

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's North Carolina General Statutes Annotated
Chapter 143. State Departments, Institutions, and Commissions
Article 49a. Equal Employment Practices

N.C.G.S.A. § 143-422.2

§ 143-422.2. Legislative declaration

Effective: March 30, 2017

[Currentness](#)

(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, 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(c) Repealed by [S.L. 2017-4, § 1, eff. March 30, 2017](#).

Credits

Added by Laws 1977, c. 726, § 1. Amended by [S.L. 2016-3 \(2nd Ex.Sess.\), § 3.1, eff. March 23, 2016](#); [S.L. 2017-4, § 1, eff. March 30, 2017](#).

[Notes of Decisions \(157\)](#)

N.C.G.S.A. § 143-422.2, NC ST § 143-422.2

The statutes and Constitution are current through S.L. 2022-12 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

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Notes Of Decisions

Validity of ordinances

County did not possess the independent authority to pass antidiscrimination employment ordinance originally enacted pursuant to enabling legislation that was found to be in violation of provision in North Carolina Constitution prohibiting local acts by the General Assembly that affected labor or trade; state Equal Employment Practices Act (EEPA) contained little detail to guide or direct those seeking to deal with day-to-day employment issues through legislation, a county could not make important policy choices that might just as easily have been made by the legislature, and changes of policy and procedure found in enabling legislation and ordinance were sufficiently important choices that they should emanate from the General Assembly. *Williams v. Blue Cross Blue Shield of North Carolina*, 2003, 579 S.E.2d 231 , withdrawn from bound volume, superseded [357 N.C. 170](#), [581 S.E.2d 415](#) . [Counties 21.5](#)

In general

State of North Carolina was entitled to Eleventh Amendment sovereign immunity with respect to former state employee's state law claims for wrongful termination, breach of employment contract, and violation of the North Carolina Equal Employment Practices Act (EEPA). [Johnson v. North Carolina](#), 2012, 905 F.Supp.2d 712 . [Federal Courts 2371](#)

In a disparate treatment case under Title VII or North Carolina Equal Employment Practices Act (EEPA), courts are concerned only with ensuring that decision-makers are not improperly motivated by discriminatory animus. [Faulkner v. Tyco Electronics Corp.](#), 2008, 552 F.Supp.2d 546 . [Civil Rights 1138](#)

A claimant under either Title VII or North Carolina Equal Employment Practices Act (EEPA) can establish a disparate treatment claim (1) through direct proof of discrimination or (2) through presumptions by using the burden-shifting method set out in *McDonnell Douglas*. [Faulkner v. Tyco Electronics Corp.](#), 2008, 552 F.Supp.2d 546 . [Civil Rights 1536](#) ; [Civil Rights 1544](#) ; [Civil Rights 1744](#)

It is the express public policy of the State of North Carolina to protect the right of all people to seek, obtain, and hold employment without discrimination based upon sex. [McFadden v. Trend Community Health Services](#), 2000, 114 F.Supp.2d 427 . [Civil Rights 1165](#)

North Carolina statute which provides that public policy of state is to protect persons from employment discrimination, does not create private cause of action, but North Carolina courts recognize claims of wrongful termination based on violations of public policy. [Bannerman v. Burlington Industries, Inc.](#), 1997, 7 F.Supp.2d 645 . [Civil Rights 1720](#)

Material issue of fact as to whether rule violation, securing time off under false pretenses, was pretext for discharging black employee precluded summary judgment for employer on employee's claim on wrongful discharge in violation of North Carolina public policy. [Mumford v. CSX Transp.](#), 1994, 878 F.Supp. 827 , affirmed [57 F.3d 1066](#) . [Federal Civil Procedure 2497.1](#)

North Carolina statute prohibiting gender discrimination applies to employers, and not to supervisors. [Cox v. Indian Head Industries, Inc.](#), 1999, 187 F.R.D. 531 . [Civil Rights 1113](#)

In determining what discipline is appropriate in given case, employer has discretion to consider all facts and make determination whether employee's conduct warrants discharge or milder form of punishment. [North Carolina Dept. of Correction v. Gibson](#), 1983, 301 S.E.2d 78, 308 N.C. 131 . [Labor And Employment 750](#)

Construction with other law

Having failed to establish facts to support her [Title VII](#) claims of discriminatory discharge based on race or sex, employee also was not wrongfully discharged in violation of North Carolina public policy against race or sex discrimination, as it was embodied in North Carolina Equal Employment Practice Act. [McDougal-Wilson v. Goodyear Tire and Rubber Co.](#), 2006, 427 F.Supp.2d 595 . [Civil Rights 1122](#) ; [Civil Rights 1168](#)

North Carolina law recognizes, as exception to the at-will employment rule, claim for wrongful discharge in violation of public policy based on allegations that plaintiff was fired because of her sex. [Efird v. Riley](#), 2004, 342 F.Supp.2d 413 . [Civil Rights 1720](#)

Because Hispanic resident physician was unable to prevail on his claims of discriminatory discharge and discipline under Title VII analysis, he was unable to establish wrongful discharge claim under the North Carolina Equal Employment Opportunity Act. [Jane v. Bowman Gray School of Medicine-North Carolina Baptist Hosp.](#), 2002, 211 F.Supp.2d 678 . [Civil Rights 1122](#)

