Help! I’m an Accidental Government Information Librarian

Brought to you by the North Carolina Library Association’s Government Resources Section.

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Upcoming Accidental Librarian Webinars

• June 15: Congressional procedures with Morgan Stoddard
• July: data.gov and APIs with Julia Frankosky
• August 8: Congressional research redux with Rosalind Tedford
• September: National Science Foundation resources with Nina Exner

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Legal Research Basics Redux

Presented by Jennifer L. Behrens, Head of Reference Services, Duke University, Goodson Law Library

NCLA “Help! I’m an Accidental Government Information Librarian” Webinar # 58 / May 17, 2016
Legal Research Basics Redux

• Introduction: Legal Reference & Legal Referrals
• U.S. Legal Research: Overview & Key Sources
  • Legislative materials
  • Executive materials
  • Judicial materials
• Finding “The Law”
  • Getting started with secondary sources
  • Courtney’s case: A sample search process
  • “Good law”: Updating your findings
Legal Reference ≠ Legal Advice!

• Manage expectations with library users about the limits to your assistance.
• Have a list of area legal referral services handy, or bookmarked.

Policy on Legal Reference and Legal Advice:

Reference librarians help you use the library and its collections, but they cannot do legal research for you. Librarians locate information, identify relevant resources, develop search strategies for catalogs, databases, the web and indexes and provide assistance in legal research methodology. The reference staff cannot provide substantive advice on a legal problem, interpret legal materials for you, or explain how the law applies to your particular case.

Legal Referral Services

- **Legal Aid** (income requirements, but free if users qualify)

- American Bar Association’s [FindLegalHelp.org](http://FindLegalHelp.org) map (not a free service, but many state bar associations offer low-cost initial consultations)

- **Law school** clinics or pro bono offices (generally referred through **Legal Aid**)

- **Law school** or local law libraries: same limitations on legal advice, but may have more specialized resources to get a self-represented litigant started.
U.S. Legal Research:

Primary Sources of Law
Sources of Law (federal system): image via Kids.gov

- **State systems** are similar to the federal; some variations in organization and/or nomenclature.
- In both state and federal legal systems, *each* of the three government branches create **primary law** (official government pronouncements which have the force of law).
How a Bill Becomes a Law

• If you’ve forgotten, watch *Schoolhouse Rock!*
• For information on researching the *legislative history* documents created along the way, check out library guides like our [Federal Legislative History](#) or...

• Past NCLA “Help!” webinars:
  • [Tracking Legislation](#) (2014)
  • [Lights-Camera-Action! Congressional Committee Hearings](#) (2014)
  • [Secrets of the *Congressional Record*](#) (2013)
  • [Climbing Capitol Hill: Congressional Research Basics](#) (2013)
  • [NC Legislative History](#) (2011)
<table>
<thead>
<tr>
<th>Statute Publications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Session Laws</strong></td>
</tr>
<tr>
<td><strong>Chronological</strong></td>
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<tr>
<td>compilation of</td>
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<tr>
<td>enactments by that</td>
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<tr>
<td>year’s legislature.</td>
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<td></td>
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<tr>
<td>Good for <strong>historical</strong></td>
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<tr>
<td><strong>research purposes</strong></td>
</tr>
<tr>
<td>or for finding very</td>
</tr>
<tr>
<td><strong>recent laws.</strong></td>
</tr>
</tbody>
</table>
## Which publication do I use?

<table>
<thead>
<tr>
<th>If you want to know...</th>
<th>Then you need to consult...</th>
</tr>
</thead>
<tbody>
<tr>
<td>What the Civil Rights Act looked like as it was originally passed by Congress in 1964.</td>
<td>The session law version from <em>U.S. Statutes at Large</em> (frozen in time, does not reflect any later amendments).</td>
</tr>
<tr>
<td>The current equal employment statute, outlining which classes of people are protected under federal anti-discrimination law.</td>
<td>The latest edition of the <em>United States Code</em> (current laws in force, includes later amendments).</td>
</tr>
<tr>
<td>What protected employment classes are found under North Carolina state law.</td>
<td>The latest edition of the <em>state code, North Carolina General Statutes</em> (current laws in force, includes later amendments).</td>
</tr>
</tbody>
</table>
Tools for finding statutes

• Online versions are **keyword-searchable**.

