PETITION FOR RULE-MAKING

Rulemaking Coordinator
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, NC 27699-1101

I. Petitioner

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Petitioner, a North Carolina citizen, and an aggrieved worker, has been a victim of a premature foreclosure on a Retaliatory Employment Discrimination Act (REDA) claim by the Department of Labor. This petition results from a cautionary tale of how an administrative body, charged with upholding the rights of working people, can become an instrument of their destruction.

The Petitioner's career has spanned over 25 years, a tenure marked by dedication, professionalism, and not a single disciplinary action, lawsuit (save for divorce), or HR complaint from or against an employer. Yet, this impeccable record was shattered by a former employer's actions. The employer's behavior, a direct response to The Petitioner's protected activities, triggered a severe health crisis. For over a year, The Petitioner had been asymptomatic of an underlying health condition, a state of equilibrium meticulously maintained under the care of a physician. However, the employer's hostile and discriminatory actions caused these symptoms to reappear with such ferocity that The Petitioner was placed out of work for two weeks at the physician's order.

The conditions of employment to return to work were so profoundly intolerable that they effected a **constructive discharge**. The Petitioner was not fired; instead, he was forced to leave a situation that had become a threat to his well-being. This was the foundation of The Petitioner's REDA claim, a pursuit initiated with the belief that the law would provide a shield against such blatant retaliation.

Initially, the Department of Labor (DOL) seemed to recognize the validity of the claim. The Petitioner was offered a neutral right-to-sue letter, a standard procedure that would have allowed for the pursuit of justice in court. However, this glimmer of hope was cruelly revoked. The DOL, in a baffling and devastating reversal, declared that REDA did not apply to the case because The Petitioner had asserted a constructive discharge. This technicality, a semantic distinction without a moral or just difference, became the pretext for the **pre-emptive foreclosure** of the claim. The Department of Labor, the very agency entrusted to protect The Petitioner, turned its back, arguing that a constructive discharge, a direct consequence of the employer's intolerable actions, somehow disqualified The Petitioner from the very protections designed for victims of such acts.

Meanwhile, the former employer has acted with absolute impunity. They have submitted self-defeating and demonstrably false claims to the North Carolina Industrial Commission, confident in the knowledge that they will face no accountability. The system, it seems, is designed to protect their misdeeds, not to hold them to account. The DOL's decision has not only dismissed The Petitioner's claim but has effectively granted the former employer a license to continue their malicious and discriminatory behavior without fear of repercussion.

This case stands as a testament to how quickly a life's work can be undone by the combination of an unscrupulous employer and a bureaucratic failure. In an instant, over two and a half decades of career momentum and a reputation of integrity were obliterated. The

Petitioner's livelihood is gone, and the path to rebuilding it is fraught with the lingering stain of this injustice. The Department of Labor, by allying itself with a technical definition rather than with the spirit of justice, has left a law-abiding, hard-working citizen to face the devastating consequences of an employer's discrimination and retaliation alone. The Petitioner's rights have not been protected; they have been extinguished. And in this process, the very purpose of REDA has been perverted.

II. Rule for Which Amendment is Requested and Text of the Proposed Rule

Petitioner requests the Department revise rule 13 NC Admin Code 19 .0201 (attached as Exhibit A).

Petitioner respectfully requests that the Department of Labor amend the definitions section of the REDA rules to expressly broaden the scope of adverse employment actions under N.C.G.S. 95-240(2). Specifically, the following amendments should be made to clarify the definitions cited in the statute:

1. “Discharge” – Clarify that discharge includes *constructive discharge* within the meaning of discharge and define constructive discharge as “circumstances where an employer makes working conditions so intolerable that a reasonable person would feel compelled to resign.”

2. “Suspension” – Clarify that suspension includes “with or without pay, indefinite suspension, investigatory suspension, and any action that materially interrupts the employee’s ability to perform work.”

3. “Demotion” – Clarify that demotion “includes reduction in job title, pay, wages, non-discretionary bonuses, responsibilities, reporting status, prestige, or career

advancement opportunities."

4. "Retaliatory relocation" – Clarify that relocation includes not only permanent transfers but also "temporary, rotational, and shift transfers that substantially increase commuting time, financial burden, or substantially disrupts family or medical needs."

5. "Other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment" – Clarify that this encompasses "*any and all benefits of employment*, including but not limited to:
    - Compensation, non-discretionary bonuses, stock, retirement contributions, or similar financial benefits;
    - Health, disability, or other insurance benefits;
    - Leave entitlements under state and federal law;
    - ADA accommodations, FMLA rights, OSHA rights, Whistleblower Rights, and ERISA-protected benefits;
    - Opportunities for training, promotion, tenure, or continued career development."

III. Effect of the Proposed Rule of Effect

A. Effect on NCDOL Operations and Enforcement

As with any new rule or amendments to current rules, the Department will face a learning curve and some costs associated with educating employees and employers about the new rule (or amendments), training staff, making any necessary updates to computers or other administrative systems, and enforcing the rule. However, the proposed amendments will provide the Department with clearer, state-based definitions that are consistent with the language and purpose of Article 21 of Chapter 95. Investigators will be able to assess complaints more efficiently at the intake stage, reducing disputes over whether certain adverse actions are

covered by REDA. By defining terms such as constructive discharge, retaliatory relocation, and adverse actions affecting benefits, the Department will improve uniformity in its enforcement decisions and reduce case backlogs caused by interpretive uncertainty. The Department will need to train its staff on the requirements of the Proposed Rule amendments and update its investigation procedures accordingly. The Department will have to review and potentially investigate any complaints submitted pursuant to the Proposed Rule amendments. Coordination between the Occupational Safety and Health ("OSH") Division and REDB could be required if employees suffer adverse employment actions related to a complaint or attempt to enforce their rights under the Proposed Rule amendments.

B. Effect of the Proposed Rule on Employers Over Whom the Department Has Jurisdiction

Put simply, employers who do not intend to discriminate or retaliate will benefit greatly from the Proposed Rule amendments. Employers across North Carolina will have clearer notice of their obligations under REDA. The Proposed Rule amendments eliminate ambiguity in terms that currently invite litigation or prolonged disputes, such as subjective words and phrases: "discharge" or "other adverse employment action." With more precise definitions, employers can adopt consistent human resources policies that align with the Department's expectations, thereby decreasing the likelihood of enforcement actions and increasing voluntary compliance.

C. Effect of the Proposed Rule on Employees Over Whom the Department Has Jurisdiction

Employees should experience greater job satisfaction when they see their employers taking measures to protect their health and safety. North Carolina workers will benefit from greater confidence that REDA protects them against the full spectrum of retaliatory practices, including being forced to resign under intolerable conditions or suffering retaliation through the loss of earned or legally guaranteed employment benefits. Employees will not have to rely on

uncertain or piecemeal interpretations when deciding whether to bring a complaint; thus, access to the protections the General Assembly intended will be codified.

D. Effect on the General Public

The public will gain from improved consistency and efficiency in how the Department administers REDA. Clearer rules mean quicker resolution of complaints, fewer resources expended on threshold jurisdictional disputes, and stronger public confidence in the Department's ability to safeguard workers' rights. By strengthening protections against retaliation, these amendments also encourage employees to report safety violations, wage issues, and other matters of public concern, which in turn promotes safer and more compliant workplaces across the state.

IV. Documents Supporting the Petition

1. Supporting Documents or Data:
    a. Statutory Text of N.C.G.S. 95-240(2) (attached as Exhibit B)
    b. Evidence of NCDOL Bias in favor of Employers (attached as Exhibit C)
        i. 1.27% merit findings with right-to-sue
        ii. 0 civil actions initiated by the Commissioner on behalf of a claimant in the history of REDA's 34 years
    c. 11(c) marked as "N/A" by NCDOL in latest FAME Report (Exhibit D)
    d. *Simmons v Accordius Health, LLC* (attached as Exhibit E)
        i. Two federal cases in the Western District of North Carolina, applying REDA, finding that constructive discharge can apply under REDA.
    e. Public Interest Data highlighting retaliation as a substantial cause for workers not reporting workplace violations (attached as Exhibit F)

V. Reasons for the Proposed Rule

The current REDA rules do not define or clarify key statutory terms such as “discharge,” “suspension,” “demotion,” “retaliatory relocation,” or “other adverse employment action.” As a result, both complainants and respondents are often left uncertain about what conduct falls within the Department’s jurisdiction. This lack of clarity leads to inconsistent case outcomes, premature dismissals, and unnecessary disputes at the intake stage.

Providing explicit definitions will strengthen the Department’s ability to carry out its statutory duty to investigate and enforce claims of retaliatory employment discrimination under Chapter 95, Article 21. Clearer rule text ensures that employers understand their obligations, employees understand their rights, and the Department has a consistent framework for applying the law.

The proposed amendments are necessary to:

1. Eliminate ambiguity in the scope of REDA by defining constructive discharge and clarifying that adverse employment actions include the loss or denial of all benefits, privileges, and protections of employment.

2. Promote consistency in enforcement by giving investigators and decision-makers uniform standards to apply when determining jurisdiction and evaluating complaints.

3. Improve efficiency in case processing by reducing threshold disputes over whether certain retaliatory actions fall within the statute’s protections.

4. Enhance public confidence in the Department's role as a fair and predictable enforcer of workplace rights in North Carolina.

5. Encourage reporting of violations by assuring workers that all meaningful forms of retaliation, whether through termination, forced resignation, or loss of benefits, are within REDA's protection.

By adopting these definitions, the Department will better align REDA enforcement with its legislative purpose: to safeguard North Carolina employees from retaliation when they exercise rights protected by state law.

VI. Statutory Authority for Rulemaking:

The Department of Labor has clear statutory authority to promulgate rules implementing and enforcing the Retaliatory Employment Discrimination Act (REDA). The following provisions authorize the Commissioner and the Department to regulate in this area:

- **G.S. 95-4** – Vests the Commissioner of Labor with broad authority to "make, adopt, modify, and repeal reasonable rules and regulations for the prevention of accidents or injuries to employees in every employment or place of employment." This general rulemaking authority extends to matters necessary to enforce statutes administered by the Department.

- **G.S. 95-130 and G.S. 95-131** – Authorize the Commissioner to adopt rules and enforce protections under the Occupational Safety and Health Act of North Carolina. Since REDA complaints often arise from safety-related retaliation, these provisions support the Department's role in adopting rules that clarify

retaliation protections.

- **G.S. 95-240 through G.S. 95-245** – Establish the Retaliatory Employment Discrimination Act and expressly charge the Commissioner with investigating complaints, attempting resolution, and bringing civil actions when warranted. The absence of statutory definitions for “discharge,” “suspension,” “demotion,” “retaliatory relocation,” and “other adverse employment action” necessitates rulemaking to provide clarity for the enforcement of these provisions.

- **G.S. 95-242** – Directs the Commissioner to investigate and determine the merits of REDA complaints, which requires the Department to interpret and apply the statutory terms at issue. Rulemaking authority ensures these determinations are made consistently across cases.

- **G.S. 95-244** – Authorizes the Commissioner to adopt rules necessary to carry out the provisions of Article 21 (REDA).

- **G.S. 150B-20** – Provides that any person may petition an agency to adopt, amend, or repeal a rule, and requires the agency to consider the request under the Administrative Procedure Act.

VII Conclusion

1. **Legislative Intent**

   The General Assembly enacted the Retaliatory Employment Discrimination Act to ensure that employees in North Carolina can exercise statutory rights without fear of reprisal. The Act was designed to be remedial in nature, to protect workers broadly, and

to encourage the reporting of violations that implicate workplace safety, wage payment, workers' compensation, and other vital matters of public concern. Clear definitions are essential to carry out this remedial purpose.