In determining parameters of age discrimination claim under North Carolina Equal Employment Practices Act, court should apply the same standards that apply under ADEA. [Alderman v. Inmar Enterprises, Inc.](#), 2002, 201 F.Supp.2d 532 , affirmed [58 Fed.Appx. 47, 2003 WL 550398](#) . [Civil Rights 1201](#)

Wrongful discharge claims brought under North Carolina law for violation of public policy, as set forth in Equal Employment Practices Act, are determined under same standard that applies to §§ 1981 race discrimination claims. [Julsaint v. Corning, Inc.](#), 2001, 178 F.Supp.2d 610 . [Civil Rights 1122](#)

Exclusive or concurrent remedies

Employee's sex discrimination claim under North Carolina Constitution failed because employee had adequate state remedy in her action for wrongful discharge in violation of the public policy enunciated in North Carolina Equal Employment Practices Act. [Hughes v. Bedsole](#), 1995, 48 F.3d 1376 , certiorari denied [116 S.Ct. 190, 516 U.S. 870, 133 L.Ed.2d 126](#) . [Civil Rights 1704](#)

At-will employee terminated while on medical leave allegedly because of his age and/or disability could state claim under North Carolina law for discharge in violation of public policy, regardless of fact that employee simultaneously brought Title VII action against employer. [Atkins v. USF Dugan, Inc.](#), 1999, 106 F.Supp.2d 799 . [Civil Rights 1502](#) ; [Civil Rights 1704](#)

A terminated employee could not maintain a suit alleging gender discrimination under the state constitution; the existence of another state remedy, in the form of a statute prohibiting wrongful discharge in violation of public policy, barred recourse to the constitution. [Emmons v. Rose's Stores, Inc.](#), 1997, 5 F.Supp.2d 358 , affirmed [141 F.3d 1158](#) . [Civil Rights 1704](#)

Although RLA denied district court subject matter jurisdiction over claims involving application of and construction of collective bargaining agreements, it did not provide exclusive forum for determination of railroad employee's federal and state law rights to be free from discriminatory practices and accordingly, federal district court had subject matter jurisdiction over railroad employee's claims of discriminatory discharge based on his race and claims of retaliatory discharge under Title VII and § 1981 and his state law claim for wrongful discharge in violation of North Carolina public policy. [Mumford v. CSX Transp.](#), 1994, 878 F.Supp. 827 , affirmed [57 F.3d 1066](#) . [Labor And Employment 1535](#)

Black former employee could proceed with claim of wrongful discharge in violation of public policy notwithstanding availability of federal remedy under Title VII; former employee's wrongful discharge claim would only be precluded under North Carolina law if there was North Carolina statutory remedy. [Mayse v. Protective Agency, Inc.](#), 1991, 772 F.Supp. 267 . [Civil Rights 1502](#) ; [Civil Rights 1704](#)

Under North Carolina law, where employee had adequate remedy in Title VII, employee's claim for wrongful discharge in violation of public policy was required to be dismissed. [Frazier v. First Union Nat. Bank](#), 1990, 747 F.Supp. 1540 . [Civil Rights 1502](#)

Employee's action against co-worker for intentional infliction of emotional distress based on alleged sexual harassment was not preempted by Labor Management Relations Act, since such conduct could not arguably be sanctioned by labor contract. [Johnson v. AT & T Technologies, Inc.](#), 1989, 713 F.Supp. 885 . [Damages 57.6](#) ; [States 18.46](#)

Absent federal preemption, plaintiffs may simultaneously pursue remedies under both Title VII and North Carolina's Equal Employment Protection Act (NCEEPA) for a wrongful discharge. [Arbia v. Owens-Illinois, Inc.](#), 2003, 2003 WL 21297330 , Unreported. [Civil Rights 1502](#) ; [Civil Rights 1704](#)

Public policy

Public policy - In general

While the North Carolina Equal Employment Practices Act (EEPA) clearly pronounces the State's public policy, the EEPA itself amounts to little more than a declarative policy statement that affords plaintiffs no statutory

remedies or private causes of action for its violation. [Johnson v. North Carolina, 2012, 905 F.Supp.2d 712](#) . [Civil Rights 1720](#)

While North Carolina statute providing that the State's public policy is 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 does not create a private right of action, a plaintiff can bring a common law claim for wrongful discharge based on a violation of the public policy expressed in the statute. [Leonard v. Wake Forest University, 2012, 877 F.Supp.2d 369](#) . [Civil Rights 1720](#)

Assuming that North Carolina statute, declaring state public policy opposing discrimination, created private state law cause of action, district court would abstain from hearing action brought under statute and would dismiss action; since no basis in North Carolina law could be found for determining requisite elements of prima facie case or burden of proof under statute, case involved complex issues of unresolved state law, the resolution of which would be disruptive of state efforts to establish coherent policy with respect to matter of substantial public concern. [Newton v. Lat Purser and Associates, Inc., 1994, 843 F.Supp. 1022](#) . [Federal Courts 2599](#)