• **Subject indexes** will point you to code sections on a particular topic.

• **Popular Name Tables** give you citation information based on the “short title” of the legislation (e.g., Civil Rights Act of 1964).

• **50-state surveys**: secondary source compiling citations to each state’s laws on a particular topic.
## Selected sources for federal statutes

<table>
<thead>
<tr>
<th>Session Laws</th>
<th>U.S. Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>• <strong>Public &amp; Private Laws, FDsys</strong> (1995 – present)</td>
<td>• <strong>U.S. Code, Office of Law Revision Counsel</strong> (current code only)</td>
</tr>
<tr>
<td>• <strong>U.S. Statutes at Large, FDsys</strong> (1951 – present)</td>
<td>• <strong>U.S. Code Service (annotated), LexisNexis Academic</strong> $ (current code only)</td>
</tr>
<tr>
<td>• <strong>U.S. Statutes at Large, Law Library of Congress</strong> (1789-1950)</td>
<td>• <strong>U.S. Code PDFs, FDsys</strong> (1994 ed. – present)</td>
</tr>
<tr>
<td>• <strong>U.S. Statutes at Large Library, HeinOnline</strong> $ (1789 – present)</td>
<td>• <strong>U.S. Code PDFs, Library of Congress/Hein</strong> (1925 – 1988 ed.)</td>
</tr>
<tr>
<td></td>
<td>• <strong>U.S. Code library, HeinOnline</strong> $ (1925 – present)</td>
</tr>
</tbody>
</table>
The Popular Name Tool enables you to search or browse the United States Code Table of Acts Cited by Popular Name. For printing purposes, the PDF file is recommended. A detailed explanation of the Table is located here.

- **Pub. L. No. link**: table illustrating where individual sections of the session law can be found in the current U.S. Code
- **Stat. link**: scan of the original Public Law from U.S. Statutes at Large
- **U.S.C. link**: text of that section of the current U.S. Code
78 Stat. 240 - An Act to further amend the Reorganization Act of 1949, as amended, so that such act will apply....


78 Stat. 241 - An Act to enforce the constitutional right to vote, to confer jurisdiction upon the district....


78 Stat. 268 - An Act to amend the Federal Credit Union Act to allow Federal credit unions greater flexibility....

PUBLIC LAW 88-352—JULY 2, 1964

Public Law 88-352

AN ACT

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Civil Rights Act of 1964”.

TITLE I—VOTING RIGHTS

Sec. 101. Section 2004 of the Revised Statutes (42 U.S.C. 1973c), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and as further amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), is further amended as follows:

(a) Insert “1” after “(a)” in subsection (a) and add at the end of subsection (a) the following new paragraphs:

“(2) No person acting under color of law shall—

“(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any
Federal financial assistance is to provide employment.

Sec. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

Sec. 701. For the purposes of this title—
(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: Provided, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hun-
ment of individuals to perform work connected with the educational activities of such institution.

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

Sec. 703. (a) It shall be an unlawful employment practice for an employer

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—
<table>
<thead>
<tr>
<th>Act</th>
<th>Date</th>
<th>Pub. L.</th>
<th>Stat.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Rights Act of 1866</td>
<td>Apr. 9, 1866, ch. 31, 14 Stat. 27</td>
<td></td>
<td></td>
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<tr>
<td>Civil Rights Act of 1957</td>
<td>Sept. 9, 1957, 71 Stat. 634</td>
<td></td>
<td></td>
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<tr>
<td>Civil Rights Act of 1950</td>
<td>May 6, 1960, 74 Stat. 86</td>
<td></td>
<td></td>
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<tr>
<td>Civil Rights Act of 1968</td>
<td>Apr. 11, 1968, 82 Stat. 73</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Pub. L. No. link: table illustrating where individual sections of the session law can be found in the current U.S. Code*
§2000e–2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any...

