property subject to the recorded lien. In the judgment resulting from such an action, the court
34 may order the sale at sheriff's auction or the transfer to the plaintiff of title or possession of any
35 property subject to the lien. Whether or not the court makes such an order as part of the judgment,
36 a writ of sale may be issued for any property subject to the lien at any point after a judgment for
37 unpaid wages is issued.

38 (k) If judgment is entered in favor of the employer in an action for unpaid wages or if the
39 case is dismissed with prejudice, the lien shall be extinguished upon expiration of the applicable
40 appeals period if no appeal is filed. If an appeal is filed, the lien shall continue in force until all
41 issues on appeal have been decided.

42 (l) If an action to recover the wages is not brought within one year of the filing of the
43 lien, the lien created by this section shall be extinguished.

44 (m) A lien recorded pursuant to subsection (f) of this section takes precedence over all
45 other debts, judgments, decrees, liens, or mortgages against the employer, regardless as to
46 whether these debts, judgments, decrees, liens, or mortgages originate before or after the wage
47 lien, and regardless of whether these debts, judgments, decrees, liens, or mortgages were
48 perfected prior to the wage lien. An employee's lien is effective against the employer, the estate
49 of the employer, or a subsequent bona fide purchaser of the property subject to the employee's
50 lien.

(n) The employee, the Commissioner, or the employee's representative, as assignee of the employee, is entitled to court costs and reasonable attorneys' fees for filing a successful action to foreclose a lien pursuant to this section."

SECTION 1.5.(f) This section is effective when this act becomes law and applies to employers and employees on or after that date.

"BAN THE BOX"

SECTION 1.6.(a) Chapter 126 of the General Statutes is amended by adding a new Article to read:

"Article 17.

"Fair Assessment of Persons with Criminal Histories.

"§ 126-100. Definitions.

The following definitions apply in this Article:

- (1) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's fitness for public employment. The term does not include a record of arrest not resulting in conviction.
- (2) Hiring authority. – The agent responsible by law for the hiring of persons for public employment.
- (3) Public employment. – Any job, work for pay, or employment, including temporary or seasonal work, where the employer is the State of North Carolina or any local political subdivision of the State.

"§ 126-101. Consideration of applicant criminal history.

A hiring authority may not inquire into or consider the criminal history of an applicant for public employment, or include any such inquiry on any initial employment application form, until the hiring authority has made a conditional offer of employment to the applicant. This Article is not applicable to positions for which a hiring authority is otherwise required by law to consider the criminal record; however, nothing in this Article shall be construed to preclude any hiring authority in its discretion from adopting the provisions of this Article.

"§ 126-102. Criteria for disqualification.

(a) Except as otherwise required by law, no person shall be disqualified from public employment solely or in part because of a prior conviction, unless the conviction is determined to be substantially related to the qualifications, functions, or duties of the position after consideration of all of the following factors:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct and the duties of the position.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission of a crime by the person.

(b) A record of arrest not resulting in conviction may not be the basis for disqualification from public employment.

"§ 126-103. Opportunity to provide evidence of inaccuracy.

The hiring authority must inform the individual of the potential adverse employment decision based on the background check report prior to a final decision and must provide an opportunity to demonstrate that he or she was not correctly identified in the background check report or that the report is otherwise inaccurate.

"§ 126-104. Data collection.

The State Human Resources Commission shall do the following:

- 1 (1) Record and log the positions that are statutorily required to conduct
2 background checks prior to a conditional offer of employment.
- 3 (2) Conduct quarterly reviews to determine compliance with this Article and
4 make a report on all such reviews to the General Assembly annually.
- 5 (3) Collect, and make available to the public, data on:
 - 6 a. The number of applicants for public employment with criminal
7 histories given conditional offers of employment.
 - 8 b. The number of applicants for public employment with criminal
9 histories who are subsequently employed.
 - 10 c. The retention rate of public employees with criminal histories.