2. **Preventing Inconsistent Outcomes**

   In the absence of rule-based definitions, similar complaints can lead to different outcomes depending on how an investigator or court interprets terms such as "discharge" or "adverse employment action." This inconsistency undermines confidence in the Department's enforcement role and may discourage employees from filing complaints.

3. **Administrative Efficiency**

   Providing clarity at the rule level will reduce the number of cases dismissed on threshold jurisdictional grounds and allow investigators to spend more time on the merits of complaints. This not only improves efficiency but also strengthens the Department's standing as a fair and accessible forum for addressing retaliation.

4. **North Carolina–Centered Protection**

   These amendments ensure that REDA remains a distinctly North Carolina protection, tailored to the needs of the state's workforce and employers, rather than relying on imported or piecemeal standards. It reinforces the Department's role as the state's lead labor enforcement agency with the capacity to set its own consistent rules.

5. **Public Confidence and Compliance**

   By adopting definitions that mirror the lived realities of employees and employers in this state, the Department will promote greater voluntary compliance with the law, reduce

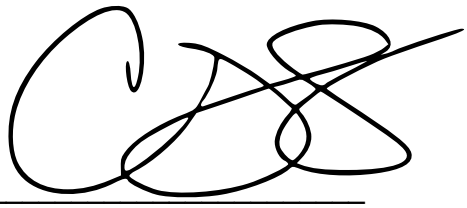
disputes, and enhance public trust in the fairness and predictability of the state's labor protections.

For all reasons outlined in this petition, Petitioner requests that NCDOL adopt the Proposed Rule amendments.

VI. Certification

I hereby submit this Petition for Rule-Making pursuant to **G.S. 150B-20** and **13 NCAC 01B .0101**.

Submitted by:



Signature: _____
Name: Craig Reynolds
Date: August 19, 2025

EXHIBIT 1

13 N.C. Admin. Code 19 .0201 - DEFINITIONS

The following definitions are applicable throughout this Chapter:

(1) "Complainant" is a person allegedly aggrieved by a violation of G.S. 95-241, who files a written complaint with the WORD Office.

(2) "Employee" means those individuals protected from discrimination or retaliation by G.S. 95-241, and includes but is not limited to those individuals defined as employees in G.S. 97-2(2), G.S. 95-25.2(4), G.S. 95-127(9), miners as defined in G.S. 74-24.2, temporary, leased, or loaned employees, former employees, jointly employed employees, common law employees, and applicants.

(3) "Interview" as used in these Rules includes privately speaking with an employee or witness on company time on the company premises.

(4) "Open or pending in the trial court division" as set forth in G.S. 95-242(e) means the period beginning with the filing of a written complaint with the Department and ends with either the Commissioner's receipt of a final determination by the trial court on the Commissioner's civil action or closure of the file according to these Rules, whichever occurs later.

(5) "Protected activity" or "activity" shall mean and include all the actions set forth in G.S. 95-241(a) and G.S. 127A-111.

(6) "Respondent" is a person, as defined in G.S. 95-240(1), against whom a REDA complaint is filed.

EXHIBIT 2

Article 21.

Retaliatory Employment Discrimination.

§ 95-240. Definitions.

The following definitions apply in this Article:

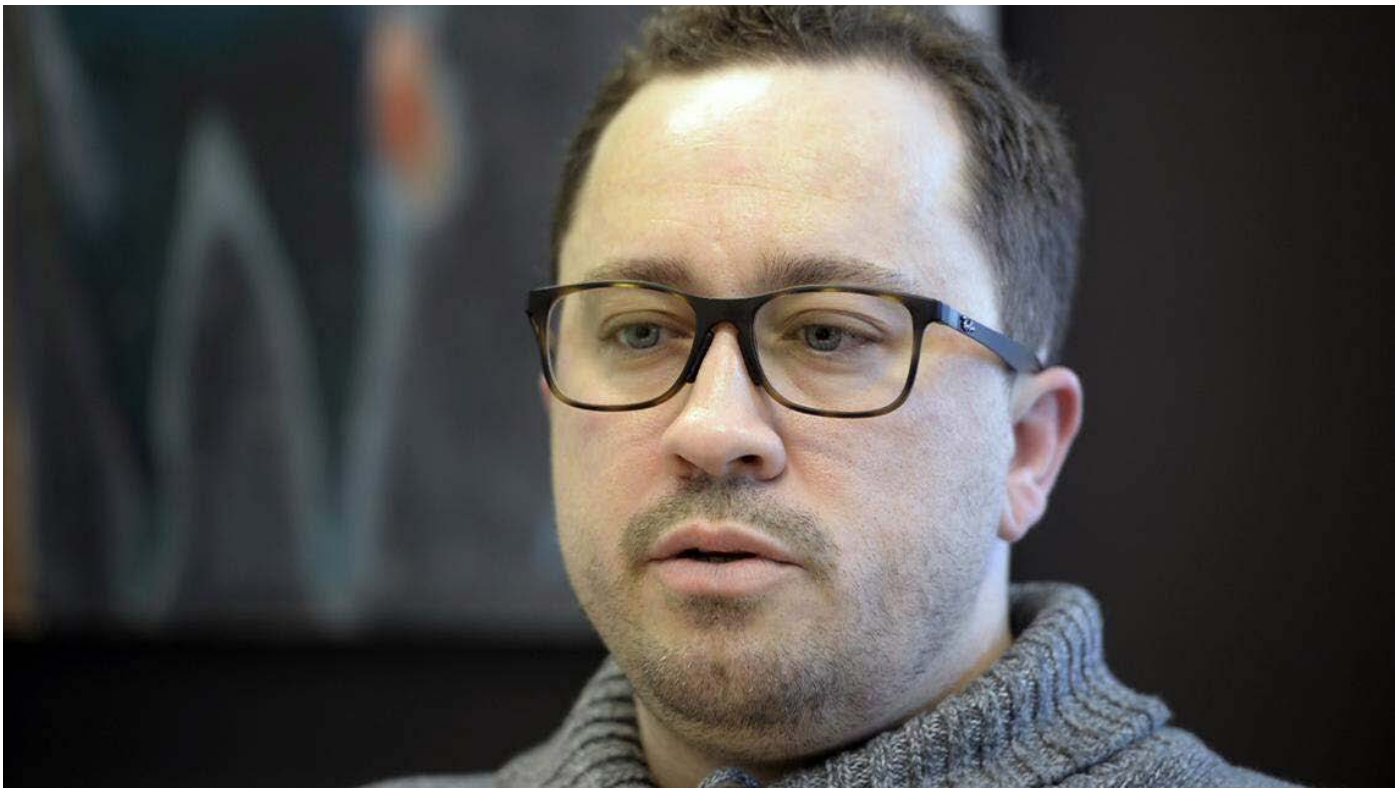
(1) "Person" means any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency, or other entity of government.

(2) "Retaliatory action" means the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

EXHIBIT 3

NC anti-retaliation law shields few workers. One recorded his firing. Here's what happened.

Greg Gordon August 9, 2020 9:00 AM



Robert Maughmer David Foster *dfoster@charlotteobserver.com*

Robert Maughmer was psyched to be climbing utility poles for AT&T again in south Charlotte. After 13 months, the searing pain from an on-the-job hand injury was gone at last. But one day, in his third week back in early 2018, someone told Maughmer he was being laid off. Shaken, he said, he pulled out his cell phone and dialed his boss, not realizing until later that a program in his phone was recording the call.

That recording is the centerpiece of a two-fold legal battle that Maughmer

has waged over the last two years while bouncing between low-paying jobs as he fought to hang onto his home.

He filed his initial complaint, accusing AT&T of dismissing him out of fear he would file a costly workers compensation claim, in September 2018 with the state Department of Labor under a 27-year-old worker rights law.

When the labor department rejected his complaint four days later, even before investigators could learn of the recording, Maughmer filed a broader suit in Wake County Superior Court. The suit claims that the agency, under fifth-term Republican Labor Commissioner Cherie Berry, has failed to adequately enforce the state law, the Retaliatory Employment Discrimination Act (REDA). The 1992 law was designed to shield workers from reprisals if they point out workplace dangers or threaten to saddle their employers with work-related medical costs.

After receipt of more than 10,000 complaints under the law since Berry took office, neither the Labor Department nor the state attorney general's office that often represents the agency had brought a single retaliation case on behalf of a worker, officials of the two agencies said. The agency does try to mediate settlements between employers and many workers.

Even without taking action, the department can make or break private legal cases with its decisions about whether to issue a letter giving the "right to sue." Over nine years and thousands of complaints, according to data obtained by McClatchy through a public records request, the agency's investigations resulted in issuance of only 127 right-to-sue letters "with merit," a designation that lawyers say can carry weight with civil court judges.

In initially dismissing Maughmer's complaint, the labor department exerted its power to decline to authorize him to pursue damages from AT&T in civil

court.

After he sued, the department reinstated Maughmer's complaint. An investigation was not opened until this March, a delay the department blamed on a backlog of complaints. On May 13, a state investigator advised Maughmer's Charlotte attorney, Josh Van Kampen, that there was not enough evidence to issue a right-to-sue letter with merit. Instead, on July 23, the agency wrote him stating that his case has "no merit" and gave him 90 days to sue, the investigator said.

Latest retaliation complaints involve coronavirus

Van Kampen called the outcome "outrageous" and said it "shows that Cherie Berry's labor department is nothing more than a firewall to protect business."

"We are barreling through a pandemic where workers are as vulnerable to being wrongfully terminated by their employers, as they are to be stricken by the virus," he said. "North Carolinians need a labor department that vigorously enforces our state's anti-retaliation laws."

Berry, a former entrepreneur, took office with the motto, "The government that governs best governs least." In announcing she wouldn't seek a sixth four-year term this November, she said she considered the labor department to be "not a regulatory agency so much as we're an agency that will partner with (businesses) and will help them achieve safe workplaces."

A 2008 Charlotte Observer story said that in 2007, the budget for the bureau handling REDA cases was slashed to $618,000, down 25% from 1999, forcing cuts in investigators' travel.

Van Kampen said Maughmer will file a civil suit against AT&T, but that his office has yet to do so because it's been "inundated" with worker complaints

of retaliation after they complained about unsafe conditions related to the coronavirus.

Littler, a global firm that represents businesses in labor matters, advised clients in April that the federal Occupational Safety and Health Administration reported receiving "hundreds of whistleblower complaints over the prior month relating to the coronavirus, including claims that employees were disciplined or terminated after reporting allegedly unsafe work practices or conditions." The firm, which has an office in Charlotte, said widespread job layoffs during the coronavirus pandemic at the same time employees are complaining about safety risks, such as lack of social distancing or masks, could put employers in jeopardy of retaliation claims.

In a news release that month, OSHA reminded employers of worker whistleblower protections.

Judge yet to rule

Some 19 months since filing of the Wake County suit against Berry and more than 15 months after the parties submitted final legal briefs, Judge Bryan Collins has yet to rule or even to signal that he will.

Van Kampen had dubbed his client's recording "the best smoking gun admission you're going to find" in a retaliation case.

Maughmer provided a transcript of the recording to McClatchy and played it. According to the transcript, AT&T manager Charles Tucker tells Maughmer of his dismissal: "When you came back I had already had my mind made up on that … because uhhh, I was scared you would get hurt again."