Assuming that North Carolina statute, which declared state public policy opposing discrimination, created private state law cause of action, district court could refrain from hearing action under statute permitting district courts to refrain from exercising supplemental jurisdiction if claim raises novel or complex issue of state law or, in exceptional cases, if there are compelling reasons for declining jurisdiction; no basis in North Carolina law could be found for determining requisite elements of prima facie case or burden of proof under statute. [Newton v. Lat Purser and Associates, Inc., 1994, 843 F.Supp. 1022](#) . [Federal Courts 2548](#) ; [Federal Courts 2599](#)

At-will exception, public policy

Under North Carolina law, in order to invoke public policy exception to employment at will doctrine under North Carolina Equal Employment Practices Act (NCEEPA), plaintiff must allege unlawful discharge, and burden rests solely on the plaintiff to demonstrate that he was the victim of a protected discriminatory action. [Moser v. Driller's Service, Inc., 2013, 988 F.Supp.2d 559](#) . [Civil Rights 1110](#) ; [Civil Rights 1744](#)

Although North Carolina follows the employment-at-will doctrine, North Carolina courts recognize a limited exception to this doctrine for terminations that violate public policy. [Gallimore v. Newman Machine Co., Inc., 2004, 301 F.Supp.2d 431](#) . [Labor And Employment 759](#)

North Carolina's Equal Employment Protection Act (NCEEPA) recognizes a public policy exception to the general rule that an employee in North Carolina may be discharged without cause, regardless of whether the reason is rational. [Arbia v. Owens-Illinois, Inc., 2003, 2003 WL 21297330](#) , Unreported. [Civil Rights 1122](#)

Public policy - At-will exception

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Handicapped

Employee was not wrongfully discharged on basis of perceived disability in violation of North Carolina Equal Employment Practices Act (NCEEPA), absent showing he was regarded as disabled under North Carolina Persons with Disabilities Protection Act (NCPDPA). [Rishel v. Nationwide Mut. Ins. Co., 2003, 297 F.Supp.2d 854](#) . [Civil Rights 1218\(6\)](#)

Active alcoholism is not a “handicap” for which an employee receives protection from discrimination under the Equal Employment Practices Act and the Handicapped Persons Protection Act. [McCullough v. Branch Banking & Trust Co., Inc., 2000, 136 N.C.App. 340, 524 S.E.2d 569](#) . [Civil Rights 1226](#)

For purposes of determining whether an employee is an active alcoholic and, thus, excluded from protections afforded to persons with handicaps under the Equal Employment Practices Act and the Handicapped Persons Protection Act, an “active alcoholic” is an alcoholic who is currently engaged in the use of alcohol or was in the immediate past engaged in the use of alcohol. [McCullough v. Branch Banking & Trust Co., Inc., 2000, 136 N.C.App. 340, 524 S.E.2d 569](#) . [Civil Rights 1226](#)

Prima facie case of discrimination

Prima facie case of discrimination - In general

Former employee's allegations were sufficient to state a claim of racial discrimination under North Carolina law; employee alleged that she was a member of a protected class as an African-American female, that she was consistently rated a “successful performer” during annual job reviews, that she was fired because of her race, and that similarly situated employees outside her protected class were treated differently. [Tims v. Carolinas Healthcare System, 2013, 983 F.Supp.2d 675](#) . [Civil Rights 1740](#)

If an employer proffers a valid reason for apparently taking disparate actions against a plaintiff, plaintiff must then demonstrate that the apparently valid reason was actually a pretext for illegal discrimination under Title VII or North Carolina Equal Employment Practices Act (EEOA). [Faulkner v. Tyco Electronics Corp., 2008, 552 F.Supp.2d 546](#) . [Civil Rights 1536](#) ; [Civil Rights 1744](#)

Employer's failure to supply negative feedback to employee did not establish that employee was meeting employer's expectations, for purposes of satisfactory-performance prong of terminated employee's prima facie age discrimination case brought under North Carolina Equal Employment Practices Act. [Reed v. Buckeye Fire Equipment Co., 2006, 422 F.Supp.2d 570](#) , affirmed in part, reversed in part and remanded [241 Fed.Appx. 917, 2007 WL 2173616](#) . [Civil Rights 1204](#)

Fact that employee had received salary increase and bonus in years four and five of his employment, respectively, was insufficient to establish satisfactory-performance prong of employee's prima facie age discrimination case under North Carolina Equal Employment Practices Act, arising from his termination in year eight; no bonus or pay increase had occurred since year five, and there was evidence of failure to meet employer's expectations as to both performance and personal work habits. [Reed v. Buckeye Fire Equipment Co., 2006, 422 F.Supp.2d 570](#) , affirmed in part, reversed in part and remanded [241 Fed.Appx. 917, 2007 WL 2173616](#) . [Civil Rights 1204](#)