11 **"§ 126-105. Applicability.**

12 The provisions of this Article apply to all applicants for public employment."

13 **SECTION 1.6.(b)** G.S. 126-5 is amended by adding a new subsection to read:

14 "(c17) Notwithstanding any other provision of law, the provisions of Article 17 of this
15 Chapter apply as to applicants for employment with the State of North Carolina or any local
16 political subdivision of the State."

17 **SECTION 1.6.(c)** This section is effective when this act becomes law and applies to
18 applications for employment made on or after that date.

19 **REPEAL OF PUBLIC EMPLOYEE COLLECTIVE BARGAINING RESTRICTION**

20 **SECTION 1.7.(a)** G.S. 95-98 reads as rewritten:

21 ~~**"§ 95-98. Contracts between units of government and labor unions, trade unions or labor**~~
22 ~~**organizations concerning public employees declared to be illegal.**~~

23 ~~Any agreement, or contract, between the governing authority of any city, town, county, or~~
24 ~~other municipality, or between any agency, unit, or instrumentality thereof, or between any~~
25 ~~agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade~~
26 ~~union, or labor organization, as bargaining agent for any public employees of such city, town,~~
27 ~~county or other municipality, or agency or instrumentality of government, is hereby declared to~~
28 ~~be against the public policy of the State, illegal, unlawful, void and of no effect."~~

29 **SECTION 1.7.(b)** This section is effective when this act becomes law.

30 **EARNED INCOME TAX CREDIT**

31 **SECTION 1.8.(a)** G.S. 105-151.31 is reenacted as it existed immediately before its
32 expiration and reads as rewritten:

33 **"§ 105-151.31. Earned income tax credit.**

34 (a) Credit. – An individual who claims for the taxable year an earned income tax credit
35 under section 32 of the Code is allowed a credit against the tax imposed by this Part equal to a
36 ~~percentage~~ five percent (5%) of the amount of credit the individual qualified for under section
37 32 of the Code. A nonresident or part-year resident who claims the credit allowed by this section
38 must reduce the amount of the credit by multiplying it by the fraction calculated under
39 G.S. 105-134.5(b) or (c), as appropriate. ~~The percentage is as follows:~~

40 (1) ~~For taxable year 2013, four and one half percent (4.5%).~~

41 (2) ~~For all other taxable years, five percent (5%).~~

42 (b) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax
43 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary
44 must refund the excess to the taxpayer. The refundable excess is governed by the provisions
45 governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. ~~Section~~
46 ~~3507 of the Code, Advance Payment of Earned Income Credit, does not apply to the credit~~
47 ~~allowed by this section.~~ In computing the amount of tax against which multiple credits are
48 allowed, nonrefundable credits are subtracted before refundable credits.
49
50

(e) ~~Sunset.~~ This section is repealed effective for taxable years beginning on or after January 1, 2014."

SECTION 1.8.(b) This section is effective for taxable years beginning on or after January 1, 2021.

TAX CREDIT FOR CHILD AND DEPENDENT CARE EXPENSES

SECTION 1.9.(a) Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-151.34. Credit for qualified child and dependent care expenses.

(a) Credit. – A person who is allowed a credit against federal income tax for a percentage of employment-related expenses under section 21 of the Code shall be allowed as a credit against the tax imposed by this Part an amount equal to one hundred percent (100%) of the amount of the credit provided for in section 21 of the Code which is claimed and allowed pursuant to the Internal Revenue Code. To claim the credit allowed by this section, the taxpayer must provide with the tax return the information required by the Secretary of Revenue.

(b) Phaseout. – The credit allowed by this section shall be reduced by a percentage listed below, rounded to the nearest percentage point, based on the taxpayer's adjusted gross income as calculated under the Code:

<u>Filing Status</u>	<u>For AGI Exceeding</u>	<u>Percentage Reduction</u>
<u>Married, filing jointly</u>	<u>\$75,000</u>	<u>The lesser of 100% or [(Taxpayer's AGI – \$75,000)/\$125,000]</u>
<u>Head of Household</u>	<u>\$56,250</u>	<u>The lesser of 100% or [(Taxpayer's AGI – \$56,250)/\$93,750]</u>
<u>Single</u>	<u>\$37,500</u>	<u>The lesser of 100% or [(Taxpayer's AGI – \$37,500)/\$62,500]</u>

(c) Limitations. – A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-153.4(b) or (c), as appropriate. The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except for payments of tax made by or on behalf of the taxpayer."