AT&T spokesman Jim Kimberly said the corporate giant has investigated Maughmer's allegations "thoroughly and appropriately," but declined to

elaborate due to privacy concerns. Kimberly denied that the company punishes or dismisses employees who file workers' compensation claims and said AT&T puts the safety and welfare of its 265,000 employees first.

In the suit before Judge Collins, Maughmer's attorneys alleged that North Carolina's Labor Department has deprived an unknown number of workers of their rights to legal redress in civil courts, a protection that's supposed to be shielded by the REDA law.

The right to sue

The anti-discrimination law was enacted a year after the state's worst workplace disaster – the inferno that killed 25 employees trapped in a chicken processing plant in the tiny town of Hamlet because the fire doors were chained to deter theft.

The REDA law directs the Labor Department to investigate allegations that employees were wrongly fired or punished for speaking up about issues ranging from safety hazards and wages-and-hours violations to posing a risk of an injury claim.

The law passed after the Hamlet fire also gives Berry's department authority to file civil suits against employers on behalf of wronged workers.

Maughmer's attorneys accuse Berry, the defendant in the suit, of violating the state constitution's guarantee of a legal "remedy" for every wronged citizen.

Citing the ongoing litigation, Labor Department spokeswoman Dolores Quesenberry has declined to comment on the case.

A central issue in the suit is whether 1998 regulations implementing the

REDA law went too far in giving Labor Department officials authority to deny claimants the right to sue. The regulations were issued under a Democratic labor commissioner, Harry Payne, who preceded Berry.

Lawyers for state Attorney General Josh Stein, who represented the agency, say department officials relied on the regulations in trying to weed out complaints not covered under the law. For example, a towing operator filed a complaint alleging a locality wasn't giving him enough business and was denied a right-to-sue letter.

The law requires the agency to share with employers allegations in each of the hundreds of REDA complaints it receives each year and to investigate the facts for up to 90 days. It then may dismiss the claim as unfounded or attempt to mediate a settlement. But unless a settlement is negotiated, the law requires the agency to issue letters authorizing those who complain to sue their employers regardless of the strength of their allegations.

In their court brief, lawyers for the Labor Department denied that any policy changes had occurred. However, they said that after Raleigh lawyer Harriet Hopkins was named deputy chief of the Retaliatory Employment Discrimination Bureau in October 2017, it was decided to add notices, in bolded, capital letters, advising workers such as Maughmer, whose complaint was initially rejected without an investigation, that they would not be issued a right-to-sue letter. Lawyers representing claimants say such a decision can put their clients at a disadvantage in court. Previously, the agency was silent on the issue.

Van Kampen said he had heard complaints about the department's handling of REDA claims from lawyers across the state.

"I view this as the commissioner of labor telling injured workers that they can't even get on the elevator at the courthouse to get up to the court,"

Raleigh attorney Stewart Fisher, who filed the suit, said in a phone interview.

Lawyers for the Labor Department have argued the lawsuit is moot because the agency reopened Maughmer's claim.

But while the department's 2018 annual report said 97% of complaints were investigated and closed within 180 days of assignment to an investigator, Maughmer's complaint was not investigated for more than 17 months after he originally filed it. Maughmer was interviewed on March 20, when an investigator finally got to hear the recording, Van Kampen said.

Complaints fell

The annual number of logged REDA complaints fell steadily over a nine-year period in North Carolina. However, complaints under a similar federal REDA law rose 39% from 2009 through 2018, and though they dipped in 2017 and 2018, they rose by another 11% in fiscal 2019.

Annual complaint totals in North Carolina, which had hovered for years around 800, declined from 790 in 2009 to 362 in 2017, a 45% drop, according to public records. There was a corresponding drop in the number of right-to-sue letters issued by the agency, from 554 to 220. The most recent available data, for the first eight months of 2018, showed 247 complaints.

McClatchy could obtain only limited information about the program from the department, none of which explained the declines.

Quesenberry cited the pending litigation for the department's refusal to respond to a public records request in the spring of 2019 for more extensive data about the program, including the numbers of REDA complaints that have been rejected in recent years. Without a decision by Colliins, the

agency's posture has prevented the release of any further data on its REDA enforcement for nearly two years.

Few lawyers specializing in representing workers with REDA claims were willing to speak publicly about the program -- ironically, for fear of retaliation when the Labor Department considered their future complaints.

Emily Spieler, a Northeastern University law school professor who headed a U.S. Department of Labor advisory panel on whistleblowers during the Obama administration, said nearly all complaints under the federal law have revolved around reprisals over workers' compensation claims.

Limiting benefits

Beginning more than a century ago, state legislatures across the country created workers' compensation systems for sick or injured workers in return for their surrendering rights to sue their employers, except in rare cases.

But in 2011 North Carolina's legislature, joining more than 30 other states in a rollback of workers' compensation laws over the last decade, capped benefits at 500 weeks for most injured workers and made it more difficult for them to qualify.

Insurers and business allies cited the need to keep the state's business climate competitive with surrounding states. Spokespeople for the North Carolina Chamber of Commerce and for Raleigh-based Builders Mutual Insurance Co., a leading underwriter of workers' compensation insurance, declined to respond to requests for further comment about the legislation.

In 2013 and 2016, conservatives won passage of legislation that stripped state workers' compensation hearing officers of their civil service protection and shortened their terms, opening the way for appointment of successors

who were more sympathetic to businesses.

“There is this notion somehow that workers who are injured at work should be treated with suspicion,” and thus should be denied benefits “they were presumed to be entitled to under the old workers’ compensation laws,” Spieler said in a phone interview. “What these new laws are doing is they’re taking away workers’ rights to have essential benefits that pay for medical care, and for lost wages, but not restoring to them their right to sue their employers for negligence.”

REDA was designed to give some employees recourse.

Spieler and David Michaels, who headed the federal OSHA program under Obama, both declined to speculate about the reasons that North Carolina’s program has shrunk.

It is not because retaliation is less common, Spieler said. To the contrary, anecdotal reports from across the country suggest that workplace retaliation remains “rampant,” she said.

Retaliation has proliferated “because workers have no protection,” Spieler said. “The laws are weak. Many workers lack the resources to engage a lawyer.”

While other countries have adopted “laws against discipline and discharge (that) are much stronger generally,” she said, nearly all U.S. states including North Carolina allow employers to dismiss workers without cause, subject to exceptions in laws such as REDA.

Durham attorney Faith Herndon, who occasionally handles employee REDA complaints, said the state has a reputation for failing to aggressively investigate such charges that dates back to before Berry took the helm 19 ½

years ago.

“Never have I had a useful investigation from them. Ever,” she said. “I’ve been doing this for 25 years.”

Fisher, Maughmer’s attorney, said his office receives an average of one call per week about workers who say they were fired over a compensation claim or a company’s refusal to give a light-duty assignment to an injured worker.

“In North Carolina,” he said**,** “employers are pretty brazen when it comes to retaliating against people who file workers’ compensation claims.”

Charlotte attorney Chris Strianese said one of his clients, a pregnant worker, was denied a right-to-sue letter over her charge that an employer threatened to fire her unless she had an abortion.

Strianese called it “infuriating” that department officials are able to dissuade the courts from deciding issues that test the limits of the REDA law.

Perilous work

For Maughmer and other AT&T pole climbers, running coaxial cable along lines of utility poles is dangerous work.

Ironically, Maughmer said he hurt his hand on the ground, when he slid down a 12-foot embankment in October 2016. Doctors determined he had detached a ligament from several bones.

As the weeks passed, the pain didn’t. But Maughmer felt he had to draw his paycheck. He said his fiancée, Claire Blackwell, is severely diabetic and on full disability from the Social Security Administration, having received three organ transplants.

Unable to climb utility poles, he battled on for nearly four months, sitting in an aerial bucket, working one-handed to help connect the cables.

Late in the day, Maughmer said, the pain would grow more intense until "it was all I could think of."

Finally, in February 2017, he underwent surgery to reattach the ligament.

The department's Sept. 25, 2018, letter notifying Maughmer that his complaint was being administratively closed cited his failure to file an injury claim with the company.

Maughmer said that based on the way an injured co-worker was treated, he feared he would be fired if he filed an injury claim and chose not to do so. But he said he mentioned the injury to his boss before a morning meeting of his crew.

Van Kampen said AT&T then had a duty to report the injury to its workers' compensation insurance carrier, but did not.

On the recording, supervisor Tucker tells Maughmer, "You never said you did it on the job but you know, but I feel like you did," an apparent reference to where Maughmer got hurt.

Van Kampen called it an admission of "an irrational fear that a worker is prone to injury, based on an injury in the past."

AT&T spokesman Kimberly said Maughmer was a "temporary outside plant technician."

Van Kampen called that "a red herring," saying retaliation against any worker is illegal. He noted that Maughmer had worked for AT&T for a year and a half before the injury and other temporary workers were "still there in the same

capacity" when Maughmer lost his job.

Maughmer, 38, said in an interview that loss of the $72,000-a-year job has threatened to cost him his south Charlotte town house. Although he had held a job since he was 15, he said, for more than a year, he was unable to find a 20- to 35-hour position with hourly pay even close to what he earned at AT&T.

Maughmer finally secured a full-time job beginning in mid-May, as a mail carrier for the U.S. Postal Service.

During his long recovery from his hand injury, he said, he first drew $300 a week in unemployment benefits and then "half a paycheck" through AT&T's short-term disability coverage. His $14,000 in savings was swallowed by mortgage payments on his house and other bills.

He sold off his classic Jeep and his high school ring and brought in additional money by selling blood plasma. He and Blackwell changed their diets to save on groceries, he said.

While looking for a position, he managed to bring in a little over $2,000 some months by working seven days a week doing odd jobs and making deliveries for Postmates, DoorDash and Uber Eats, he said. Maughmer said, though, that his 2019 income totaled $13,000.

He said he only hung on to the house because his mortgage lender agreed to shift billings for his tardy payments to the end of the loan term and gave him another three months' forbearance due to the pandemic. A lifelong friend loaned him $2,000 to pay off eight months of unpaid installments on his second mortgage after that lender, Bank of America, gave notice it would seek to foreclose, he said.

“I’ve broken down and curled up in a ball in my closet from this action,” he said.

Gmail [redacted]

Whistleblower Complaint 301054895

Frye, Kevin <kevin.frye@labor.nc.gov> Mon, Jun 9, 2025 at 8:58 AM
To: Craig Reynolds [redacted]

Mr. Reynolds,

Thank you for following up and please know that we take your concerns very seriously. I wanted to provide you with the resources and background regarding our claim process, but can understand how frustrating it can feel to contact several different agencies and go through what seems like an extensive intake process. We require these complaint forms and any addenda for any individual who may file a claim with our bureau.

Regarding your inquiry for unpaid wages, yes you may contact our NC Wage and Hour Bureau at 1-800-625-2267 (Option 1). Please see the following for a list of information you will need on hand if you are eligible and would like to file a complaint either via telephone or our online webform: How and Where to File a Wage Complaint | NC DOL. Please call the Wage & Hour Complaint Toll-Free number at 1-800-625-2267 (1-800-NC-LABOR) between the hours of 8:00 a.m. and 4:45 p.m., Monday through Friday to discuss your circumstances. However, please note that any person employed in an enterprise covered by the **Fair Labor Standards Act (FLSA), including those enterprises that are engaged in the operation of a hospital, school or preschool, or residential care facility for the aged or physically or mentally infirmed, or an enterprise whose gross annual dollar volume is greater than $500,000, should contact the U.S. Department of Labor Wage and Hour Division** at http://www.dol.gov **or by calling 1-866-4-US-WAGE (1-866-487-9243)**.