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28.


REFERENCES IN TEXT

The Subversive Activities Control Act of 1950, referred to in subsec. (f), is title I (§§1–32) of act Sept. 23, 1950, ch. 1024, 64 Stat. 987, which is classified principally to subchapter I (§781 et seq.) of chapter 23 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The Controlled Substances Act, referred to in subsec. (k)(3), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.


## Selected sources for state statutes

<table>
<thead>
<tr>
<th>Session laws</th>
<th>Codes</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Access through <a href="#">state legislature website</a> (links via <a href="#">Cornell LII</a>) (<a href="#">NC: back to 1959</a>)</td>
<td>• Access through state legislature website (<a href="#">NC General Statutes</a>)</td>
</tr>
<tr>
<td>• <a href="#">Session Laws library, HeinOnline</a> ($) (18th century – present)</td>
<td>• <a href="#">State Statutes, Codes &amp; Regulations, LexisNexis Academic</a> ($) (current codes only)</td>
</tr>
<tr>
<td></td>
<td>• <a href="#">State Statutes: A Historical Archive library, HeinOnline</a> ($) (various dates)</td>
</tr>
</tbody>
</table>
Sidebar: Local ordinances

• County, city and/or town ordinances regulate local issues such as noise and animal control.

• Codes of ordinances are often posted for free on local government websites, or via:
  • Municode Library
  • eCode 360
The Executive Branch

Rules/Regulations
The rulemaking process

Delegation

- Legislature assigns ("delegates") its rulemaking power to executive branch agency or department.
- Usually highly technical or specialized area.

Promulgation

- Executive agency now has power to make ("promulgate") rules/regulations within the scope of the legislature’s grant of power.
- Once promulgated, regulations have the same force of law as if the legislature had passed it directly.
“Notice & comment” rulemaking

Proposed rule is announced and published in administrative register.

Period for public comments to the regulating body.

Finalized rule is re-published in administrative register with summary of public comments.

Current rules in force are codified in an administrative code.
# Administrative registers/codes

<table>
<thead>
<tr>
<th>Federal Register</th>
<th>Code of Federal Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• FederalRegister.gov (1994 – present)</td>
<td>• e-CFR, GPO (unofficial, but kept the most up-to-date)</td>
</tr>
<tr>
<td>• FDsys (1994 – present)</td>
<td>• FDsys (1996 – present)</td>
</tr>
<tr>
<td>• Federal Register PDFs, Library of Congress/Hein (1936 – present)</td>
<td>• C.F.R. PDFs, Library of Congress/Hein (1938 – present)</td>
</tr>
<tr>
<td>• LexisNexis Academic $ (1936 – present)</td>
<td>• LexisNexis Academic $ (current ed.)</td>
</tr>
</tbody>
</table>

State administrative registers & codes:
State Law Listings, Cornell Legal Information Institute
gion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sec. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President.

RULES AND REGULATIONS

Sec. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of any unlawful employment practice within the jurisdiction thereof;
§2000e–12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of title 5.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

§1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of section 703 of title VII.¹ Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

¹The principles involved here continue to apply to race, color, religion or national origin.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.


Proposed rules & requests for public comment are found in the Federal Register (FR).
Final Rule – FR (again). Includes summary of comments received and agency explanations.