Because claims under North Carolina's statute prohibiting discriminatory discharge are analyzed under a Title VII framework when a cause of action is recognized, a plaintiff asserting such a claim has to establish that: (1) she is a member of a protected class; (2) she was qualified for her job and her job performance was satisfactory; (3) she was fired; and (4) other employees who are not members of the protected class were retained under apparently similar circumstances. [Pettiford v. North Carolina Dept. of Health and Human Services, 2002, 228 F.Supp.2d 677](#) . [Civil Rights 1122](#)

Applicant for superintendent position at correctional facility made a prima facie case of racial and gender discrimination by Department of Correction (DOC), in hearing before ALJ; applicant was female and a member of a protected group, applicant was qualified for a promotion and was passed over for the promotion, the person receiving the position was not a member of the protected class, there was evidence that applicant was more qualified than person promoted as applicant had higher formal education, higher screening and test scores and more favorable supervisor recommendations, and DOC had hired persons in the past as superintendents who had program experience like applicant, instead of more experience in operations and custodial matters. [Gordon v. North Carolina Dept. of Correction, 2005, 173 N.C.App. 22, 618 S.E.2d 280](#) . [Civil Rights 1135](#) ; [Civil Rights 1142](#) ; [Civil Rights 1169](#)

Prima facie case of discrimination may be made out by showing that claimant is member of minority group, he was qualified for position, he was discharged, and employer replaced him with person who was not member of minority group. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

Prima facie case of discrimination may be made out by showing discharge of black employee and retention of white employee under apparently similar circumstances. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

Showing of prima facie case is not equivalent to finding of discrimination; rather, it is proof of actions taken by employer from which court may infer discriminatory intent or design because experience has proven that in absence of explanation, it is more likely than not that employer's actions were based upon discriminatory considerations. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

After plaintiff proves prima facie case of discrimination, employer is not required to prove that its action was actually motivated by proffered reasons, for it is sufficient if evidence raises genuine issue of fact as to whether claimant is victim of intentional discrimination. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

To rebut presumption of discrimination, employer must clearly explain by admissible evidence nondiscriminatory reasons for employee's rejection or discharge; explanation must be legally sufficient to support judgment for employer. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

If employer clearly explains by admissible evidence nondiscriminatory reasons for employee's rejection or discharge, prima facie case, and attendant presumption giving rise thereto, is successfully rebutted. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

When employer explains nondiscriminatory reason for his action, plaintiff is then given opportunity to show that employer's stated reasons are in fact pretext for intentional discrimination. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

Plaintiff may rely on evidence offered to establish his prima facie case of discrimination, to carry his burden of proving that employer's stated reasons are in fact a pretext for intentional discrimination. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

Trier of fact is not at liberty to review soundness or reasonableness of employer's business judgment when it considers whether alleged disparate treatment is pretext for discrimination. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1711](#)

When trier of fact considers whether alleged disparate treatment is pretext for discrimination, sole focus of inquiry is employer's motivation. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1711](#)

Black correctional program assistant established prima facie case of discrimination by showing that even though he and several white employees failed to make proper checks to insure presence of two inmates, only he was discharged when inmates were found to have escaped. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

Department of Correction rebutted prima facie case by clearly articulating legitimate nondiscriminatory reasons for discharge of black correctional program assistant, after two inmates had escaped, in view of testimony that assistant was discharged for his failure to make proper checks throughout his entire shift and his failure to report obviously suspicious situation before leaving work at end of his shift, and testimony that assistant's conduct constituted greater negligence than conduct of white employees who were not as severely disciplined. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

In race discrimination action brought by black correctional program assistant, State Personnel Commission exceeded bounds of its authority by reviewing business judgment of Department of Correction. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Public Employment 539](#)

In race discrimination action brought by black correctional program assistant, State Personnel Commission erred in failing to resolve ultimate question of whether assistant was victim of intentional discrimination. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Public Employment 544](#)

African American former employee of city public works commission failed to make prima facie claim under Title VII and North Carolina law that he was terminated on basis of discrimination, where undisputed evidence established that he was not performing job duties at level that met employer's legitimate expectations, despite admonishment from supervisors, that employee had engaged in hostile insubordination, and that he was replaced by another African American. [Spease v. Public Works Com'n of City of Fayetteville, 2010, 369 Fed.Appx. 455, 2010 WL 813761](#) , Unreported. [Civil Rights 1128](#)

Discharged employee's allegations did not create prima facie case of age and disability discrimination against his employer under either Age Discrimination in Employment Act (ADEA) or North Carolina Equal Employment Practices Act (EEPA); employer's officials thought employee's job performance was subpar, while working for employer as a corporate officer employee usurped a business opportunity for employer by secretly working for third party with which employer hoped to contract, and there was no evidence that employer replaced employee with worker outside employee's protected class and in fact, employer absorbed his position and used part-time contractor to perform some of his work. [Hardin v. Belmont Textile Machinery Co., 2009, 355 Fed.Appx. 717, 2009 WL 4609773](#) , Unreported, on remand [2010 WL 2650911](#) . [Civil Rights 1204](#) ; [Civil Rights 1220](#)