While the statute includes the provision set forth in G.S. 95-242(a), please be aware that this has never been utilized. This would require an analysis and factual decision, as well as any logistical concerns regarding staffing and legal representation. However, please note that the right to sue letter that we issue would still allow you to seek a private attorney who may represent you, should you choose to proceed with filing a civil action following the outcome of a REDA investigation. If you do not have an attorney or know of one to contact, you may contact the North Carolina Lawyer Referral Service at 919-677-8574 to be referred to an attorney.

I apologize, but I was unaware that you had filed a case before the NC Industrial Commission, and we will consider this information once we have received all the information from the addendum. Again, I can understand that this is a long process and has required you to interact with both federal and state agencies. Please know that our intent is to assist you the best we can with the information we have available.

Please let us know if we may be of further assistance in processing your complaint."

Kevin Frye

Administrator

Retaliatory Employment Discrimination Bureau

NC Department of Labor

1101 Mail Service Center

Raleigh, NC 27699-1101

Office|919-707-7940 | kevin.frye@labor.nc.gov

Please visit our website at www.nclabor.com

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EXHIBIT 4

FY 2024 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

NORTH CAROLINA DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH DIVISION

Evaluation Period: October 1, 2023 – September 30, 2024

Initial Approval Date: January 26, 1973
Program Certification Date: October 5, 1976
Final Approval Date: December 10, 1996

Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Atlanta Region

OSHA
Occupational Safety
and Health Administration

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9a	Percent in compliance (safety)	40.26%	+/- 20% of 32.83%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 26.27% to 39.40% for safety.
9b	Percent in compliance (health)	33.80%	+/- 20% of 44.18%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.34% to 53.01% for health.
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	55.07	+/- 20% of 56.02	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.82 to 67.23for safety.
11b	Average lapse time (health)	58.44	+/- 20% of 67.21	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 53.77 to 80.65 for health.
12	Percent penalty retained	84.44%	+/- 15% of 70.81%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 60.19% to 81.44%.
13	Percent of initial inspections with worker walk-around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	N/A*	N/A*	This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025.
15	Percent of 11(c) complaints that are meritorious	N/A*	N/A*	This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025.
16	Average number of calendar days to	N/A*	N/A*	This measure is not being reported for FY 2024 due to the transition to the new

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	complete an 11(c) investigation			SAMM measures starting in FY 2025.
17	Percent of enforcement presence	0.76%	+/- 25% of 1.00%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.75% to 1.25%.

EXHIBIT 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20-cv-337-MOC-DCK

LAKITA SIMMONS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER**
	)	
ACCORDIUS HEALTH, LLC,	)	
	)	
Defendant.	)	
	)	

THIS MATTER comes before the Court on a Motion to Dismiss filed by Defendant Accordius Health, LLC, pursuant to Rule 12(b)(6) and/or Rule 56(f) of the Federal Rules of Civil Procedure. (Doc. No. 7).

I. BACKGROUND

In this action, filed in state court and removed to this Court by Defendant, Plaintiff Lakita Simmons has filed a single claim against her former employer Defendant Accordius Health, LLC, alleging a violation of the North Carolina Retaliation in Employment Act ("REDA"), N.C. GEN. STAT. § 95-240 et seq., which, among other things, prohibits employers from terminating an employee in retaliation for bringing a claim under the North Carolina North Carolina Workers' Compensation Act, N.C. GEN. STAT. § 97-1 et seq. Defendant contends that a release that Plaintiff signed when settling her workers' compensation claim prohibits her from bringing this action. For the following reasons, the Court will deny Defendant's motion.

The following facts are relevant to this motion:

On November 25, 2018, Plaintiff suffered an on-the-job injury to her back while helping a patient up off the floor. (Compl. ¶ 4). Plaintiff remained off work through March 23, 2019,

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when she was released to light duty work. (Id. at ¶¶ 10, 12). Plaintiff alleges that Defendant did not honor her doctor's restrictions. (Id. at ¶¶ 13-14). On July 8, 2019, Defendant terminated Plaintiff's employment. (Id. at ¶ 15). On July 24, 2019, Plaintiff filed a "Retaliatory Employment Discrimination Complaint Form" (hereinafter referred to as "NCDOL Complaint") with the North Carolina Department of Labor.[1] See (NCDOL Compl., Ex. 1). In completing the NCDOL Complaint, Plaintiff alleged that she was fired in retaliation for filing a workers' compensation claim. (Id.).

On April 20, 2020, almost nine months after the termination of her employment and the filing of the NCDOL Complaint, Plaintiff executed a settlement and release agreement, referred to here as the "Clincher Release."[2] The relevant provision of the Clincher Release is as follows:

> "NOW, THEREFORE, Lakita R. Simmons, for and in consideration of the compensation payments recited, and the medical benefits which shall be paid upon approval of the North Carolina Industrial Commission has and does hereby release and forever discharge, not only for herself but also for her heirs, next of kin, and personal representative(s), the said Defendant Health, LLC, United Wisconsin Insurance Company, and United Heartland, Employer Defendant, Carrier-Defendant, and Third-Party Administrator, respectively, of and from any and all and every manner of action and actions, cause or causes of action, suits, debts, dues and sums of money, judgments, demands, and claims whatsoever, which against the said Defendant Health, LLC, United Wisconsin Insurance Company, and United Heartland, Employer Defendant, Carrier-Defendant, and Third-Party Administrator, respectively, she ever had or may have by reason of or growing out of the terms and provisions of the North Carolina Workers' Compensation Act, on account of the alleged injury of November 25, 2018, which give rise to this claim for compensation and for any subsequent disability sustained by her, or medical bills incurred by her. Employee-Plaintiff knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury which is the subject of this Agreement."

---

[1] This filing is required by N.C. GEN. STAT. § 95-242. See also Driskell v. Summit Contracting Group, Inc., 828 Fed. Appx. 858 (4th Cir. 2020); and Johnson v. North Carolina, 905 F. Supp. 2d 712 (W.D.N.C. 2012).

[2] "A 'clincher' or compromise agreement is a form of voluntary settlement used in contested or disputed cases." Ledford v. Asheville Hous. Auth., 482 S.E.2d 544, 546 (N.C. Ct. App. 1997)).

(Release, Ex. 3).

Then, on October 21, 2020, Plaintiff filed this action in state court, and Defendant removed the action to this Court on November 23, 2020.[3] Defendant filed its motion to dismiss, or alternatively, for summary judgment, on December 23, 2020. Defendant contends that the plain and unambiguous language of the Clincher Release signed by Plaintiff bars Plaintiff's REDA claim. Plaintiff contends, on the other hand, that the Clincher Release is clearly limited in scope to only Plaintiff's workers' compensation claims related to Plaintiff's injury, and not to her claim of her alleged retaliatory firing under REDA. Id.

II. STANDARD OF REVIEW

Defendant styled its motion as one to dismiss under Fed. R. Civ. P. 12(b)(6) or, alternatively, for summary judgment under Fed. R. Civ. P. 56. Furthermore, both parties have submitted attachments that are outside of the pleadings—that is, Defendant has submitted the Clincher Release, and Plaintiff has submitted another release of claims that Defendant offered to Plaintiff after she signed the Clincher Release. Ordinarily, a court "is not to consider matters outside the pleadings or resolve factual disputes when ruling on a motion to dismiss." Bosiger v. U.S. Airways, 510 F.3d 442, 450 (4th Cir. 2007). However, under Rule 12(b)(6), a court, in its discretion, may consider matters outside of the pleadings, pursuant to Rule 12(d). If the court does so, "the motion must be treated as one for summary judgment under Rule 56," but "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the

[3] As Defendant concedes in its Reply, this action was improperly removed. See 28 U.S.C. § 1445(c) (stating that "[a] civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States"); see also Wiley v. United Parcel Serv., Inc., 227 F. Supp. 2d 480, 488 (M.D.N.C. 2002). Nevertheless, Plaintiff has waived the right to remand it, and the Court may not sua sponte remand it. See Lunsford v. Cemex, Inc., 733 F. Supp. 2d 652, 655 (M.D.N.C. 2010).

motion." FED. R. CIV. P. 12(d); see Adams Housing, LLC v. City of Salisbury, Md., 672 F. App'x 220, 222 (4th Cir. 2016) (per curiam). However, when the movant expressly captions its motion "in the alternative" as one for summary judgment, and submits matters outside the pleadings for the court's consideration, the parties are deemed to be on notice that conversion under Rule 12(d) may occur; the court "does not have an obligation to notify parties of the obvious." Laughlin v. Metro. Wash. Airports Auth., 149 F.3d 253, 261 (4th Cir. 1998). Here, in addressing whether the execution of the Clincher Release in her workers' compensation settlement bars Plaintiff from bringing her REDA claim in this action, the Court has considered matters outside of the pleadings. Therefore, it appears that the Court must convert the motion to dismiss to a summary judgment motion. As the parties were on notice that conversion may occur, however, the Court does not need to provide the parties with further notice, and the Court will treat the motion as a motion for summary judgment.

Summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is material only if it might affect the outcome of the suit under governing law. Id. The movant has the "initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (internal citations omitted).

Once this initial burden is met, the burden shifts to the nonmoving party. The nonmoving

party "must set forth specific facts showing that there is a genuine issue for trial." Id. at 322 n.3. The nonmoving party may not rely upon mere allegations or denials of allegations in his pleadings to defeat a motion for summary judgment. Id. at 324. The nonmoving party must present sufficient evidence from which "a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248; accord Sylvia Dev. Corp. v. Calvert Cty., Md., 48 F.3d 810, 818 (4th Cir. 1995). When ruling on a summary judgment motion, a court must view the evidence and any inferences from the evidence in the light most favorable to the nonmoving party. Anderson, 477 U.S. at 255. "'Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.'" Ricci v. DeStefano, 129 S. Ct. 2658, 2677 (2009) (quoting Matsushita v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)).

III. DISCUSSION

Release agreements such as the Clincher Release in this case are contractual in nature and must be interpreted under traditional notions of contract law. Weaver v. Saint Joseph of the Pines, Inc., 652 S.E.2d 701, 709 (N.C. Ct. App. 2007). Under North Carolina law, when the language of the contract is clear and unambiguous, construction of the agreement is a matter of law for the court, and the court need not look beyond the contact's terms to determine the parties' intent. Piedmont Bank & Trust Co. v. Stevenson, 339 S.E.2d 49, 52 (N.C. Ct. App. 1986). Accordingly, a court may not look beyond the contract's four corners to interpret unambiguous terms. Id.

The North Carolina Supreme Court has described the effect of release agreements, stating, "A completed compromise and settlement … operates as a merger of, and bars all right to recover on, the claim or right of action included therein, as would a judgment duly entered in

an action between said persons." Jenkins v. Fields, 83 S.E.2d 908, 910 (N.C. 1954). "[A] release executed by the injured party and based on a valuable consideration is a complete defense to an action for damages for the injuries." Cunningham v. Brown, 276 S.E.2d 718, 723 (N.C. Ct. App. 1981). "A comprehensively phrased general release, in the absence of proof of contrary intent, is usually held to discharge all claims . . . between the parties." Hardin v. KCS Int'l, Inc., 682 S.E.2d 726, 735 (N.C. Ct. App. 2009) (quotation marks omitted).

