

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 544

Short Title: Nondiscrimination in State Employment. (Public)

Sponsors: Senators Stein (Primary Sponsor); and Woodard.

Referred to: Rules and Operations of the Senate.

April 1, 2013

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE NONDISCRIMINATION AND EQUAL OPPORTUNITY
3 PROVISIONS OF THE STATE PERSONNEL ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 126-16 reads as rewritten:

6 "**§ 126-16. Equal opportunity for employment and compensation by State departments
7 and agencies and local political subdivisions.**

8 All State departments and agencies and all local political subdivisions of North Carolina
9 shall give equal opportunity for employment and compensation, without regard to race,
10 religion, color, creed, national origin, sex, age, sexual orientation, gender identity, or
11 handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except
12 where specific age, sex or physical requirements constitute bona fide occupational
13 qualifications necessary to proper and efficient administration. This section with respect to
14 equal opportunity as to age shall be limited to individuals who are at least 40 years of age."

15 **SECTION 2.** G.S. 126-34.1 reads as rewritten:

16 "**§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

17 (a) A State employee or former State employee may file in the Office of Administrative
18 Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to
19 the following personnel actions or issues:

20 (1) Dismissal, demotion, or suspension without pay based upon an alleged
21 violation of G.S. 126-35, if the employee is a career State employee.

22 (2) An alleged unlawful State employment practice constituting discrimination,
23 as proscribed by G.S. 126-36, including:

24 a. Denial of promotion, transfer, or training, on account of the
25 employee's age, sex, race, color, national origin, religion, creed,
26 political affiliation, sexual orientation, gender identity, or
27 handicapping condition as defined by Chapter 168A of the General
28 Statutes.

29 b. Demotion, reduction in force, or termination of an employee in
30 retaliation for the employee's opposition to alleged discrimination on
31 account of the employee's age, sex, race, color, national origin,
32 religion, creed, political affiliation, sexual orientation, gender
33 identity, or handicapping condition as defined by Chapter 168A of
34 the General Statutes.

35 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for protesting
36 an alleged violation of G.S. 126-16.



- 1 (4) Denial of the veteran's preference granted in accordance with Article 13 of
2 this Chapter in initial State employment or in connection with a reduction in
3 force, for an eligible veteran as defined by G.S. 126-81.
- 4 (5) Denial of promotion for failure to post or failure to give priority
5 consideration for promotion or reemployment, to a career State employee as
6 required by G.S. 126-7.1 and G.S. 126-36.2.
- 7 (6) Denial of an employee's request for removal of allegedly inaccurate or
8 misleading information from the employee's personnel file as provided by
9 G.S. 126-25.
- 10 (7) Any retaliatory personnel action that violates G.S. 126-85.
- 11 (8) Denial of promotion in violation of G.S. 126-14.2, where an initial
12 determination found probable cause to believe there has been a violation of
13 G.S. 126-14.2.
- 14 (9) Denial of employment in violation of G.S. 126-14.2, where an initial
15 determination found probable cause to believe that there has been a violation
16 of G.S. 126-14.2.
- 17 (10) Harassment in the workplace based upon age, sex, race, color, national
18 origin, religion, creed, sexual orientation, gender identity, or handicapping
19 condition, whether the harassment is based upon the creation of a hostile
20 work environment or upon a quid pro quo.
- 21 (11) Violation of any of the following federal statutes as applied to the employee:
22 a. The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.
23 b. The Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.
24 c. The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.
25 d. The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
- 26 (b) An applicant for initial State employment may file in the Office of Administrative
27 Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:
28 (1) Alleged denial of employment in violation of G.S. 126-16.
29 (2) Denial of the applicant's request for removal of allegedly inaccurate or
30 misleading information from the personnel file as provided by G.S. 126-25.
31 (3) Denial of equal opportunity for employment and compensation on account
32 of the employee's age, sex, race, color, national origin, religion, creed,
33 political affiliation, or handicapping condition as defined by Chapter 168A
34 of the General Statutes. This subsection with respect to equal opportunity as
35 to age shall be limited to persons who are at least 40 years of age. An
36 applicant may not, however, file a contested case where political affiliation
37 was the reason for the person's nonselection for (i) an exempt policymaking
38 position as defined in G.S. 126-5(b)(3), (ii) a chief deputy or chief
39 administrative assistant position under G.S. 126-5(c)(4), or (iii) a
40 confidential assistant or confidential secretary position under
41 G.S. 126-5(c)(2).
- 42 (4) Denial of the veteran's preference in initial State employment provided by
43 Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.
- 44 (5) Denial of employment in violation of G.S. 126-14.2, where an initial
45 determination found probable cause to believe that there has been a violation
46 of G.S. 126-14.2.
- 47 (c) In the case of a dispute as to whether a State employee's position is properly
48 exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office
49 of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General
50 Statutes.

1 (d) A State employee or applicant for State employment may file in the Office of
2 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General
3 Statutes based upon a false accusation regarding, or disciplinary action relating to, the
4 employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

5 (e) Any issue for which appeal to the Office of Administrative Hearings through the
6 filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been
7 specifically authorized by this section shall not be grounds for a contested case under Chapter
8 126."

9 **SECTION 3.** G.S. 126-36 reads as rewritten:

10 "**§ 126-36. Appeal of unlawful State employment practice.**

11 (a) Any State employee or former State employee who has reason to believe that
12 employment, promotion, training, or transfer was denied the employee or that demotion, layoff,
13 transfer, or termination of employment was forced upon the employee in retaliation for
14 opposition to alleged discrimination or because of the employee's age, sex, race, color, national
15 origin, religion, creed, political affiliation, sexual orientation, gender identity, or handicapping
16 condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements
17 constitute a bona fide occupational qualification necessary to proper and efficient
18 administration, shall have the right to appeal directly to the Office of Administrative Hearings.

19 (b) Subject to the requirements of G.S. 126-34, any State employee or former State
20 employee who has reason to believe that the employee has been subjected to any of the
21 following shall have the right to appeal directly to the Office of Administrative Hearings:

22 (1) Harassment in the workplace based upon age, sex, race, color, national
23 origin, religion, creed, sexual orientation, gender identity, or handicapping
24 condition, whether the harassment is based upon the creation of a hostile
25 work environment or upon a quid pro quo.

26 (2) Retaliation for opposition to harassment in the workplace based upon age,
27 sex, race, color, national origin, religion, creed, sexual orientation, gender
28 identity, or handicapping condition, whether the harassment is based upon
29 the creation of a hostile work environment or upon a quid pro quo."

30 **SECTION 4.** Nothing in this act shall be construed as requiring the State or any
31 employer, employment agency, or labor organization to give preferential treatment or special
32 rights based on sexual orientation or gender identity or to implement special affirmative action
33 policies or programs based on sexual orientation or gender identity.

34 **SECTION 5.** This act becomes effective October 1, 2013, and applies to actions
35 occurring on or after that date.