Employee's or coworker's opinion, prima facie case of discrimination

Neither employee's own opinion as to his performance, nor his coworkers' opinions as to his performance or as to whether he deserved to be fired, constituted evidence supporting satisfactory-performance prong of terminated employee's prima facie age discrimination case, brought under North Carolina Equal Employment Practices Act. [Reed v. Buckeye Fire Equipment Co., 2006, 422 F.Supp.2d 570](#) , affirmed in part, reversed in part and remanded [241 Fed.Appx. 917, 2007 WL 2173616](#) . [Civil Rights 1744](#)

Prima facie case of discrimination - Employee's or coworker's opinion

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Prima facie case of disparate treatment

In order to demonstrate prima facie case of disparate treatment under North Carolina Equal Employment Practices Act, plaintiff must show by preponderance of the evidence that she is member of protected class, that she was qualified for her job and her job performance was satisfactory, that she was fired, and that other employees who are not members of protected class were retained under apparently similar circumstances. [Hughes v. Bedsole, 1995, 48 F.3d 1376](#) , certiorari denied [116 S.Ct. 190, 516 U.S. 870, 133 L.Ed.2d 126](#) . [Civil Rights 1744](#)

To demonstrate prima facie case of disparate treatment under North Carolina Equal Employment Practices Act, plaintiff must eliminate concerns that she was fired because of her performance or qualifications, two of the most common nondiscriminatory reasons for any adverse employment action. [Hughes v. Bedsole, 1995, 48 F.3d 1376](#) , certiorari denied [116 S.Ct. 190, 516 U.S. 870, 133 L.Ed.2d 126](#) . [Civil Rights 1744](#)

If employee presents prima facie case of disparate treatment under North Carolina Equal Employment Practices Act, employer can rebut employee's case by reducing evidence of legitimate, nondiscriminatory reasons for dismissal and if employer makes this showing, employee must prove by preponderance of the evidence that employer's proffered reasons are pretext; however, ultimate burden of persuading trier of fact that employer intentionally discriminated against employee remains at all times with employee. [Hughes v. Bedsole, 1995, 48 F.3d 1376](#) , certiorari denied [116 S.Ct. 190, 516 U.S. 870, 133 L.Ed.2d 126](#) . [Civil Rights 1744](#)

Establishing a prima facie case of disparate treatment under Title VII or North Carolina Equal Employment Practices Act (EEPA) by circumstantial evidence is not a precise, mechanically-imposed formulation; in each set of circumstances, the burden is on the plaintiff to prove a set of circumstantial facts, which in the absence of a legitimate non-discriminatory explanation, leads one to conclude with reasonable probability that the action taken against him was the product of discrimination. [Faulkner v. Tyco Electronics Corp., 2008, 552 F.Supp.2d 546](#) . [Civil Rights 1536](#) ; [Civil Rights 1545](#) ; [Civil Rights 1744](#)

In a disparate discipline case under Title VII or North Carolina Equal Employment Practices Act (EEPA), while exact symmetry between Plaintiff's situation or actions and those of others is not required, they must be materially similar. [Faulkner v. Tyco Electronics Corp., 2008, 552 F.Supp.2d 546](#) . [Civil Rights 1138](#)

To establish prima facie case of disparate treatment in a disciplinary case under Title VII or North Carolina Equal Employment Practices Act (EEPA), a plaintiff must show by a preponderance of the evidence that (1) she is a member of a protected class, (2) she was charged with engaging in prohibited conduct, (3) her conduct was substantially similar to that of employees outside the protected class, and (4) she was punished for that conduct more severely than employees outside the protected class. [Faulkner v. Tyco Electronics Corp., 2008, 552 F.Supp.2d 546](#) . [Civil Rights 1138](#) ; [Civil Rights 1545](#) ; [Civil Rights 1744](#)

Under the McDonnell Douglas burden-shifting framework, plaintiff must first establish a prima facie case of disparate treatment under Title VII or North Carolina Equal Employment Practices Act (EEPA). [Faulkner v. Tyco Electronics Corp., 2008, 552 F.Supp.2d 546](#) . [Civil Rights 1536](#) ; [Civil Rights 1744](#)

Former employee made out a prima facie case of disparate treatment against employer; former employee was a member of religious organization, she was qualified for her position and was satisfactorily performing her job duties, and she was terminated for her refusal to take flu vaccine while three other employees who were not members of religious organization were allowed to keep their jobs despite not taking the vaccine. [Head v. Adams Farm Living, Inc., 2015, 242 N.C.App. 546, 775 S.E.2d 904](#) . [Civil Rights 1159](#)

The showing of a prima facie case of disparate treatment is not equivalent to a finding of discrimination; rather, it is proof of actions taken by the employer from which a court may infer discriminatory intent or design because experience has proven that in the absence of an explanation, it is more likely than not that the employer's actions were based upon discriminatory considerations. [Head v. Adams Farm Living, Inc., 2015, 242 N.C.App. 546, 775 S.E.2d 904](#) . [Civil Rights 1536](#) ; [Civil Rights 1545](#)

When a prima facie case of disparate treatment is established, a presumption arises that the employer unlawfully discriminated against the employee. [Head v. Adams Farm Living, Inc., 2015, 242 N.C.App. 546, 775 S.E.2d 904](#) . [Civil Rights 1536](#)