North Carolina courts have found the following language to constitute a "comprehensively phrased release" that releases a defendant from all claims, absent proof of contrary intent: where the plaintiff agreed to release the defendant "from any and all claims of liabilities of whatever kind or nature, that you have ever had or which you now have, known or unknown[,]" see, e.g., Kraus v. Wells Fargo Sec., LLC, 721 S.E.2d 408, at *1 (N.C. Ct. App. 2012) (unpublished); where the plaintiff agreed to release the defendant from "all claims that [the plaintiff] may have against [the defendant] as a result of their dealings to date, and specifically including but not limited to the subject matter of this agreement and the civil action," see, e.g., Hardin, 682 S.E.2d at 735; and where the agreement stated that the parties released "any and all claims and causes of action of any kind or nature whatsoever which may exist, might be claimed to exist, or could have been claimed to exist by [the defendant] against [plaintiffs] and by [plaintiffs] against [the defendant]," see, e,g., Talton v. Mac Tools, Inc., 453 S.E.2d 563, 564 (N.C. Ct. App. 1995).

The Clincher Release in this case does not contain the same, broad language that North Carolina courts have found to be a comprehensive release of all claims, including Plaintiff's REDA claim here. As Plaintiff notes, Defendant specifically limits the scope of the release to claims arising out of the North Carolina Workers' Compensation Act. The Clincher Release

does not mention or refer to N.C. GEN. STAT. § 95-240 et seq., which is the statutory basis of Plaintiff's claims here, nor does the Clincher Release contain the comprehensive language necessary to release Defendant from any and all claims arising out of Plaintiff's workplace injury. Plaintiff's REDA claim is not based on Plaintiff's medical injury that led to Plaintiff's filing of a workers' compensation claim, but, rather, on the termination of Plaintiff's employment, allegedly in violation of the N.C. GEN. STAT. § 95-240 et seq. That is, although Plaintiff was allegedly wrongfully discharged for asserting her rights in a workers' compensation claim, Plaintiff's claim here arises out of the Chapter 95 of the North Carolina General Statutes, not Chapter 97. Thus, Defendant's contention that the Clincher Release also applies to a retaliatory discharge claim pursuant to N.C. GEN. STAT. § 95-240 et seq. is without merit.

In support of its motion, Defendant cites Wiley v. United Parcel Service, Inc., 227 F. Supp. 2d 480 (M.D.N.C. 2002), for the proposition that the REDA claim is so integrally related to Plaintiff's workers' compensation claim that it must "arise out of" Plaintiff's workers' compensation claim. The Wiley case, however, involved the issue of removal under 28 U.S.C. § 1445(c), which states that "[a] civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States." The Wiley court found that removal of a REDA claim to federal court was improper because the plaintiff's REDA claim was integrally related to the plaintiff's workers' compensation claim. The court's analysis in Wiley, however, had nothing to do with North Carolina contract law—and, specifically, the law of general releases. That is, even if REDA is integrally related to North Carolina's Workers' Compensation Act for purposes of the federal removal statute, this does not mean that every release that bars future claims "growing out of the Workers Compensation Act" necessarily includes a REDA claim. Federal laws regarding the right to remove actions from

state to federal court implicate matters of court sovereignty, whereas contract law is intended to reflect the intent of the contracting parties.

Defendant also argues that Plaintiff's REDA claim existed when she signed the Clincher Release. See Travis v. Knob Creek, Inc., 362 S.E.2d 277, 279 (N.C. 1987) (noting that a party's claim must exist when a release is executed for the party to relinquish her right to bring the claim). As Plaintiff points out, however, Plaintiff's right to sue under REDA did not arise until she received the notice to sue letter on until July 24, 2020, which was after she signed the Clincher Release. Therefore, Defendant's contention that her REDA claim existed when she signed the Clincher Release is incorrect. For this additional reason, the Court finds that the Clincher Release executed by the parties does not bar Plaintiff from pursuing her REDA claim in this action.

Finally, in her opposition brief, Plaintiff submits that, after Plaintiff signed the Clincher Release, Defendant directed the attorney handling the workers' compensation Claim to draft another release to present to Plaintiff. See (Doc. No. 10-1, Pl. Ex. A). The second release, attached as Plaintiff's Exhibit A, expressly included the REDA claim in the list of released claims, and stated in relevant part:

> "Releasor further acknowledges and expressly agrees that Releasor is waiving any and all rights Releasor may have had or now has to pursue any claim under any employment statute, including but not limited to Title VII of the Civil Rights Act of 1964 (Title VII), the Family and Medical Leave Act (FMLA), the Age Discrimination in Employment Act (ADEA), the Immigration Reform and Control Act of 1986 (IRCA), the Americans with Disabilities Act (ADA), The Civil Rights Act of 1991, the Employment Retirement Income Security Act (ERISA), and any analogous laws of the State of North Carolina, N.C. Gen. Stat., § 95-240 et seq., any executive order, law or ordinance, or any duty or other obligation arising out of common law, public policy, contract (express or implied), or tort (which includes a release of any rights of claims the undersigned may have pursuant to the decision in Woodson v. Rowland, 329 N.C. 330, 407 S.E. 2d 222 (1991) and its progeny), and any and all other federal, state and local laws and regulations relating to employment."

(Id. (emphasis added). Plaintiff states that this subsequent release was submitted to Plaintiff after she signed the Clincher Release on April 20, 2020, along with an offer of consideration of $100.00 to sign the Agreement. Plaintiff refused to sign the second release and made a counteroffer to settle the claim, but no further offer was made. Plaintiff argues that this subsequent release that Defendant attempted to persuade Plaintiff to sign is a comprehensive release of all claims, including the REDA claim that Defendant now claims the Clincher Release encompassed. Plaintiff further argues that logic dictates that if the Clincher Release did serve to release the REDA claim, then Defendant would have no reason to pay Plaintiff to sign another release that expressly waived the REDA claims and other claims.

The Court agrees that the proposed release, which Plaintiff refused to sign, is further proof that the parties did not intend for the Clincher Release to release Defendant from bringing a REDA claim. Although Defendant complains that this extrinsic evidence should not be considered, the law of releases in North Carolina is well settled that proof of contrary intent is allowed to show that a release was not intended to waive and release and all claims that a plaintiff may have. See Hardin, 682 S.E.2d at 735. Moreover, to the extent that Defendant argues that the terms unambiguously also incorporate REDA claims (and, thus, the Court may not look beyond the "four corners" of the Clincher Release), the Court disagrees. In other words, the phrase "growing out of the terms and provisions of the North Carolina Workers' Compensation Act" does not unambiguously incorporate a North Carolina REDA claim.[4] Thus,

[4] Similarly, North Carolina's parol evidence rule does not apply, as the parol evidence rule only "prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is used to contradict, vary, or explain the written instrument." Carolina First Bank v. Stark, Inc., 660 S.E.2d 641, 646 (N.C. Ct. App. 2008) (emphasis added) ("The credit memoranda regarding the 2001 loan were created after the execution of the guaranties. Therefore, the parol evidence

this Court may consider the proposed release that Plaintiff refused to sign in discerning the parties' intent when executing the Clincher Release.

In sum, for all the reasons stated herein, the Court finds that, by signing the Clincher Release as part of her workers' compensation settlement, she did not relinquish her right to bring her REDA claim against Defendant in this action. The Court will, therefore, deny Defendant's motion to dismiss and/or motion for summary judgment.

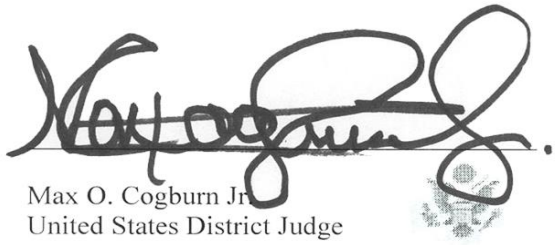
IV. CONCLUSION

For the reasons stated herein, Defendant's motion to dismiss, or alternatively, for summary judgment, is denied.

IT IS THEREFORE ORDERED that:

(1) Defendant's Motion to Dismiss and/or Motion for Summary Judgment, (Doc. No. 7), is **DENIED**, and the Plaintiff may proceed with her REDA claim in this action.

Signed: February 23, 2021



rule would not apply."). Here, the proposed general release, which Plaintiff refused to sign, was offered only after the parties executed the Clincher Release.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20-cv-337-MOC-DCK

LAKITA SIMMONS, **Plaintiff,** **v.** **ACCORDIUS HEALTH, LLC,** **Defendant.**	**ORDER**

THIS MATTER comes before the Court on a Motion for Summary Judgment by Defendant Accordius Health, LLC. (Doc. No. 23).

I. BACKGROUND

A. Procedural Background

Plaintiff filed this action in state court on October 20, 2020, alleging that her former employer Accordius Health, LLC, terminated her employment in retaliation for her bringing a workers' compensation claim after she was injured at work, in violation of North Carolina's Retaliatory Employment Discrimination Act, N.C. GEN. STAT. 95-243 et seq.

Defendant removed the action to this Court on November 23, 2020. On December 30, 2021, Defendant filed the pending summary judgment motion, seeking dismissal of Plaintiff's claim. Plaintiff filed a response on January 26, 2022, Defendant filed a Reply on February 2, 2022, and the Court held a hearing on February 11, 2022.

B. Factual Background

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According to the allegations in Plaintiff's verified Complaint and her deposition testimony, Plaintiff worked as a CNA for Defendant. This position required her to assist patients with daily living, including feeding, showering, and transportation. (Simmons Dep. at 10). An essential function of this job required Plaintiff to lift, push, or pull at least 50 pounds. (Id. at 31).

On November 25, 2018, Plaintiff suffered an on-the-job injury to her back. (Id. at 36). Immediately after the injury, Plaintiff notified her supervisor, who initiated a workers' compensation claim. Plaintiff's supervisor provided Plaintiff with the paperwork necessary to receive benefits. (Id.). Plaintiff's physician restricted her from working until March 2019. (Id. at 40).

Plaintiff returned to work on light duty on or about March 23, 2019. Plaintiff's physician provided work restrictions that Plaintiff was not to lift more than 50 pounds. (Id. at 42-47). Plaintiff went back to work under those restrictions, but immediately started having problems with work duties beyond her restrictions. (Id. at 61-62). Her job duties included making food trays, placing them on a roller cart, and pushing the carts down the hallway. (Id. at 42). According to Plaintiff, her job duties required her to lift constantly above her weight restrictions imposed by her treating physician. (See Doc. No. 23-2, p. 8).

Plaintiff consulted with her orthopedic surgeon, who performed an MRI in early April. He also reduced her lifting restrictions to 10 pounds due to her condition at that time. (Pl. Ex. 1). Plaintiff testified that for about two months she struggled to succeed in the purported "light duty" position, but she had difficulty managing her back injury and did not show for her shifts. Plaintiff complained about her job duties and requested light duty to her immediate supervisor in the kitchen. (Simmons Dep. at 43). According to Plaintiff, the kitchen manager did not respond. (Id.).

On April 30, 2019, Plaintiff reported that she was having to push patients in wheelchairs and again the nurse sent a work restriction of ten pounds. (See Pl. Ex. 3). Then again on May 6, 2019, Plaintiff said that she was suffering through duties in the kitchen loading and pushing carts, further exacerbating her pain. (See Pl. Ex. 4). Plaintiff had to go out of work due to the exacerbation of her back injury later in May. On July 8, 2019, Defendant terminated Plaintiff's employment. (See Ex. 2).

