

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

1

HOUSE BILL 739

Short Title: Protect State Employee & Contractor Rights. (Public)

Sponsors: Representatives Logan, Montgomery, and K. Smith (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

April 16, 2019

1 A BILL TO BE ENTITLED
2 AN ACT PROTECTING THE RIGHTS OF STATE EMPLOYEES AND CONTRACTORS BY
3 CREATING AN OMBUD'S OFFICE UNDER THE STATE HUMAN RESOURCES
4 COMMISSION FOR THE INDEPENDENT REVIEW OF WORKPLACE COMPLAINTS
5 BY STATE GOVERNMENT EMPLOYEES AND PROHIBITING THE
6 MISTREATMENT OF CONTRACT EMPLOYEES WORKING IN STATE
7 GOVERNMENT.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 126-4 reads as rewritten:

10 "§ 126-4. Powers and duties of State Human Resources Commission.

11 Subject to the approval of the Governor, the State Human Resources Commission shall
12 establish policies and rules governing each of the following:

13 ...

14 (20) Delegation of authority to an Ombud's Office charged with providing
15 independent review of State employee workplace complaints and assistance
16 to State employees in resolving workplace issues. In addition, the Ombud's
17 Office shall establish programs to educate State employees about their rights
18 and to train both supervisors and employees in dispute resolution techniques
19 appropriate for the State government workplace.

20"

21 SECTION 2. Chapter 126 of the General Statutes is amended by adding a new
22 Article to read:

23 "Article 17.

24 "Contract Employee Protection.

25 "§ 126-100. Definitions.

26 The following definitions apply in this Article:

- 27 (1) Adverse action. – Any of the following actions taken by a private third-party
28 employer or a State government employee against a contract employee:
29 a. Reassignment to less desired work location.
30 b. A reduction in compensation.
31 c. Failure to give a promised or customary increase in compensation or
32 work status.
33 d. Disciplinary action including discharge, demotion, or transfer.
34 e. More intensive or critical supervision.
35 f. Withdrawal of previously allowed privileges.



- 1 g. Assignment to more difficult duties.
2 h. Demanding increased production for a retaliatory purpose.
3 i. Treatment that subjects the contract employee to workplace bullying.
4 (2) Contract employee. – An employee of a private third-party employer who is
5 assigned to work in a State government workplace or on a State-controlled
6 project.
7 (3) Private third-party employer. – A nongovernmental employer that (i) employs
8 two or more employees and (ii) has a contract with the State to furnish
9 employees to a State agency, department, or institution to perform personal
10 services in a State government workplace or on a State-controlled project.
11 (4) Workplace bullying. – A persistent pattern of mistreatment from others in the
12 workplace that causes either physical, emotional, or financial harm, including,
13 but not limited to, verbal, nonverbal, psychological, or physical abuse and
14 interference with an employee's work or career advancement.

15 **"§ 126-101. Mistreatment of contract employees prohibited.**

16 (a) It is against the public policy of this State for any State employee to mistreat a contract
17 employee in the State government workplace or in connection with a State-controlled project. It
18 is the duty of each supervisor in a State government workplace to take all reasonable steps to
19 prevent mistreatment of contract employees.

20 (b) No State employee shall take or cause a private third-party employer to initiate an
21 adverse action against a contract employee in retaliation for the contract employee doing any of
22 the following:

- 23 (1) Making a complaint or providing information, in good faith, to the North
24 Carolina Department of Labor or the United States Department of Labor about
25 a possible labor law violation by the private third-party employer or by the
26 State agency, department, or institution.
27 (2) Testifying in any investigation made or other proceeding held under State,
28 local, or federal law relating to a State government workplace or
29 State-controlled project.
30 (3) Exercising any employee rights that are protected under State, local, or federal
31 law.
32 (4) Complaining about workplace bullying in a State government workplace or in
33 connection with a State-controlled project.

34 Any State employee who violates this subsection shall be subject to disciplinary action up to
35 and including termination from State government employment.

36 (c) A private third-party employer shall not take adverse action against a contract
37 employee in retaliation for the contract employee doing any of the following:

- 38 (1) Making a complaint or providing information, in good faith, to the North
39 Carolina Department of Labor or the United States Department of Labor about
40 a possible labor law violation by the private third-party employer or by the
41 State agency, department, or institution.
42 (2) Testifying in any investigation made or other proceeding held under State,
43 local, or federal law relating to a State government workplace or
44 State-controlled project.
45 (3) Exercising any employee rights that are protected under State, local, or federal
46 law.
47 (4) Complaining about workplace bullying in the State government workplace or
48 in connection with a State-controlled project.

49 The North Carolina Department of Labor shall investigate alleged violations of this section
50 and may assess a civil penalty against a private third-party employer in an amount from one
51 thousand dollars (\$1,000) to twenty thousand dollars (\$20,000) for each violation of this section.

1 A private third-party employer who is found by the North Carolina Department of Labor to have
2 violated this section shall be ineligible to enter into contracts with any State agency, department,
3 or institution for a period of five years.

4 The contract employee may bring a civil action against a private third-party employer for a
5 violation of this subsection in the superior court of the county where the violation occurred or
6 where the contract employee lives within two years of the date of the alleged adverse action. If
7 the contract employee is the prevailing party in an action under this subsection, the court may
8 order reinstatement, back pay, and other appropriate relief and shall order payment of the
9 prevailing party's attorney fees and litigation costs by the losing party.

10 **"§ 126-102. Applicability; notices; rules.**

11 (a) This Article applies to all State employees including those subject to, and those
12 exempt from, provisions of this Chapter.

13 (b) It is the duty of both the private third-party employer and the State employer to post
14 notice in accordance with G.S. 95-9 or use other appropriate means to keep all employees
15 informed of their protections and obligations under this Article.

16 (c) This section provides rights, obligations, procedures, and relief in addition to, and not
17 in lieu of, what is provided under Article 14 of this Chapter and Article 21 of Chapter 95 of the
18 General Statutes.

19 (d) The North Carolina Department of Labor and the State Human Resources
20 Commission shall collaborate, and each shall adopt the appropriate rules, to carry out the
21 provisions of this Article."

22 **SECTION 3.** This act is effective when it becomes law.