For modern rules, you can read all electronically submitted comments on Regulations.gov.
Regulations summary

• Researchers must always check for **applicable executive branch regulations**.
• They are **legally binding** and can provide additional details not contained in the relevant statutes.
• Begin regulatory research with the **current administrative code** for your jurisdiction.
Sidebar: Other executive materials

• Administrative agencies often issue many other types of documents: *memoranda, reports, press releases, etc.*

• Some agencies also hear disputes and issue *administrative decisions*, very much like a judicial branch court.

• These materials are often available through the agency website ([USA.gov list](http://USA.gov list)).
The Judicial Branch

Court opinions/orders
Precedent

• Courts interpret the meaning of statutes, regulations, and prior case law, as they apply to a particular situation.

• Their rulings create precedent (or “mandatory authority”) which the relevant jurisdiction is bound to follow in future, similar situations.
The life of a lawsuit

Most case law that researchers will find comes from appellate courts, although they comprise a much smaller fraction of the court systems’ case load.

For more about locating trial court materials, check out my NCLA webinar, Order in the Court Records (2015).
<table>
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<tbody>
<tr>
<td><strong>U.S. Supreme Court</strong> – binds lower federal courts on matters of federal law, as well as state courts on federal constitutional issues</td>
<td><strong>Court of last resort</strong> – final word on matters of purely state law &amp; the state constitution</td>
</tr>
<tr>
<td><strong>U.S. Circuit Courts of Appeal</strong> – bind lower federal district courts within that appellate circuit. Different circuits may disagree (&quot;circuit split&quot;).</td>
<td><strong>Intermediate appellate court</strong> – binds lower trial-level courts.</td>
</tr>
<tr>
<td><strong>U.S. District Courts</strong> – No binding precedential value in federal system. Most decisions at this level are not formally “published”/reported.</td>
<td><strong>Trial courts</strong> – generally have no precedential value; usually not even officially “published”/reported.</td>
</tr>
</tbody>
</table>
Sources for case law

- **LexisNexis Academic**: $, Federal & State Cases section
- **Google Scholar**: free access to federal & state cases [coverage]
- **Ravel**: free access to federal cases & growing historical state case collection [coverage begins in 1925]
- **FindLaw Cases & Codes**: includes case law databases. [coverage varies by database]
Finding “the Law”
Courtney’s case: A sample search

• Courtney is a library patron who has recently been terminated from her employment; she believes her firing was illegal discrimination.
• She’s very emotional, and wants to tell you every detail of what her employer did and said.
• She refuses attorney referral info as “too expensive.”
• She wants to “just read the laws so I can figure out what to do.”
<table>
<thead>
<tr>
<th>Primary legal sources</th>
<th>Secondary legal sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official government pronouncements which <strong>have the force of law</strong>.</td>
<td>Materials which <strong>analyze or explain the law</strong>, but do not have the force of law.</td>
</tr>
</tbody>
</table>

**Examples:**

- **Statutes** (legislative)
- **Regulations** (executive)
- **Court opinions** (judicial)
- Legal **self-help** publications
- Legal **encyclopedias**
- Journal & law review **articles**
- [CALI.org law school website]
- [custom search engine]
Legal Self-Help Works (e.g., Nolo Press)

- Accessible, conversational tone (written specifically for non-lawyers).
- Good general background & overview of legal issues related to a particular topic, but only a starting point.
- For more detail and references to primary/secondary sources, try a legal encyclopedia.
Legal Encyclopedia

• Provide **helpful summaries** of the law, with case law & secondary source references for further reading.

• Two attempt to cover the **“general” law** across all U.S. states.
  - **American Jurisprudence 2d** ("AmJur"): on LexisNexis Academic $ or Westlaw Patron Access $
  - **Corpus Juris Secundum** ("C.J.S."): on Westlaw Patron Access $

• **State encyclopedias** give more specific information for a jurisdiction (e.g., *Strong’s North Carolina Index*)
§ 82. Examples of public policy exception

West's Key Number Digest

West's Key Number Digest, Labor and Employment 759, 761, 771, 772, 782, 819

National Background:

As to public policy exception to employment-at-will rule, generally, see Am. Jur. 2d, Wrongful Discharge §§ 52 to 63.