II. STANDARD OF REVIEW

Summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

The party seeking summary judgment has the initial burden of demonstrating that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. Id. at 324. Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. Id. Under this standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. Anderson, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. Dash v. Mayweather, 731 F.3d 303, 311 (4th

Cir. 2013). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248. Further, Rule 56 provides, in pertinent part:

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

FED. R. CIV. P. 56(c)(1). Accordingly, when Rule 56(c) has shifted the burden of proof to the non-movant, the non-movant must show the existence of a factual dispute on every essential element of his claim.

III. DISCUSSION

North Carolina's Retaliatory Employment Discrimination Act ("REDA"), set forth in N.C. GEN. STAT. § 95-241(a), provides, in relevant part:

> "[n]o person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to ... [f]ile a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, …with respect to ... Chapter 97 of the General Statutes," the Workers' Compensation Act, N.C. GEN. STAT. § 97-1 (2020) et seq."

To prevail under REDA, a plaintiff must show as her prima facie case that: (1) she exercised his rights as listed under N.C. GEN. STAT. § 95-241(a), (2) she suffered an adverse employment action, and (3) that the alleged retaliatory action was taken because the employee exercised her rights under N.C. GEN. STAT. § 95-241(a). Wiley v. UPS, Inc., 594 S.E.2d 809, 811 (N.C. Ct. App. 2004). If the plaintiff presents a prima facie case, the burden shifts to the defendant to

"show that there was a valid reason for any actions it took regarding [her]." Lilly v. Mastec N. Am., Inc., 302 F. Supp. 2d 471, 481 (M.D.N.C. 2004). Once a defendant meets this burden, "plaintiff then has to demonstrate that the apparently valid reason was actually a pretext for discrimination." Id.

The Court finds that Plaintiff has met her prima facie case. Therefore, Defendant must show that there was a valid reason for firing Plaintiff. Defendant contends that it fired Plaintiff because Plaintiff left work because she was unable to perform even light duties at work. Defendant also asserts that the alleged retaliatory action was too far removed in time to be considered a result of Plaintiff's protected activity. For the following reasons, the Court rejects both of Defendant's arguments.

First, as to temporal proximity, the North Carolina Court of Appeals has held that "requiring a close temporal connection would allow employers to circumvent the statute. By simply delaying the retaliatory firing for several months, an employer could prevent a REDA claim from ever going forward, even where there is direct evidence of a wrongful motive." Tarrant v. Freeway Foods of Greensboro, Inc., 593 S.E.2d 808, 813 (N.C. Ct. App. 2004). Rather, the major concern is actual causation, not mere proximity in time. Id. The Court declines to find as a matter of law that the eight-month period between when Plaintiff took workers' compensation and was terminated was too remote to preclude a retaliation claim.

Next, as to Defendant's contention that it fired Plaintiff because she left work when she couldn't perform her duties, Plaintiff's verified Complaint asserts that when she returned to work with Defendant, Defendant placed her in a position that was beyond her work restrictions ordered by her doctor and that Defendant then terminated her employment when she was unable to continue to perform those duties. Defendant contends that Plaintiff has produced no evidence

that the work she was required to do exceeded her work restrictions. By the same token, however, Defendant has not provided evidence that the work Plaintiff was required to do was within Plaintiff's work restrictions. As Plaintiff has argued, if Defendant intentionally required Plaintiff to perform work that exceeded her work restrictions, this act in and of itself could be considered retaliatory if Defendant knew Plaintiff would be unable to perform this work. In other words, by requiring an employee to work beyond her restrictions when she returns from workers' compensation leave, an employer can intentionally effect a constructive discharge as a retaliatory action against the employee.

In sum, the Court finds that Plaintiff has raised a genuine issue of disputed fact as to whether there was a causal connection between her workers' compensation filing and being fired. Thus, Defendant's summary judgment motion is denied.

IV. CONCLUSION

For the reasons stated herein, the Court denies the summary judgment motion.

IT IS, THEREFORE, ORDERED that:

1. Defendant's Motion for Summary Judgment, (Doc. No. 23), is **DENIED**. Plaintiff's claim shall proceed to trial.

Signed: March 17, 2022

Max O. Cogburn Jr
United States District Judge

EXHIBIT 6

Top Reasons Employees Don't Report Harassment and Other Workplace Incidents

Deb Muller February 4, 2025

» » » Top Reasons Employees Don't Report Harassment and Other Workplace Incidents

One of the things we hear most from business leaders is that their organizations don't have culture, mistreatment, or workplace behavior issues. Our response?

How do you know?

Just because your employees aren't coming to you with complaints doesn't mean nothing is happening. In fact, it could be just the opposite. Despite the growing awareness of various forms of harassment in the workplace, our Workplace Harassment and Misconduct Report found that only 58% of employees who experience or witness unfairness at work never report it to management.

So, why don't employees speak up? The answer is rarely simple, but below are some of the most common reasons why employees don't come forward about workplace mistreatment, and what employers can do to promote safe workspaces.

They Don't Think They'll be Taken Seriously

If it's hard for you to imagine a workplace issue being considered anything other than serious, you're not alone — especially for HR and people leaders. However, 39% of employees who experience workplace misconduct lack confidence that their issues will be addressed fairly or even taken seriously. For example, perhaps an organization has a reputation of "sweeping things under the rug," or maybe employees have been witness to other situations where the problem was not addressed. To help employees feel confident in leadership, establish a culture of trust and transparency. Encourage employees to come forward and be open about your investigation process and how reports are handled.

They're Worried about Repercussions

Perhaps the biggest reason that workplace incidents go unreported is fear of retaliation by the perpetrator or organization. Many employees say they are

afraid of one form of retribution or another, including:

- Receiving a demotion or losing their job
- Being unfairly labeled as "dramatic" or "difficult" etc
- Becoming alienated by peers
- Being transferred to another department or location
- Being denied future opportunities such as raises or promotions

This is heavy. Imagine being afraid of *losing your job* by doing the right thing and coming forward. It's a tough place to be in – and one that no employee ever should be. If employees are fearful of any of the above, it speaks volumes about the organization's culture. To keep concerns of this at bay, your company can also take initiative to try to prevent retaliation from reports and investigations.

When employees are afraid to speak up, it translates into lack of safety within the workplace. Give employees a space to speak discreetly and safely, and the trust and loyalty will follow.

They Feel Partially Responsible

In some cases, an employee may feel like they could have done something to prevent the incident(s) from happening altogether. This can grow into feelings of guilt or shame, which could be all it takes to keep someone from speaking up. Send the message to employees that any feeling of confusion or discomfort is reason enough to come forward.

They Don't Know How or Who to Report to

Most employees have the general understanding that they can address work-related issues with their manager or HR. That said, knowing who within the department or how to present the concern may not always be so clear.

Human Resources teams can be quite large —consisting of managers, directors, executives, vice presidents and other leadership roles. How can employees know who to reach out to? And what is the process for doing so? Should employees send an email, submit a formal statement or schedule a face-to-face meeting? Perhaps you have an HR reporting system like Speakfully where employees can voice concerns discreetly and be kept in the loop along the way. Whatever the case, a clear, transparent and simple process for employees to voice their concerns is vital.

Speakfully by HR Acuity

When employees aren't sure where to go with concerns, they often stay silent—but that's where **Speakfully by HR Acuity** makes a difference. This anonymous employee reporting platform gives employees a safe, confidential way to raise issues, helping companies foster a culture where speaking up is encouraged not feared. With an intuitive, easy-to-use system, organizations can catch problems early, show employees their voices matter and build a more transparent, inclusive workplace. Learn more about how Speakfully by HR Acuity helps companies listen, respond and create lasting change.

For ER/HR leaders, read more about how you can support your workforce when you receive an anonymous complaint here.

They Don't Know What They're Experiencing

When it comes to workplace mistreatment, there is a lot of gray area. Sometimes an employee may not know exactly what they're going through, or even know if what they're experiencing is a reason to speak up. For example, words like harassment, discrimination and bullying can seem extreme, and one could easily decide what they're experiencing doesn't fall

into those buckets. But what is it, then? This is where keeping a journal or ongoing documentation of experiences could help individuals process what they're going through, and eventually feel comfortable presenting their concern(s) to HR or leadership teams.

Encouraging Open Communication with HR Acuity

Bottom line? If your employees aren't coming to you, don't assume it's due to a flawless corporate culture. Instead, be curious and be proactive in your approach towards cultivating a company culture where everyone has a voice and feels safe being heard.

That's where Speakfully can help. Whether it's harassment, bullying, culture issues, bias or general concerns, navigating the workplace is anything but black and white. Speakfully decodes the gray areas and gives business leaders real-time insights into workplace culture by providing anonymous employee reporting channels. Schedule a demo with a member of our team to learn more about our employee relations software today.

The Importance of Protecting Worker Voice and Concerted Activity

Fact Sheet, April 2024

Both union and non-union employees have these rights under federal law:

- to engage in discussions with their colleagues about their terms and conditions of employment, including wages, hours, and working conditions; and
- to join together to improve these conditions through actions such as striking or picketing,as long as these actions are conducted in a peaceful and lawful manner.[i]

Some violations are obvious, like when an employer fires an outspoken union supporter. But violations in non-union workplaces, such as forbidding workers from discussing their pay, are also quite prevalent and harder for workers to identify as illegal.

Important For Enforcing Workers' Rights. The ability of co-workers to share information related to their working conditions without fear of retaliation is critical to enforcing a range of workplace protections.

- For example, the #MeToo reckoning revealed that because workers were bound by nondisclosure agreements and managers too often protected, other workers were never warned about serial sexual harassers, allowing violations to continue.
- Workers' lack of information about pay is another prime example. Recent pay secrecy research suggests that as much as half of the U.S. workforce have been "discouraged or prohibited" from discussing pay by their managers.[ii] Without free discussion of wages and working conditions, systemic pay and promotional gaps can go undiscovered for years. Systemic pay discrimination at one financial services firm was only discovered after a woman found out that her male colleague made 50% more than her despite bringing in less revenue.[iii]
- Protected concerted activity also offers a viable channel for workers with relatively more socio-economic power to stand up for colleagues when they witness discrimination or harassment. The onus of reporting, complaining, and untangling systematic harassment does not have to fall on the victims of unfair treatment.

Important to Job Satisfaction. A sense of power at work is strongly correlated not only to job satisfaction, but also with life happiness overall, and a more productive workplace.[iv]

- After pay satisfaction, workers' assessment of the power they had to change working conditions was the strongest job-related predictor of overall job satisfaction. [v]

Important to Building Worker Power and Union Organizing. Peer-to-peer discussion of working conditions is an essential pre-requisite to mobilizing the labor movement and building worker power across the country.[vi]

- Most Americans support unions and would join one if it became available, but "unions are running too few elections and the resources required to win them are [too] high" to rely on union efforts alone to advance worker rights.[vii]
- Discrete labor campaigns offer another way to build power and organizational capacity. After all, "any group of workers organizing together to improve working conditions is acting like a union." and "conversations among coworkers are [still] the foundation to everything."[viii] The formation of an organizing committee – the collective element of collective action – is a major "bottleneck" in campaigns.
- Even failed unionization campaigns can yield dramatic benefits for workers. A unionization drive at Home Depot, for example, started from a demand for extra pay for translation services provided by store associates. The pressure from the organizing effort forced the company to improve wages for workers in the store, and the experience was eye-opening for workers who previously felt powerless. The organizer reflected that "the real goal after going through this stuff, and what I realize is the powers, the connection. The connection and doing something with the connection that you have between yourself and your coworkers."[ix]

Important to Democracy. Worker campaigns, even on discrete issues, serve an inspirational purpose: showing workers the power of collective action, the possibility of organizing for change. This is important not just for union organizing but for democracy itself.