Employee established prima facie case of disparate treatment based on age, in relation to car dealership's employment practices; evidence established that employee was 60 years old at time of termination, employee was promoted several times but was repeatedly referred to in age-related derogatory manner, employee's evidence showed that reason given for termination was stealing based on employee's sale of his wife's car to customer at dealership, and employee asserted that another employee had sold his personal vehicle to dealership customer and had not been terminated. [Johnson v. Crossroads Ford, Inc., 2013, 230 N.C.App. 103, 749 S.E.2d 102](#) , review denied [367 N.C. 283, 752 S.E.2d 471](#) . [Civil Rights 1210](#)

In order to establish a prima facie case of disparate treatment in employment practices, plaintiff must show by preponderance of the evidence that: (1) he is member of protected class; (2) he was qualified for his job and his job performance was satisfactory; (3) he was fired; and (4) other employees who are not members of protected class were retained under apparently similar circumstances. [Johnson v. Crossroads Ford, Inc., 2013, 230 N.C.App. 103, 749 S.E.2d 102](#) , review denied [367 N.C. 283, 752 S.E.2d 471](#) . [Civil Rights 1138](#) ; [Civil Rights 1744](#)

Pretextual reasons

Former pharmaceutical sales representative's forecast of evidence in her Title VII action alleging sex and pregnancy discrimination created only weak issue of fact that her employer's justification for terminating her was untrue, and thus was insufficient to establish that the termination was a pretext for discrimination, or a wrongful discharge in violation of North Carolina public policy due to her sex or, assuming state courts would recognize such a claim, her pregnancy; plaintiff presented only her subjective belief that defendant's claim that she falsified sales calls was untrue, and abundant and uncontroverted evidence supported defendant's claims that plaintiff falsified sales calls and that she was actually at home and when she claimed to be working in the field. [Simpson v. Amylin Pharmaceuticals, Inc., 2013, 977 F.Supp.2d 552](#) . [Civil Rights 1549](#) ; [Civil Rights 1744](#)

Chemical plant's reasons for terminating employment of its Native American technician, in that he had entered false data into a log book in violation of employer's no-tolerance policy requiring accurate documentation,

was legitimate and non-discriminatory, rather than pretext for discrimination based on employee's interracial relationship with an African American co-worker, in violation of North Carolina Equal Employment Practices Act (EEPA). [Sampson v. Hospira, Inc., 2013, 531 Fed.Appx. 388, 2013 WL 3336826](#) . [Civil Rights 1137](#)

Age discrimination

When considering claim for wrongful discharge on basis of age under North Carolina Equal Employment Practices Act (NCEEPA), court should apply same standards that apply under ADEA. [Rishel v. Nationwide Mut. Ins. Co., 2003, 297 F.Supp.2d 854](#) . [Civil Rights 1204](#)

Employee's dissatisfactory performance was legitimate non-aged based reason for his termination after his plant engineer position was eliminated; although employer created new division engineer position, employee had poor working relationship with manufacturing personnel, his department had failed to promptly respond to problems in the plant, and as plant engineer, employee had failed to address such problems. [Bannerman v. Burlington Industries, Inc., 1997, 7 F.Supp.2d 645](#) . [Civil Rights 1204](#)

Employer's reason for terminating employee based upon dissatisfactory work performance, after employee's plant engineer position was eliminated, was not pretext for age discrimination; although employer created new division manager position, it offered position first to candidate who was one month younger than employee and had been rated for promotions, and when candidate declined, position was filled by 36-year-old employee with highest promotability rating. [Bannerman v. Burlington Industries, Inc., 1997, 7 F.Supp.2d 645](#) . [Civil Rights 1209](#)

Under North Carolina law, protection of Equal Employment Practices Act (EEPA) extends to situations where potential employer refuses to hire based on potential employee's age; allowing such cause of action in addition to wrongful discharge cause of action would further Act's public policy to protect and safeguard right and opportunity of all persons to seek, obtain, and hold employment without discrimination. [Bass v. City of Wilson, 1993, 835 F.Supp. 255](#) . [Civil Rights 1202](#)

Content of general manager's summary judgment affidavit submitted by employee was not contrary to employee's complaint for wrongful termination on basis of age in violation of Equal Employment Practices Act (EEPA), but rather, affidavit supported employee's claim, and thus affidavit was not inherently incredible on that basis; affidavit showed that general manager believed employer's reasons for terminating employee were pretextual and that one of the principal reasons employer terminated employee was because of his age. [Johnson v. Crossroads Ford, Inc., 2013, 230 N.C.App. 103, 749 S.E.2d 102](#) , review denied [367 N.C. 283, 752 S.E.2d 471](#) . [Judgment 185.2\(8\)](#) ; [Judgment 185.3\(13\)](#)

Employer that employed less than 15 employees was not subject to lawsuit for age discrimination. [Jarman v. Deason, 2005, 173 N.C.App. 297, 618 S.E.2d 776](#) . [Civil Rights 1111](#) ; [Civil Rights 1720](#)