Cases:

Public policy is violated, for purposes of a claim for wrongful discharge, when an at-will employee is fired in contravention of express policy declarations contained in the North Carolina General Statutes; however, something more than a mere statutory violation is required to sustain a claim of wrongful discharge under the public-policy exception as a degree of intent or willfulness on the part of the employer is required. ¹

There is no specific list of what employment actions constitute a violation of public policy. ²

To prevail on a claim for unlawful termination in violation of public policy, a plaintiff must identify a specified North Carolina public policy that was violated by an employer in discharging the employee. ³ It is not sufficient to simply point to public policy that may be implicated in issues that an employee has raised in a wrongful termination action; the employee must show that the public policy of North Carolina was contravened when defendant terminated the plaintiff from at-will employment. ⁴

A plaintiff may state a claim for wrongful discharge in violation of public policy by alleging that the dismissal resulted...
Journal & law review articles

• LexisNexis Academic ($) includes a section of “U.S. Law Reviews & Journals.”

• Google Scholar also provides some legal journal articles.

• The ABA’s Legal Technology Resource Center offers a free custom search engine of open-access law journal articles.
Secondary sources summary

• Despite the name, secondary sources should be a legal researcher’s first stop.
  • Context & background
  • Search keywords
  • Time-saving footnotes to specific primary sources

• Potential limitations: currency, jurisdiction, intended audience.
North Carolina General Statutes

NOTE: The Statutes on the North Carolina General Assembly website reflect changes made in the 2015 Session. The changes from all Sessions are listed in the NC Statutes and Session Laws affected by ratified bills documents.

The General Statutes published on this website are not official. Please read the caveats for more information.

Full-Text Search?: enter search criteria Search

Look-Up by Citation: enter chapter # Search

Chapter 1 Civil Procedure.
Chapter 1A Rules of Civil Procedure.
Chapter 1B Contribution.
Chapter 1C Enforcement of Judgments.
Chapter 1D Punitive Damages.
Chapter 1E Eastern Band of Cherokee Indians.
Chapter 1F North Carolina Uniform Interstate Depositions and Discovery Act.
Chapter 2 Clerk of Superior Court [Repealed and Transferred.]
§ 143-422.2. Legislative declaration.

It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general. (1977, c. 726, s. 1.)
§ 143-422.2. Legislative declaration

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, biological sex or handicap by employers which regularly employ 15 or more employees.

(b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

(c) The General Assembly declares that the regulation of discriminatory practices in employment is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to the regulation of discriminatory practices in employment, except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law.

HISTORY: 1977, c. 726, s. 1; 2016-3, 2nd Ex. Sess., s. 3.1.
PRIVATE RIGHT OF ACTION -- In an action in which an employee filed suit against her employer alleging claims of race discrimination and retaliation in violation of North Carolina’s Equal Employment Practices Act (NCEEA), G.S. 143-422.1 et seq., the court found that because the NCEPA did not provide a private right of action, the employee could not maintain a claim under it. Addison v. Wal-Mart Stores, 2003 U.S. Dist. LEXIS 10778 (M.D.N.C. June 23, 2003).


In an action in which former employees filed suit against their former employer pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., and the North Carolina Equal Employment Practices Act (NCEPA), G.S. 143-422.1 et seq., the employer was granted summary judgment on the employees' NCEPA claims; North Carolina courts and federal courts applying North Carolina law have found repeatedly that no private cause of action exists for retaliation, hostile work environment, disparate treatment, or constructive discharge in violation of public policy. Swann v. Roadway Express, Inc., 2004 U.S. Dist. LEXIS 9448 (M.D.N.C. May 14, 2004).