- The decline of unions is part of the broader decline of associational life and social capital in the United States – like a decline in churches and bowling leagues – that researchers have linked to challenges for American democracy.[x]
- Research in sociology develops the idea of "conditional solidarity" and suggests that any individual is much more likely to initiate cooperative action if they believe that others will reciprocate.[xi]

But Low-Income Workers of Color Are Particularly Worried About Retaliation. Most workers, and especially low-income workers, are uninformed or misinformed about their legal rights at work.[xii]

- Nearly two-thirds of American workers report feeling comfortable discussing workplace conditions with their colleagues, but low income, non-white, and less-educated workers are least likely to feel comfortable engaging in these kinds of conversations for fear of retaliation.[xiii]

Evidence from the union context suggests that empowering workers with information about their rights and viable paths to enforce those rights makes a difference in willingness to engage in collective action.

i. "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . ." 29 U.S.C. § 157.

ii. Alexander Hertel-Fernandez, *American Workers' Experiences with Power, Information, and Rights on the Job: A Roadmap for Reform*, Roosevelt Institute, Apr. 2020, https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_WorkplaceVoice_Report_202004.pdf.

iii. Dune Lawrence & Max Abelson, "To Sue Goldman Sachs, You Have to be Willing to Hang On – for a Long, Long, Time," *Bloomberg*, May 3, 2018, https://www.bloomberg.com/news/features/2018-05-03/wall-street-s-biggest-gender-lawsuit-is-13-years-in-the-making; Courtney Comstock, "My Colleague Groped Me After a Goldman-Sponsored Strip Club Outing," *Business Insider*, Sept. 15, 2010, https://www.businessinsider.com/christina-chen-oster-2010-9.

iv. Hertel-Fernandez at 11.

v. *Id.* at 8-9.

vi. *See, e.g.*, "Live Show: We Need You – Yes, You – to Join the Labor Movement," *Working People*, Mar. 8, 2023 (panel discussion of worker organizers repeatedly referencing the importance of conversations with co-workers for improving working conditions); Steven Greenhouse, "Worker-to-Worker Organizing May Finally Have Its Moment," The Century Foundation, Apr. 7, 2022, Worker-to-Worker Organizing May Finally Have Its Moment (tcf.org); *Notification of Employee Rights Under the National Labor Relations Act*, 76 Fed. Reg. 54005, Nov. 14, 2011.

vii. "Call it the union paradox: near-record-high popularity, but record-low participation." Greg Rosalsky, *You may have heard of the union boom. The numbers tell a different story*, Planet Money, NPR, Feb. 28, 2023, https://www.npr.org/sections/money/2023/02/28/1159663461/you-may-have-heard-of-the-union-boom-the-numbers-tell-a-different-story.

viii. Eric Dirnbach, *How Machinists and Trade Unionists Built a New Labor Organizing Model During the Pandemic*, Jacobin, Feb. 12, 2022, https://jacobin.com/2022/02/ue-dsa-ewoc-covid-19-new-organizing-labor.

ix. Maximillian Alvarez, "He tried to organize Home Depot's first union. Now he's unemployed." *Real News Network*, Mar. 6, 2023, https://therealnews.com/he-tried-to-organize-home-depots-first-union-now-hes-unemployed.

x. Dan Clawson, "Union Density & Bowling Leagues: Declining Together? Review of Robert Putnam's 'Bowling Alone.'" *New Labor Forum*, no. 9, 2001, 73–77, JSTOR, http://www.jstor.org/stable/40342315.

xi. Tula Connell, Unions Across the Globe Develop, Defend Democracy, *Solidarity Center AFL-CIO*, Oct. 9, 2022, https://www.solidaritycenter.org/unions-across-the-globe-develop-defend-democracy/.

xii. Gabriel Nahmias, *Beyond the NLRA: Organizing Workers of the Future*, MIT Work of the Future Task Force White Paper, 23-24.

xiii. Hertel-Fernandez at 5, 28.

xiv. *Id.* at 28.

xv. *Id.* at 28.

Minimum Wage Theft Costs NC Workers $238 Million Annually

Wednesday, Aug 28, 2024

PISCATAWAY, N.J. – Tens of thousands of workers in North Carolina are illegally paid below $7.25 an hour, but an exemption in the state's labor law and a shortage of enforcement resources make it difficult for them to recoup lost earnings.

The Workplace Justice Lab@Rutgers University, a research center focused on strengthening labor standards enforcement in the U.S., analyzed 20 years of federal employment data to produce a comprehensive new report on minimum wage compliance in the Tar Heel State.

The report estimates that **1.4 million** workers in North Carolina experienced minimum wage theft between 2003 and 2022—an average of nearly **72,000** workers per year. It's a substantial loss of income for those who can least afford it. Each victim lost an average of **$3,312** per year, or **28%** of their wages, for a statewide total of **$238 million** annually.

"It's hard to survive on $7.25 an hour under the best of circumstances," said **Jake Barnes, Research Project Manager for the Workplace Justice Lab@Rutgers University and lead author of the report**. "But when you lose hundreds or even thousands of dollars a year to minimum wage theft, it becomes virtually impossible to support yourself and your family."

The Rutgers report also finds:

- Food services and drinking places had the highest violation rate (**7.4%**)

of any industry, followed by personal and laundry services (**7.1%**) and private households (**6.5%**).
- **13.8%** of restaurant servers and **10.4%** of childcare workers experienced a minimum wage violation, more than any other occupation for which estimates are possible.
- Non-citizens were **40%** more likely to experience wage theft than citizens. The likelihood was even greater for non-citizens who are Latinx or Black.
- Asian/Pacific Islanders, women (all races), young people (16-24), seniors (65+), part-timers, and workers who did not finish high school faced higher rates of wage theft.
- The Jacksonville metropolitan area had the highest violation rate (**3.7%**), followed by Durham (**3%**), Fayetteville (**2.8%**), Raleigh (**2.6%**), and Burlington (**2.6%**).

North Carolina's minimum wage protections do not apply to the vast majority of the state's workers because of an exemption, G.S. 95-25.14(a)(1), for workers covered by federal law. Consequently, most wage theft victims must turn to the understaffed U.S. Department of Labor, which employs just 730 investigators to serve approximately 143 million workers nationwide.

"The exemption in North Carolina's law leaves a gaping hole in the state's minimum wage protections," said **Jenn Round, Director of the Beyond the Bill Program for the Workplace Justice Lab@Rutgers University**. "With millions of dollars being stolen from hardworking North Carolinians each year, state lawmakers must step up to close this gap and provide meaningful state protections and enforcement. "

The Rutgers report calls on state lawmakers to better protect workers and compliant employers by staffing-up the Wage and Hour Bureau (WHB) and amending the Wage and Hour Act to:

- **Eliminate** the exemption for workers covered under federal law;
- **Allow** proactive investigations in high-violation industries;
- **Increase** penalties on employers that break the law; and
- **Provide** the WHB with meaningful tools to recover back wages.

"North Carolina workers deserve a fair day's pay for a fair day's work," said **Ben Wilkins, Director of the Union of Southern Service Workers**. "It is imperative that the NC Wage and Hour Bureau is empowered with the resources and authority needed to ensure this basic right is upheld for all workers across our communities."

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About the Report

Minimum Wage Non-Compliance in North Carolina was written by Jake Barnes, Jenn Round, Daniel Galvin, and Janice Fine.

About Us

The Rutgers School of Management and Labor Relations (SMLR) is the world's leading source of expertise on managing and representing workers, designing effective organizations, and building strong employment relationships.

The Workplace Justice Lab@Rutgers University (wjl@RU) exists to address economic inequality through supporting and strengthening grassroots organizing and democratic governance. We do this through building dynamic

communities of learning and practice, carrying out cutting edge research, and offering specialized training and in-depth one-on-one consultations.

###

New Survey Reveals Many Employers Lack Protections for Whistleblowers

Women and low-performing employees are the most frequent targets of retaliation as many employers overlook actions that may be illegal retaliation

EVERFI, Inc., the leading social impact education innovator, released the findings of a new survey revealing that many employers do not have adequate protections in place to prevent retaliation against whistleblowers. Survey data also reveals that organizations that do prioritize and take proactive steps to prevent retaliation report far fewer incidents.

Retaliation is the most common claim of workplace discrimination by far and has been for the past decade. In 2019, the Equal Employment Opportunity Commission (EEOC) received five times more charges of retaliation than sexual harassment–more than all race, color, and religion-based discrimination charges combined.

This research conducted by HR.com's HR Research Institute, in partnership with EVERFI, examined why workplace retaliation occurs, who tends to experience it (and perpetuate it), and what steps can be taken to help effectively prevent it.

The survey shows that many employers are unaware of actions that are potentially risky. Organizations view retaliatory actions narrowly, focusing on egregious acts like termination (80 percent of respondents say their organization would consider it retaliatory), hostile treatment (78 percent), discipline (75 percent), and demotion (74 percent). Fewer organizations consider changes in benefits (57 percent), work location (64 percent), or

duties/work schedule (65 percent) to be potentially retaliatory, even though the EEOC and U.S. Supreme Court have stated that they could be.

The research also found that many organizations do not have procedures in place to prevent retaliation and safeguard employees after they come forward. Among the survey's key findings:

- Almost one-third of companies surveyed do not have an anti-retaliation policy.
- Only 43 percent of employers with an anti-retaliation policy train all employees on that policy.
- Only half of organizations (52 percent) check-in with whistleblowers to confirm that they are not experiencing retaliation, and just 19 percent designate someone to monitor an employee's performance reviews to safeguard against retaliatory ratings.
- Nearly one-fifth (17 percent) don't take any such steps to protect whistleblowers post-complaint.

"The findings from this survey are a wake-up call for employers," said Elizabeth Bille, J.D., SHRM-SCP, senior vice president, Workplace Culture, EVERFI. "Retaliation can lead to significant legal claims, decreased employee morale and retention, and damaged workplace cultures, so the stakes are high to get this work right. Unfortunately, our findings show that many organizations are not taking straightforward, proactive steps to prevent it from happening."

Retaliation can happen to anyone, but some employees are more susceptible than others. The majority of responding HR professionals indicated that low-performing employees (63 percent) and women (62 percent) are sometimes or often the targets of retaliation, compared to high-performing employees (36 percent) and men (47 percent).

While employers often think retaliation is committed primarily by managers against their direct reports, this is often not the case. Nearly half of respondents (46 percent) say the person retaliating is sometimes or often another leader in the complainant's chain of command, 35 percent say it is a leader outside of their chain of command, and 51 percent say it is a peer-level colleague.

Additionally, the survey found that the most common reasons for retaliation are personal feelings of anger, embarrassment, hurt, or betrayal (61 percent) and viewing the person as disloyal, a troublemaker, or not a team player (59 percent). Far less common is the belief that the complaint was knowingly false or made with bad intent (28 percent).

"Retaliation in the workplace is a silent crisis, and indeed, could be the next #MeToo-type issue to take the workplace by storm: it is alarmingly common, can cause significant damage, and is not on most organizations' radar," said Bille. "It undermines an employer's progress on all workplace issues, from diversity and inclusion to legal compliance and mental wellness. Any organization that is working to create a healthy, inclusive, ethical working environment needs to take action to prevent retaliation."

The survey did yield a positive revelation, indicating that prioritizing anti-retaliation efforts and implementing some straightforward procedures can pay dividends. Companies that actively communicate their anti-retaliation policies to all employees through training and communications from senior leaders are far less likely to say that retaliation occurs sometimes or often (35 percent) than those who take a more "check the box" communication approach, sharing via a handbook or website (65 percent).