Professor's did not state claim that university's failure to grant him tenure and renew his teaching appointment violated public policy, though he alleged that his age would make "it virtually impossible for him to achieve tenure at another university," where he did not allege that university discharged him based on his age. [Claggett v. Wake Forest University, 1997, 126 N.C.App. 602, 486 S.E.2d 443](#) . [Civil Rights 1208](#)

Employer's termination of 50-year-old employee for inadequate job performance was not pretext for age discrimination, in violation of Age Discrimination in Employment Act (ADEA) and North Carolina Equal Employment Practices Act, even though employee had previously received adequate performance evaluations, new district manager had indicated desire "to replace team leaders with younger college graduates," and younger employee who failed to meet expectations was not fired, where regional vice president found that employee did not perform adequately during his visit, employee had unexplained absences, and younger employee was protected because his father was personal friend of district manager. [Ruff v. Target Stores, Inc., 2007, 226 Fed.Appx. 294, 2007 WL 805827](#) , Unreported. [Civil Rights 1209](#)

Religious discrimination

Former employee failed to establish that employer's legitimate nondiscriminatory reason for discharging employee, namely employee's refusal to obtain a flu vaccination, was merely a pretext for religious discrimination; employer allowed employees who provided a note from a physician stating a specific medical justification to abstain from receiving the vaccination, and former employee's note was rejected by employer

as it was from a chiropractor and it did not identify a link between employee's autoimmune disease and the flu vaccine. [Head v. Adams Farm Living, Inc., 2015, 242 N.C.App. 546, 775 S.E.2d 904](#) . [Civil Rights 1158](#)

Employer provided a legitimate, nondiscriminatory reason for employee's discharge, in action alleging religious discrimination; employer operated a skilled nursing and healthcare facility, employer experienced a flu outbreak, as defined by the Center for Disease Control (CDC), employer required all employees to obtain a flu vaccination, employee refused to take the vaccine, and employee failed to provide a note from a medical doctor excusing her from obtaining the vaccine. [Head v. Adams Farm Living, Inc., 2015, 242 N.C.App. 546, 775 S.E.2d 904](#) . [Civil Rights 1157](#)

Sex discrimination

Female shift supervisor at county jail failed to establish that employer's proffered reasons for her discharge were pretext for discrimination for purposes of her sex discrimination claim under North Carolina Equal Employment Practices Act. [Hughes v. Bedsole, 1995, 48 F.3d 1376](#) , certiorari denied [116 S.Ct. 190, 516 U.S. 870, 133 L.Ed.2d 126](#) . [Civil Rights 1171](#)

Under North Carolina law, employee who alleged that she was fired after she refused manager's request for sex stated a cause of action for wrongful discharge, considering that employee was asked to commit an act prohibited by criminal law. [Harrison v. Edison Bros. Apparel Stores, Inc., 1991, 924 F.2d 530](#) , rehearing denied, on remand [814 F.Supp. 457](#) . [Civil Rights 1184](#) ; [Labor And Employment 783](#)

Female employee was not punished for inappropriate touching more severely than two male employees who had engaged in similar conduct, as element of employee's prima facie case of disparate treatment under Title VII or North Carolina Equal Employment Practices Act (EEOA), notwithstanding any differences as to employer's handling of the employer's investigations into allegations against the employees; both male employees, like female employee, were discharged for inappropriate touching of a coworker, and differences in the investigations as to their conduct were justified by fact that serious allegations, witnesses, and key information emerged as to their conduct later and at differing times, whereas female employee's case involved a clear allegation of intentional, inappropriate touching in the presence of at least one corroborating witness. [Faulkner v. Tyco Electronics Corp., 2008, 552 F.Supp.2d 546](#) . [Civil Rights 1172](#)

Evidence was sufficient to establish, in hearing before ALJ on petition by applicant for promotion to superintendent position at correctional facility alleging Department of Correction (DOC) did not select her because of her race and gender, that applicant was more qualified than the person selected; applicant had more years of service and more education, received consistent ratings of outstanding on her performance reviews compared to very good ratings for person selected, and had higher scores on the interviewing and screening tests. [Gordon v. North Carolina Dept. of Correction, 2005, 173 N.C.App. 22, 618 S.E.2d 280](#) . [Civil Rights 1135](#) ; [Civil Rights 1142](#) ; [Civil Rights 1169](#)

Evidence was sufficient to establish, in hearing before ALJ on petition by applicant for superintendent position at correctional facility alleging Department of Correction (DOC) did not select her because of her race and gender, that email sent by Secretary of DOC to director who made hiring decision tended to show that DOC intended to hire an African American male over a white female regardless of qualification; Secretary's email stated hiring decision was good and he was more comfortable in defending the choice of the person selected than a third candidate in the event of a challenge by applicant, and ALJ found Secretary's explanation for the contents of the email, that the third candidate was never considered for the position, unworthy of credence. [Gordon v. North Carolina Dept. of Correction, 2005, 173 N.C.App. 22, 618 S.E.2d 280](#) . [Civil Rights 1710](#)