Employee's retaliation claim under North Carolina's Equal Employment Practices Act (NCEPA), G.S. 143-422.2, encountered a fatal flaw because the NCEPA did not create a private right of action. It was only applicable to common law wrongful discharge claims or in connection with other specific statutory remedies. In addition, even
Full-text case law searches

Google Scholar

wrongful discharge public policy 143-422.2

Articles (include patents)  Case law

Federal courts  North Carolina courts  Select courts...

Stand on the shoulders of giants
**Coman v. Thomas Mfg. Co., Inc.**
381 SE 2d 445, 325 NC 172 - NC: Supreme Court, 1989 - Google Scholar
... Plaintiff seeks to recover damages from defendant for **wrongfully** terminating his at-will employment. **wrongful discharge**
... a cause of action for **wrongful discharge** for refusing to commit an **unlawful** act. **unlawful discharge**
The Court of Appeals ruled that Sidos had stated a claim for **wrongful discharge** under theories of...

**North Carolina Dept. of Correction v. Gibson**
... DOC filed documentary exhibits which showed that at the time of plaintiff's **discharge** over 40% of the... There was no evidence presented to show that plaintiff was involved in or **discharged** for his... that the order was affected by error of law and made upon **unlawful** procedure, and...

**Amos v. Oakdale Knitting Co.**
416 SE 2d 166, 331 NC 348 - NC: Supreme Court, 1992 - Google Scholar
... reason, there can be no right to terminate such a contract for an **unlawful** reason or... by enacting the Wage and Hour Act, did not intend to preclude **wrongful discharge** actions based on... the Court is whether Coman recognized a separate and distinct claim for bad faith **discharge**...

**Whitt v. Harris Teeter, Inc.**
598 SE 2d 151, 165 NC App. 32 - NC: Court of Appeals, 2004 - Google Scholar
... 588, 440 SE2d 119, 125 (stating that, "[a]ssuming that plaintiff was **wrongfully** constructively **discharged**... there can be no right to terminate such a contract for an **unlawful** reason or... 160 in Coman, is a claim in tort for a hostile work environment constructive **wrongful discharge**...
Court of Appeals 2004

314 N.C. 331, 333 S.E.2d 490 (1985), overruled in part on other grounds, National v. Applied Analytical Industries, Inc., 347 N.C. 329, 493 S.E.2d 420 (1997). To state a claim for wrongful discharge in violation of public policy, an employee has the burden of pleading that his "dismissal occurred for a reason that violates public policy." Condeline v. Compass Grp. USA, Inc., 145 N.C.App. 314, 317, 551 S.E.2d 179, 181, affirmed per curiam, 354 N.C. 568, 557 S.E.2d 528 (2001). "Public policy has been defined as the principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good." Coman, 325 N.C. at 175 n.2, 381 S.E.2d at 447 n.2. Although this definition of public policy "does not include a laundry list of what is or is not 'injurious to the public or against the public good,' at the very least public policy is violated when an employee is fired in contravention of express policy declarations contained in the North Carolina General Statutes," Amos v. Oakdale Knitting Co., 331 N.C. 348, 353, 416 S.E.2d 166, 169 (1992) (footnote omitted).

There is no question that "the right to be free of sexual harassment in the workplace ... is implicated in our State declaration of public policy." Guthrie v. Conroy, 152 N.C.App. 15, 19-20, 567 S.E.2d 403, 407 (2002); see also N.C. Gen.Stat. § 143-422.2 (2003) (declaring that "[i]t is the public policy of this State to protect ... the right ... of all persons to seek, obtain and hold employment without discrimination or abridgement on account of ... sex"); Russell v. Buchanen, 129 N.C.App. 519, 500 S.E.2d 728 (employee suit alleging wrongful discharge in violation of Title VII and North Carolina public policy, disc. review denied, 348 N.C. 501, 510 S.E.2d 655 (1998). Our Supreme Court has ruled that the "ultimate purpose of ... G.S. 143-422.2 and Title VII (42 U.S.C. 2000e, et seq.) is the same," and thus the statute is co-extensive with the federal statute, evaluated under the same standards of evidence and principles of law. Dept. of Correction v. Gibson, 308 N.C. 131, 141, 301 S.E.2d 78, 85 (1983). Title VII prohibits sexual harassment in the workplace. See 42 U.S.C. § 2000e-2(a)(1) (providing that "it shall be an
Updating Your Findings