SECTION 1.9.(b) Subsection (a) of this section is effective for taxable years beginning on or after January 1, 2021.

UNEMPLOYMENT INSURANCE BENEFITS INCREASES

SECTION 2.1.(a) G.S. 96-14.2(a) reads as rewritten:

"(a) Weekly Benefit Amount. – The weekly benefit amount for an individual who is totally unemployed is an amount equal to the wages paid to the individual in the ~~last two completed quarters~~ highest paid quarter of the individual's base period divided by 52 and rounded to the next lower whole dollar. If this amount is less than fifteen dollars (\$15.00), the individual is not eligible for benefits. The weekly benefit amount may not exceed ~~three hundred fifty dollars (\$350.00)~~ five hundred thirty-five dollars (\$535.00)."

SECTION 2.1.(b) This section is effective for benefit weeks beginning on or after January 3, 2021.

SECTION 2.2.(a) G.S. 96-14.3 reads as rewritten:

"§ 96-14.3. Duration of benefits.

(a) Duration. – The number of weeks an individual is allowed to receive unemployment benefits ~~depends on the seasonal adjusted statewide unemployment rate that applies to the six month base period in which the claim is filed. One six month base period begins on January 1 and one six month base period begins on July 1. For the base period that begins January 1, the~~

1 average of the seasonal adjusted unemployment rates for the State for the preceding months of
 2 July, August, and September applies. For the base period that begins July 1, the average of the
 3 seasonal adjusted unemployment rates for the State for the preceding months of January,
 4 February, and March applies. The Division must use the most recent seasonal adjusted
 5 unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and
 6 not the rate as revised in the annual benchmark.

7 Seasonal Adjusted	8 Number
9 Unemployment Rate	10 of Weeks
11 Less than or equal to 5.5%	12 12
13 Greater than 5.5% up to 6%	14 13
15 Greater than 6% up to 6.5%	16 14
17 Greater than 6.5% up to 7%	18 15
19 Greater than 7% up to 7.5%	20 16
21 Greater than 7.5% up to 8%	22 17
23 Greater than 8% up to 8.5%	24 18
25 Greater than 8.5% up to 9%	26 19
27 Greater than 9%	28 20

29 (a1) Maximum Duration. – An eligible individual is entitled to receive unemployment
 30 benefits for a maximum period of 26 weeks, unless the benefit period is extended expressly by
 31 State or federal law.

32 (b) Total Benefits. – The total benefits paid to an individual equals the individual's
 33 weekly benefit amount allowed under G.S. 96-14.2 multiplied by ~~the number of weeks allowed~~
 34 ~~under subsection (a) of this section.26."~~

35 **SECTION 2.2.(b)** This section is effective for benefit weeks beginning on or after
 36 January 3, 2021.

37 **REPEAL CORONAVIRUS LIABILITY IMMUNITY**

38 **SECTION 3.1.(a)** G.S. 90-21.133 is repealed.

39 **SECTION 3.1.(b)** Article 48 of Chapter 66 of the General Statutes is repealed.

40 **SECTION 3.1.(c)** This section is effective when this act becomes law.

41 **PANDEMIC/OCCUPATIONAL DISEASE PRESUMPTION**

42 **SECTION 4.1.(a)** G.S. 97-53 reads as rewritten:

43 "**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals and**
 44 **conditions enumerated.**

45 The following diseases and conditions only shall be deemed to be occupational diseases
 46 within the meaning of this Article:

47 ...

48 (30) Pandemic infection contracted by a covered person. – A pandemic infection
 49 contracted by a covered person shall be presumed to be due to exposure in the
 50 course of the covered person's employment. The presumption may only be
 51 rebutted by clear and convincing evidence. The following definitions apply in
 determining eligibility for compensation under this subdivision:

- a. Covered person. – Means (i) a law enforcement officer, jailer, prison guard, firefighter, or an emergency medical technician or paramedic employed by a State or local governmental employer, including a volunteer firefighter meeting the requirements of G.S. 58-84-5(3a), (ii) a health care worker, or (iii) an employee required to work during a pandemic for a business declared essential by executive order of the Governor or by order of a local governmental authority, including food service, retail, and other essential personnel.