To learn how EVERFI can help you prevent retaliation from impacting your workplace, visit our website.

About the Preventing Retaliation in the Workplace Study

The survey was conducted online from May 1, 2020, through August 9, 2020, among HR professionals invited to take the survey through HR.com's opt-in contact list. The survey was completed by 528 respondents, the majority of whom are human resources practitioners. View the full white paper of the survey results here.

About EVERFI

EVERFI is an international technology company driving social change through education to address the most challenging issues affecting society ranging from financial wellness to prescription drug safety to workplace conduct and other critical topics. Founded in 2008, EVERFI is fueled by its Software-as-a-Service (SaaS) community engagement platform and has reached more than 41 million learners globally. In 2020, the company was recognized as one of the World's Most Innovative Companies by *Fast Company* and was featured on *Fortune Magazine's* Impact 20 list. Some of America's leading CEOs and venture capital firms are EVERFI investors including Amazon founder and CEO Jeff Bezos, Google Chairman Eric Schmidt, Twitter founder Evan Williams, as well as Advance, Rethink Education, Rethink Impact, The Rise Fund, and TPG Growth. To learn more about EVERFI and how you can #answerthecall please visit everfi.com or follow us on Facebook, Instagram, LinkedIn, or Twitter @EVERFI.

Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities

By Annette Bernhardt Ruth Milkman Nik Theodore Douglas Heckathorn Mirabai Auer James DeFilippis Ana Luz González Victor Narro Jason Perelshteyn Diana Polson Michael Spiller
September 21, 2009

Executive Summary

This report exposes a world of work in which the core protections that many Americans take for granted—the right to be paid at least the minimum wage, the right to be paid for overtime hours, the right to take meal breaks, access to workers' compensation when injured, and the right to advocate for better working conditions—are failing significant numbers of workers. The sheer breadth of the problem, spanning key industries in the economy, as well as its profound impact on workers, entailing significant economic hardship, demands urgent attention.

In 2008, we conducted a landmark survey of 4,387 workers in low-wage industries in the three largest U.S. cities—Chicago, Los Angeles, and New York City. We used an innovative, rigorous methodology that allowed us to reach vulnerable workers who are often missed in standard surveys, such as unauthorized immigrants and those paid in cash. Our goal was to obtain accurate and statistically representative estimates of the prevalence of workplace violations. All findings are adjusted to be representative of front-line workers (i.e. excluding managers, professional or technical workers) in low-wage industries in the three cities—a population of about 1.64 million

workers, or 15 percent of the combined workforce of Chicago, Los Angeles and New York.

Finding 1: Workplace Violations Are Severe and Widespread in Low-Wage Labor Markets

We found that many employment and labor laws are regularly and systematically violated, impacting a significant part of the low-wage labor force in the nation's largest cities. The framework of worker protections that was established over the last 75 years is not working. Here we summarize only key violations; Table 3.1 lists all the violations measured in our study.

Minimum wage violations: ≣

- Fully 26 percent of workers in our sample were paid less than the legally required minimum wage in the previous work week.* ≣
- These minimum wage violations were not trivial in magnitude: 60 percent of workers were underpaid by more than $1 per hour.

Overtime violations:

- Over a quarter of our respondents worked more than 40 hours during the previous week. Of those, 76 percent were not paid the legally required overtime rate by their employers. ≣
- Like minimum wage violations, overtime violations were of substantial magnitude. The average worker with a violation had put in 11 hours of overtime—hours that were either underpaid or not paid at all.

"Off-the-clock" violations:

- Nearly a quarter of the workers in our sample came in early and/or stayed late after their shift during the previous work week. Of these

workers, 70 percent did not receive any pay at all for the work they performed outside of their regular shift.

Meal break violations:

- The large majority of our respondents (86 percent) worked enough consecutive hours to be legally entitled to at least one meal break during the previous week. Of these workers, more than two-thirds (69 percent) received no break at all, had their break shortened, were interrupted by their employer, or worked during the break—all of which constitute a violation of meal break law.

Pay stub violations and illegal deductions:

- In California, Illinois and New York, workers are required to receive documentation of their earnings and deductions, regardless of whether they are paid in cash or by check. However, 57 percent of workers in our sample did not receive this mandatory documentation in the previous work week.
- Employers are generally not permitted to take deductions from a worker's pay for damage or loss, work-related tools or materials or transportation. But 41 percent of respondents who reported deductions from their pay in the previous work week were subjected to these types of illegal deductions.

Tipped job violations:

- Of the tipped workers in our sample, 30 percent were not paid the tipped worker minimum wage (which in Illinois and New York is lower than the regular state minimum wage).
- In addition, 12 percent of tipped workers experienced tip stealing by their employer or supervisor, which is illegal.

Illegal employer retaliation:

We found that when workers complained about their working conditions or tried to organize a union, employers often responded by retaliating against them. Just as important, many workers never made complaints in the first place, often because they feared retaliation by their employer.

- One in five workers in our sample reported that they had made a complaint to their employer or attempted to form a union in the last year. Of those, 43 percent experienced one or more forms of illegal retaliation from their employer or supervisor. For example, employers fired or suspended workers, threatened to call immigration authorities, or threatened to cut workers' hours or pay.
- Another 20 percent of workers reported that they did not make a complaint to their employer during the past 12 months, even though they had experienced a serious problem such as dangerous working conditions or not being paid the minimum wage. Half were afraid of losing their job, 10 percent were afraid they would have their hours or wages cut, and 36 percent thought it would not make a difference.

Workers' compensation violations:

We found that the workers' compensation system is not functioning for workers in the low-wage labor market.

- Of the workers in our sample who experienced a serious injury on the job, only 8 percent filed a workers' compensation claim.
- When workers told their employer about the injury, 50 percent experienced an illegal employer reaction—including firing the worker, calling immigration authorities, or instructing the worker not to file for workers' compensation.
- About half of workers injured on the job had to pay their bills out-of-

pocket (33 percent) or use their health insurance to cover the expenses (22 percent). Workers' compensation insurance paid medical expenses for only 6 percent of the injured workers in our sample.

When workers are exempt from workplace laws:

- Some workers are either partially or completely exempt from employment and labor laws—either because of archaic exemptions of specific industries and occupations, or because they are considered to be independent contractors.
- We surveyed one group of workers that is often considered exempt from coverage: "in-home" child care workers who provide care in their own homes. When we analyzed their working conditions (separately from the rest of the sample), we found that 89 percent earned less than the minimum wage. This finding underscores the need to ensure that all workers who are in an employment relationship receive full legal protection.

Finding 2: Job and Employer Characteristics Are Key to Understanding Workplace Violations

Workplace violations are ultimately the result of decisions made by employers—whether to pay the minimum wage or overtime, whether to give workers meal breaks, and how to respond to complaints about working conditions. We found that workplace violations are profoundly shaped by job and employer characteristics.

- Violation rates varied significantly by industry. For example, minimum wage violation rates were most common in apparel and textile manufacturing, personal and repair services, and in private households (all of which had violation rates in excess of 40 percent). Violation rates were substantially lower in residential construction, social assistance

and education, and home health care (at 12 to 13 percent). Industries such as restaurants, retail and grocery stores, and warehousing fell into the middle of the range, with about 20 to 25 percent of their workers experiencing a minimum wage violation.

- Violation rates also varied significantly by occupation. For example, childcare workers had very high minimum wage (66 percent) and overtime (90 percent) violation rates. More representative were occupations such as cashiers, who had a minimum wage violation rate of 21 percent and an overtime violation rate of 59 percent.
- Workers who were paid a flat weekly rate or paid in cash had much higher violation rates than those paid a standard hourly rate or by company check.
- Workers at businesses with less than 100 employees were at greater risk of experiencing violations than those at larger businesses. But workers in big companies were not immune: nearly one in six had a minimum wage violation in the previous week, and of those who worked overtime, 53 percent were not paid time and a half.
- Not all employers violate the law. We found a range of workplace practices—offering health insurance, providing paid vacation and sick days, and giving raises—that were associated with lower violation rates. This suggests that employers' decisions about whether or not to comply with the law are part of a broader business strategy shaping the workplace.

Finding 3: All Workers Are at Risk of Workplace Violations

Workplace violations are not limited to immigrant workers or other vulnerable groups in the labor force— everyone is at risk, although to different degrees.

- Women were significantly more likely than men to experience minimum wage violations, and foreign-born workers were nearly twice as likely as

their U.S.-born counterparts to have a minimum wage violation.
- The higher minimum wage violation rate for foreign-born respondents was concentrated among women—especially women who are unauthorized immigrants.
- Foreign-born Latino workers had the highest minimum wage violation rates of any racial/ethnic group. But among U.S.-born workers, there were significant race differences: African-American workers had a violation rate triple that of their white counterparts (who had by far the lowest violation rates in the sample).
- Higher levels of education, longer job tenure, and English proficiency (for immigrants) each offered some protection from minimum wage violations. But even college-educated workers and those who had been with their employers for five or more years were still at significant risk.
- Overtime, off-the-clock and meal break violations generally varied little by worker characteristics. On the whole, job and employer characteristics were more powerful predictors of the workplace violations considered in this study.

Weekly Wage Theft in America's Cities

Wage theft not only depresses the already meager earnings of low-wage workers, but also adversely impacts their communities and the local economies of which they are a part.

- *Workers*: More than two-thirds (68 percent) of our sample experienced at least one pay-related violation in the previous work week. The average worker lost $51, out of average weekly earnings of $339. Assuming a full-time, full-year work schedule, we estimate that these workers lost an average of $2,634 annually due to workplace violations, out of total earnings of $17,616. That translates into wage theft of 15 percent of earnings.

- *Communities*: We estimate that in a given week, approximately 1,114,074 workers in the three cities combined have at least one pay-based violation. Extrapolating from this figure, front-line workers in low-wage industries in Chicago, Los Angeles and New York City lose more than $56.4 million per week as a result of employment and labor law violations.

Fulfilling the Promise of Worker Protections in America

Everyone has a stake in addressing the problem of workplace violations. When impacted workers and their families struggle in poverty and constant economic insecurity, the strength and resiliency of local communities suffer. When unscrupulous employers violate the law, responsible employers are forced into unfair competition, setting off a race to the bottom that threatens to bring down standards throughout the labor market. And when significant numbers of workers are underpaid, tax revenues are lost.

Three principles should drive the development of a new policy agenda to protect the rights of workers.

- **Strengthen government enforcement of employment and labor laws:** Public policy should leverage the resources and power that reside in agencies responsible for enforcing worker protections. This will require additional staffing, but more important, new strategies are needed to address the reality that workplace violations are becoming standard practice in many low-wage industries.
- **Update legal standards for the 21st century labor market:** Weak employment and labor laws open the door to low-road business strategies focused on illegally cutting labor costs. Raising the minimum wage, updating health and safety standards, ending exclusions that deny workers coverage, and strengthening the right of workers to

organize through labor law reform—all are key improvements that would raise compliance in the workplace and improve the competitive position of employers who play by the rules.

- **Establish equal status for immigrants in the workplace:** The best inoculation against workplace violations is ensuring that workers know their rights, have full status under the law to assert them, have access to sufficient legal resources, and do not fear retaliation. But for unauthorized immigrant workers today, this can be a near impossibility. Any policy initiative to reduce workplace violations must prioritize equal protection and equal status in national immigration reform, and ensure status-blind enforcement of employment and labor laws.

* In this summary we are not able to elaborate the complexity of employment and labor laws; see the main report for details on federal and state legal standards and coverage.