• The law is **constantly changing**!
  • Statutes can be **amended**.
  • Regulations can be **revised**.
  • Case law can be **overruled**.
• Print materials become outdated quickly.
• “**Citator tools**” help bring your research up to date.
Google Scholar citation tracking

• **Google Scholar**’s legal documents search includes a “cited by”/How Cited feature for case law and secondary sources.

• Can lead to materials which indicate **subsequent treatment**, but puts more burden on the reader to make distinctions about meaning.
Therefore, "[a] discharge based on sexual harassment [] offends the public policy of [North Carolina] and may properly support a wrongful discharge claim in violation of public policy." 
- in Lingle v. THE PAIN RELIEF CENTERS, PA, 2013 and 9 similar citations

---noting that North Carolina courts have yet to adopt a hostile work environment constructive discharge claim
- in Johnson v. North Carolina, 2012 and 3 similar citations

---the ability of North Carolina courts to recognize the doctrine, and the adoption of the Fourth Circuit's constructive discharge elements by the North Carolina Court of Appeals.
- in Whitt v. Harris Teeter, Inc.: Take This Doctrine and Shove It.Recognizing ... and 2 similar citations

The plaintiff, Wendy Whitt, worked as a cashier at a Harris Teeter grocery store in Kernersville, North Carolina
- in Whitt v. Harris Teeter, Inc.: Take This Doctrine and Shove It.Recognizing ... and one similar citation

---the court focused on the fact that the employer did nothing about the sexual harassment and that the sexual harassment itself ultimately made the plaintiff's working conditions so unbearable that she resigned, or was constructively discharged.
- in Efird v. Riley, 2004 and 2 similar citations

... alternative grounds for disallowing the plaintiffs wrongful discharge claim based on constructive discharge:(1) that Coman had been read too broadly and that North Carolina does not recognize a claim for wrongful discharge in violation of public policy, based on hostile work environment or retaliation, where the termination is a constructive termination; and (2) that even ... 
- in Baldwin v. TRADSMEN INTERNATIONAL, INC., 2013 and one similar citation

Looking to the dissenting opinion filed by the North Carolina Court of Appeals' majority opinion in Whitt, it is clear that the dissent was based on two reasons that 1) North Carolina does not recognize
Shepard’s Citations

- **LexisNexis Academic** contains a mini-version of the LexisNexis citator service, *Shepard’s Citations*.
- It allows for “Shepardizing” of case law and selected secondary sources (see “Citation Formats” for list).
- It does *not* locate citing references to *statutes*, court rules, or regulations.
WENDY WHITT, Plaintiff, v. HARRIS TEETER, INC., and RANDY SHULTZ, Defendants

NO. COA03-335

COURT OF APPEALS OF NORTH CAROLINA

165 N.C. App. 32; 598 S.E.2d 151; 2004 N.C. App. LEXIS 1160; 94 Fair Empl. Prac. Cas. (BNA) 342

January 13, 2004, Heard in the Court of Appeals

**OPINION**

[*532] Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 165 N.C. App. 32, 598 S.E.2d 151 (2004), reversing a judgment entered upon a directed verdict on 2 April 2002 by Judge Sanford L. Steelman, Jr. in Superior Court, Forsyth County. Heard in the Supreme Court 18 May 2005.

PER CURIAM.

For the reasons stated in the dissenting opinion, the decision of the Court of Appeals is reversed.

REVERSED. [**2]
What does this mean?