1 b. Pandemic. – An outbreak of an emerging disease prevalent in the
2 United States or the whole world.
3 "

4 **SECTION 4.1.(b)** This section is effective when this act becomes law and applies
5 to claims for workers' compensation benefits filed on or after that date.

6 **PANDEMIC/LOCAL GOVERNMENT EMPLOYEE QUARANTINE PAY**

7 **SECTION 4.2.(a)** Notwithstanding any provision of law to the contrary, the
8 following local governmental employees shall be credited by their respective employers for any
9 sick or vacation leave taken by the employee to comply with a quarantine related to exposure to
10 the coronavirus:

- 11 (1) Health care workers.
- 12 (2) Law enforcement officers, jailers, prison guards, firefighters, emergency
13 medical technicians, paramedics, and volunteer firefighters meeting the
14 requirements of G.S. 58-84-5(3a).

15 **SECTION 4.2.(b)** This section is effective when this act becomes law and applies
16 to every local law enforcement agency, county, city, and political subdivision of the State.
17

18 **PANDEMIC/MANDATORY STATE EMPLOYEES/HAZARD PAY/STUDY**

19 **SECTION 5.1.(a)** Article 2 of Chapter 126 of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 126-8.6. Mandatory State operations; mandatory employees; hazard pay requirements.**

22 (a) Definitions. – The following definitions apply in this section:

- 23 (1) Epidemic. – A disease occurring suddenly in a community, region, or country
24 in numbers clearly in excess of normal. This includes the occurrence of several
25 cases of a disease associated with a common source.
- 26 (2) High-risk employees. – Employees in a certain age group or who have serious
27 underlying medical conditions and might be at higher risk for severe illness
28 from a communicable disease as identified by the federal Centers for
29 Communicable Diseases or the Division of Public Health of the North
30 Carolina Department of Human Services.
- 31 (3) Isolation. – A control measure issued by a local health director or the State
32 Health Director under G.S. 130A-145 limiting the movement or action of
33 persons or animals infected or reasonably suspected to be infected with a
34 communicable disease or condition for the period of communicability to
35 prevent the spread of the communicable disease or condition, as described in
36 G.S. 130A-2(3a).
- 37 (4) Mandatory employee. – An employee with a permanent, probationary, or
38 time-limited appointment who is required to report to a designated work site
39 (particularly when all other employees are restricted from coming into the
40 workplace), other than their personal residence, and only for those specific
41 dates and times that such onsite reporting is required during a public health
42 emergency. Mandatory employees include, but are not limited to, employees
43 in positions that directly impact the (i) public health and patient care, (ii)
44 public safety, (iii) operation of critical infrastructure and facilities, (iv)
45 operation and safety of sensitive research labs and ongoing care for research
46 animals, and (v) custody or care of persons or property for whom the State has
47 a duty to continue to serve. Mandatory employees may also be referred to as
48 "essential employees."
- 49 (5) Pandemic. – The worldwide spread of an infectious/communicable disease
50 affecting a large number of people.
51

1 (6) Quarantine. – A control measure issued by a local health director or the State
2 Health Director under G.S. 130A-145 limiting the movement or action of
3 persons or animals who have been exposed to or are reasonably suspected of
4 having been exposed to a communicable disease or condition for the period of
5 time necessary to prevent the spread of the communicable disease or
6 condition, as described in G.S. 130A-2(7a).

7 (7) Social distancing. – Actions taken to reduce the opportunities for close contact
8 between people in order to limit the spread of a communicable disease.

9 (8) State agency or agency. – The legislative, executive, and judicial branches of
10 State government and the respective departments, divisions, and other units
11 thereof. The term includes The University of North Carolina.

