

# NC Workers' Compensation Act

## Selected Provisions

Employment Law  
Elon Law School

### § 97-1. Short title.

This Article shall be known and cited as The North Carolina Workers' Compensation Act.

### § 97-2. Definitions.

When used in this Article, unless the context otherwise requires:

- (1) Employment. - The term "employment" includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which three or more employees are regularly employed in the same business or establishment or in which one or more employees are employed in activities which involve the use or presence of radiation, except agriculture and domestic services, unless 10 or more full-time nonseasonal agricultural workers are regularly employed by the employer and an individual sawmill and logging operator with less than 10 employees, who saws and logs less than 60 days in any six consecutive months and whose principal business is unrelated to sawmilling or logging.
- (2) Employee. - The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, ...
- (3) Employer. - The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustee of any person. ...  
[ ... ]
- (6) Injury. - "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident. ...  
[ ... ]
- (8) Commission. - The term "Commission" means the North Carolina Industrial Commission, to be created under the provisions of this Article.
- (9) Disability. - The term "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.
- (10) Death. - The term "death" as a basis for a right to compensation means only death resulting from an injury.
- (11) Compensation. - The term "compensation" means the money allowance payable to an employee or to his dependents as provided for in this Article, and includes funeral benefits provided herein.  
[ ... ]

### § 97-6. No special contract can relieve an employer of obligations.

No contract or agreement, written or implied, no rule, regulation, or other device shall in any manner operate to relieve an employer in whole or in part, of any obligation created by this Article, except as herein otherwise expressly provided.

**§ 97-10.1. Other rights and remedies against employer excluded.**

If the employee and the employer are subject to and have complied with the provisions of this Article, then the rights and remedies herein granted to the employee, his dependents, next of kin, or personal representative shall exclude all other rights and remedies of the employee, his dependents, next of kin, or representative as against the employer at common law or otherwise on account of such injury or death.

**§ 97-10.2. Rights under Article not affected by liability of third party; rights and remedies against third parties.**

- (a) The right to compensation and other benefits under this Article for disability, disfigurement, or death shall not be affected by the fact that the injury or death was caused under circumstances creating a liability in some person other than the employer to pay damages therefor, such person hereinafter being referred to as the "third party." The respective rights and interests of the employee-beneficiary under this Article, the employer, and the employer's insurance carrier, if any, in respect of the common-law cause of action against such third party and the damages recovered shall be as set forth in this section.

[ ... ]

**§ 97-10.3. Minors illegally employed.**

In any case where an employer and employee are subject to the provisions of this Chapter, any injury to a minor while employed contrary to the laws of this State shall be compensable under this Chapter as if said minor were an adult, subject to the other provisions of this Chapter.

**§ 97-11. Employer not relieved of statutory duty.**

Nothing in this Article shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

**§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.**

No compensation shall be payable if the injury or death to the employee was proximately caused by:

- (1) His intoxication, provided the intoxicant was not supplied by the employer or his agent in a supervisory capacity to the employee; or
- (2) His being under the influence of any controlled substance listed in the North Carolina Controlled Substances Act, G.S. 90-86, et seq., where such controlled substance was not by prescription by a practitioner; or
- (3) His willful intention to injure or kill himself or another.

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer and approved by the Commission and brought to the knowledge of the employee prior to the injury compensation shall be reduced ten percent (10%). The burden of proof shall be upon him who claims an exemption or forfeiture under this section.

[ ... ]

**§ 97-12.1. Willful misrepresentation in applying for employment.**

No compensation shall be allowed under this Article for injury by accident or occupational disease if the employer proves that (i) at the time of hire or in the course of entering into employment, (ii) at the time of receiving notice of the removal of conditions from a conditional offer of employment, or (iii) during the course of a post-offer medical examination:

- (1) The employee knowingly and willfully made a false representation as to the employee's physical condition;
- (2) The employer relied upon one or more false representations by the employee, and the reliance was a sub-

stantial factor in the employer's decision to hire the employee; and

- (3) There was a causal connection between false representation by the employee and the injury or occupational disease.

#### **§ 97-22. Notice of accident to employer.**

Every injured employee or his representative shall immediately on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a written notice of the accident, and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this Article prior to the giving of such notice, unless it can be shown that the employer, his agent or representative, had knowledge of the accident, or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity, or the fraud or deceit of some third person; but no compensation shall be payable unless such written notice is given within 30 days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice and the Commission is satisfied that the employer has not been prejudiced thereby.

#### **§ 97-77. North Carolina Industrial Commission created; members appointed by Governor; terms of office; chairman.**

- (a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of six commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the Commission for terms of six years. Three commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employers. Three commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employees. No person may serve more than two terms on the Commission, including any term served prior to the effective date of this section. In calculating the number of terms served, a partial term that is less than three years in length shall not be included.

[ ... ]

#### **§ 97-83. Commission is to make award after hearing.**

If the employer and the injured employee or his dependents fail to reach an agreement in regard to benefits under this Article within 14 days after the employer has written or actual notice of the injury or death, or upon the arising of a dispute under this Article, either party may make application to the Commission for a hearing in regard to the matters at issue, and for a ruling thereon.

Immediately after such application has been received the Commission shall set the date of a hearing, which shall be held as soon as practicable and shall notify the parties at issue of the time and place of such hearing. The hearing or hearings shall be held in the city or county where the injury occurred, unless otherwise authorized by the Commission.

#### **§ 97-85. Review of award.**

- (a) If application is made to the Commission within 15 days from the date when notice of the award shall have been given, the full Commission shall review the award, and, if good ground be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the award: [ ... ]

[ ... ]

#### **§ 97-86. Award conclusive as to facts; appeal; certified questions of law.**

The award of the Industrial Commission, as provided in G.S. 97-84, if not reviewed in due time, or an award of the Commission upon such review, as provided in G.S. 97-85, shall be conclusive and binding as to all questions of fact; but either party to the dispute may ... appeal from the decision of the Commission to the Court of Appeals for errors of law under the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions. [ ... ]

The Industrial Commission of its own motion may certify questions of law to the Court of Appeals for decision and determination by the Court. [ ... ]

[ ... ]

**§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation.**

- (a) Fees for attorneys and charges of health care providers for medical compensation under this Article shall be subject to the approval of the Commission; but no physician or hospital or other medical facilities shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Commission in connection with the case. Except as provided in G.S. 97-26(g), a request for a specific prior approval to charge shall be submitted to the Commission for each such fee or charge. [ ... ]

[ ... ]

**§ 97-91. Commission to determine all questions.**

All questions arising under this Article if not settled by agreements of the parties interested therein, with the approval of the Commission, shall be determined by the Commission, except as otherwise herein provided.

**§ 97-93. Employers required to carry insurance or prove financial ability to pay for benefits; employers required to post notice; self-insured employers regulated by Commissioner of Insurance.**

- (a) Every employer subject to the provisions of this Article relative to the payment of compensation shall either:
- (i) Insure and keep insured his liability under this Article in any authorized corporation, association, organization, or in any mutual insurance association formed by a group of employers so authorized;

or

[ ... ]

- (3) Obtain a license from the Commissioner of Insurance under Article 5 of this Chapter or under Article 47 of Chapter 58 of the General Statutes.

[ ... ]