• The N.C. Supreme Court agreed with the dissenting Court of Appeals judge, and adopted his reasoning for future situations like this case. The majority opinion in the Court of Appeals was reversed.

• But Whitt v. Harris Teeter dealt with a constructive discharge (i.e., employee resigned due to alleged hostile working conditions).

• Situation of an actual termination by employer would be distinguishable. New line of research to pursue!
North Carolina General Statutes

NOTE: The Statutes on the North Carolina General Assembly website reflect changes made in the 2015 Session. The changes from all Sessions are listed in the NC Statutes and Session Laws affected by ratified bills documents.

The General Statutes published on this website are not official. Please read the caveats for more information.

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Chapter 1  Civil Procedure.
Chapter 1A  Rules of Civil Procedure.
Chapter 1B  Contribution.
Chapter 1C  Enforcement of Judgments.
Chapter 1D  Punitive Damages.
Chapter 1E  Eastern Band of Cherokee Indians.
Chapter 1F  North Carolina Uniform Interstate Depositions and Discovery Act.
Chapter 2  Clerk of Superior Court [Repealed and Transferred.]
House Bill 2 / S.L. 2016-3

Public Facilities Privacy & Security Act.
2016 Second Extra Session

Last Action: Ch. SL 2016-3 on 03/23/2016

Sponsors:
Bishop; Stam; Howard; Steinburg; (Primary)
Adams; Arp; Avila; Bradford; Brody; Burr; Cleveland; Dixon; Elmore;
Hager; K. Hall; Hastings; Hurley; Jones; Jordan; Langdon; S. Martin;
McElrath; McNeill; Millis; T. Moore; Pittman; Presnell; Riddell; Robinson;
Schaffer; Speciale; Torbett; Warren; Watford; Whitmire; Zachary;

Attributes: Public; Text has changed;

Counties: No counties specifically cited

Statutes:
95, 115C, 143, 153A, 160A (Chapters); 115C-47, 115C-521.2,
143-422.10, 143-422.11, 143-422.12, 143-422.13, 143-422.2,
143-422.3, 143-760, 153A-449, 160A-20.1, 95-25.1 (Sections)

Keywords: ADMINISTRATION DEPT., BIDS & BIDDING, CHARTERED,
COMMISSIONS, CONTRACTS, COUNTIES, DISCRIMINATION,
EMPLOYMENT, HUMAN RELATIONS COMM., LGBT ISSUES, LOCAL
GOVERNMENT, LOCAL ORDINANCES, MINIMUM WAGE, MINORITIES,
MUNICIPALITIES, PRESENTED, PUBLIC, PURCHASING, RATIFIED,
SALARIES & BENEFITS
PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS

SECTION 3.1. G.S. 143-422.2 reads as rewritten:

"§ 143-422.2. Legislative declaration.

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, biological sex or handicap by employers which regularly employ 15 or more employees.

(b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

(c) The General Assembly declares that the regulation of discriminatory practices in employment is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to the regulation of discriminatory practices in employment, except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law."

SECTION 3.2. G.S. 143-422.3 reads as rewritten:

"§ 143-422.3. Investigations; conciliations.

The Human Relations Commission in the Department of Administration shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges of discrimination. This Article does not create, and shall not be construed to create or support, a statutory or common law private right of action, and no person may bring any civil action based upon the public policy expressed herein."
Bottom Line

• Free public access to the law is growing every day.
• But it’s very easy to miss and/or misinterpret primary law!
• Every legal situation is completely unique, and depends upon a complex combination of the facts and the law in that jurisdiction.
• Never a simple “yes-or-no” situation!
Bottom Line

• Does your patron *really* just need an attorney? Have a referral list handy!

• Do they want general background information on a personal legal problem? Get them started with self-help books, encyclopedias, and/or journal articles.

• Do they have known citations, or are ready to delve into primary law? Dazzle them with your know-how!
Questions? (Now or later)

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