12 (b) Findings and Policy. – Notwithstanding the existence of a communicable disease
13 epidemic or pandemic in this State, the mandatory essential functions of government must
14 continue, even if isolation, quarantine, and social distancing are public health control measures
15 that may be required to protect the public health. Certain State employees are essential such that
16 their continued presence in the workplace may be required in a situation. It is the policy of this
17 State to provide mandatory State employees with (i) the most effective equipment and measures
18 to protect their health in the workplace and (ii) hazard pay to compensate them for their continued
19 service during an epidemic or pandemic.

20 (c) Agency Responsibilities. – It is the responsibility of the head of each State agency to
21 consult with local, State, and federal public health officials to assess the severity of the individual
22 situation and to determine what actions shall be taken (including the closure of the agency or
23 university, by facility or location). Each State agency shall:

24 (1) Comply with and adhere to any control measures, other orders, or instructions
25 from federal, State, and local public health agencies to prevent transmission
26 of a communicable disease.

27 (2) Require that agency management and employees follow public health
28 guidelines.

29 (3) Immediately inform agency management and other employees, and the local
30 health department, of any evidence in the workplace of a communicable
31 disease that could seriously endanger the health of employees and others.

32 (d) Mandatory Operations. – In order to continue essential State government functions,
33 the head of each State agency shall predetermine and designate mandatory operations and
34 designate the mandatory employees to staff the operations even when isolation, quarantine, and
35 social distancing are public health control measures that may be required to protect the public
36 health during a communicable disease pandemic or epidemic.

37 (e) Mandatory Employees. – A mandatory employee may be required to work during a
38 pandemic or epidemic in order to maintain mandatory operations. A mandatory employee may
39 be excused from work if the employee is:

40 (1) A high-risk employee;

41 (2) Isolated, quarantined, ill, or subject to other public health control measures;
42 or

43 (3) Required to care for a member of the employee's immediate family who is
44 isolated, quarantined, or ill or who requires the employee's care due to the
45 closure of a public or private school, a day care center, or an elder care facility.

46 Based on an agency's operational needs, a supervisor may excuse a mandatory employee if
47 the employee is a parent (or guardian) who is required to stay home with underage children
48 because of the closure of a day care facility, public or private school, or elder care facility.

49 If operational needs change, a mandatory employee may be required to return to work, but
50 only for documented compelling reasons that will not jeopardize the health and safety of the
51 mandatory employee. Management's discretion or convenience is not a compelling reason when

1 the employee has been advised by a health care provider to quarantine due to exposure to a
2 communicable disease. The advice to quarantine must be documented and based upon the health
3 care provider's belief that the employee has the communicable disease, may have been exposed
4 to the communicable disease, or is particularly vulnerable to the communicable disease.

5 Each State agency shall maintain a list of mandatory employees by position, including current
6 employee name and contact information. The agency head shall develop an alternative plan for
7 personnel in case the designated personnel are unable to work. Alternative workers may include
8 current employees who are not designated as mandatory but who possess the skills to fill in for
9 mandatory employees, retirees, contract workers, or other temporary employees. Employees
10 designated as mandatory personnel shall be notified of such designation and the requirement to
11 report for, or remain at, work in emergency situations.

12 If mandatory personnel are required to remain at the work site for an extended period of time,
13 the agency or university must provide adequate housing and food. If an employee remains on the
14 employer's premises for 24 hours a day, the employee shall be eligible for extra hazard duty pay
15 as appropriate and may be entitled to receive pay for all those hours depending on the situation.
16 Employees shall have a normal night's sleep and ample eating time, and this time is not
17 considered as hours worked. At a minimum, the sleep allowance is for eight hours of sleep, and
18 the meal period is for three hours.

19 (f) Hazard Pay/Compensatory Time. – When an agency is closed or when management
20 determines that only mandatory employees are required to report to a specific work site
21 (particularly when all other employees are restricted from coming into the workplace), the
22 mandatory employees shall be granted hazard pay of at least 1.5 or an equivalent ratio in
23 compensatory time for hours worked onsite up to 40 hours in a workweek. It is the agency head's
24 discretion to determine any other appropriate compensation options based on the availability of
25 funds, operational needs of the agency, and in consideration of the duties being performed.
26 Compensatory time must be used within 24 months of it being awarded, or it will expire.
27 Agencies shall make every effort to give employees the opportunity to take this time off.
28 Compensatory time earned during a public health emergency is not paid out at expiration or upon
29 separation and does not transfer to another State agency. This provision applies to all designated
30 mandatory employees, both exempt and nonexempt, under the Fair Labor Standards Act (FLSA).

31 (g) Discipline and Appeals. – Individuals designated as mandatory employees may be
32 subject to disciplinary action, up to and including termination of employment, for willful failure
33 to report for or remain at work. Each situation will be reviewed on a case-by-case basis to
34 determine appropriate action. A mandatory employee may appeal the denial of an exemption,
35 any disciplinary action under this section, or both, pursuant to G.S. 126-34.02.

36 (h) Applicability. – This section applies to all State employees, whether or not they are
37 exempt or nonexempt from the provisions of this Chapter."

38 **SECTION 5.1.(b)** G.S. 126-34.02(b) is amended by adding a new subdivision to
39 read:

40 "(b) The following issues may be heard as contested cases after completion of the agency
41 grievance procedure and the Office of State Human Resources review:

42 ...

43 (7) Treatment of mandatory employees. – A mandatory employee may appeal the
44 denial of an exemption, the adequacy of the amount of hazard pay, and any
45 disciplinary action under G.S. 126-8.6."

46 **SECTION 5.1.(c)** G.S. 126-8 reads as rewritten:

47 **"§ 126-8. Minimum leave granted State employees.**

48 The Except as otherwise authorized by G.S. 126-8.6(f), the amount of vacation leave granted
49 to each full-time State employee subject to the provisions of this Chapter shall be determined in
50 accordance with a graduated scale established by the State Human Resources Commission which
51 shall allow the equivalent rate of not less than two weeks' vacation per calendar year, prorated

1 monthly, cumulative to at least 30 days. On December 31 of each year, any State employee who
2 has vacation leave in excess of the allowed accumulation shall have that leave converted to sick
3 leave. Sick leave allowed as needed to such State employees shall be at a rate not less than 10
4 days for each calendar year, cumulative from year to year. Notwithstanding any other provisions
5 of this section, no full-time State employee subject to the provisions of Chapter 126, as the same
6 appears in the Cumulative Supplement to Volume 3B of the General Statutes, on May 23, 1973,
7 shall be allowed less than the equivalent of three weeks' vacation per calendar year, cumulative
8 to at least 30 days."
9

10 **LEGISLATIVE RESEARCH COMMISSION/STUDY HAZARD PAY**

11 **SECTION 5.2.** The Legislative Research Commission shall study the practices of
12 local governmental and private employers in this State regarding hazard pay for their employees
13 and report its findings and any legislative proposals to the 2022 Regular Session of the 2021
14 General Assembly upon its convening.
15

16 **APPROPRIATIONS**

17 **SECTION 6.1.(a)** There is appropriated from the General Fund to the Office of State
18 Budget and Management the sum of five million dollars (\$5,000,000) for the 2021-2022 fiscal
19 year to fund mandatory employee hazard pay and otherwise implement the provisions of this act.

20 **SECTION 6.1.(b)** There is appropriated from the General Fund to the Office of State
21 Human Resources (OSHR), Department of Administration, the sum of five million dollars
22 (\$5,000,000) in nonrecurring funds for the 2021-2022 fiscal year to settle claims filed by State
23 employees who contract the coronavirus in the course of State employment as provided by
24 G.S. 97-53(30), as enacted by this act. These funds shall remain available to pay these State
25 employee claims until December 31, 2022. After that date, OSHR may use these funds to assist
26 State agencies with the settlement of prior outstanding workers' compensation claims.

27 **SECTION 6.1.(c)** This section becomes effective July 1, 2021.
28

29 **EFFECTIVE DATE**

30 **SECTION 7.1.** Except as otherwise provided, this act is effective when it becomes
31 law.