Evidence was sufficient to establish, in hearing before ALJ on petition by applicant for superintendent position at correctional facility alleging Department of Correction (DOC) did not select her because of her race and gender, that DOC witnesses were critical concerning applicant's lack of experience in custody and operations even though DOC requested that she give up a prior custody and operations position at another facility; DOC argued that applicant's lack of custody and operations experience was the principle reason for promoting a person other than applicant, and there was evidence that DOC asked applicant to accommodate it by giving up the prior custody and operations position. [Gordon v. North Carolina Dept. of Correction, 2005, 173 N.C.App. 22, 618 S.E.2d 280](#) . [Civil Rights 1710](#)

Evidence was sufficient to establish, in hearing before ALJ on petition by applicant for superintendent position at correctional facility alleging Department of Correction (DOC) did not select her because of her race and

gender, that testimony of regional director who made hiring decision and testimony of person selected for the position was conflicting; director testified he only met person selected once and was not sure whether they were both members of any social organizations, while person selected testified that he worked with director several decades earlier when they were both correctional officers at a small facility, that he lived in the same town as director, that he was a member of some of the same professional and social organizations as director and that both he and director attended meetings and reunions for such organizations. [Gordon v. North Carolina Dept. of Correction, 2005, 173 N.C.App. 22, 618 S.E.2d 280](#) . [Civil Rights](#) 1710

Pregnancy discrimination

Court would defer ruling on employer's motion to dismiss employee's complaint alleging wrongful discharge in violation of North Carolina public policy prohibiting pregnancy discrimination to allow the case to proceed through discovery so that the court could then determine whether such a decision would be necessary or whether the case should ultimately be decided on alternate grounds, in the absence of settled state court precedent or a clearly expressed public policy regarding pregnancy discrimination in either the general statutes or constitution of North Carolina; court was hesitant to expand the public policy exception to North Carolina's employment-at-will doctrine, but was also hesitant to hold that a state law claim for pregnancy discrimination did not exist. [Leonard v. Wake Forest University, 2012, 877 F.Supp.2d 369](#) . [Federal Civil Procedure](#) 1828

Harassment

There is no private right of action under North Carolina's Equal Employment Practices Act (NCEEPA) for sexual harassment. [Townsend v. Shook, 2009, 323 Fed.Appx. 245, 2009 WL 1101613](#) , Unreported, on remand [2009 WL 1789369](#) . [Action](#) 3 ; [Civil Rights](#) 1720

Public policy in preventing employment discrimination under North Carolina's Equal Employment Protection Act (NCEEPA) does not embrace allegations of harassment. [Arbia v. Owens-Illinois, Inc., 2003, 2003 WL 21297330](#) , Unreported. [Civil Rights](#) 1144

Hostile work environment

There is no private right of action under North Carolina's Equal Employment Practices Act (NCEEPA) for sexual harassment. [Townsend v. Shook, 2009, 323 Fed.Appx. 245, 2009 WL 1101613](#) , Unreported, on remand [2009 WL 1789369](#) . [Action](#) 3 ; [Civil Rights](#) 1720

Public policy in preventing employment discrimination under North Carolina's Equal Employment Protection Act (NCEEPA) does not embrace allegations of harassment. [Arbia v. Owens-Illinois, Inc., 2003, 2003 WL 21297330](#) , Unreported. [Civil Rights](#) 1144

Wrongful discharge

Wrongful discharge on basis of sex and/or race was forbidden by public policy of North Carolina, as incorporated in North Carolina Equal Employment Practices Act (NCEEPA). [McLean v. Patten Communities, Inc., 2003, 332 F.3d 714](#) . [Civil Rights](#) 1122 ; [Civil Rights](#) 1720 ; [Civil Rights](#) 1166

Employee stated a wrongful discharge claim under the North Carolina Equal Employment Practices Act (NCEEPA), where he alleged that employer's president informed him that employer wanted to hire a younger employee for his position, and that it fired him accordingly. [Moser v. Driller's Service, Inc., 2013, 988 F.Supp.2d 559](#) . [Civil Rights](#) 1204

There was no evidence that employee's termination was based upon his disability, as required for his claim of wrongful termination in violation of North Carolina public policy established by North Carolina Equal Employment Practices Act. [Tuan H. Nguyen v. Austin Quality Foods, Inc., 2013, 974 F.Supp.2d 879](#) . [Civil Rights](#) 1220

Under North Carolina law, allegations that former deputy sheriff was subjected to campaign of sexual harassment by male employees, that she complained about harassment and that sheriff did nothing to rectify situation or to stop offending behavior, and that former deputy sheriff was discharged as a result of and in retaliation for her complaints about being sexually harassed did not support claim for wrongful discharge in violation of state public policy. [Efird v. Riley, 2004, 342 F.Supp.2d 413](#) . [Civil Rights](#) 1720

North Carolina does not recognize tort claims under the North Carolina Equal Employment Practices Act (NCEEPA) for wrongful constructive discharge or wrongful discharge in retaliation for complaints of sexual harassment. [Lowe v. Unifi, Inc., 2003, 292 F.Supp.2d 773](#) . [Civil Rights 1720](#)

A termination based on sex is a violation of North Carolina public policy, for purposes of a North Carolina claim for wrongful termination. [U.S.E.E.O.C. v. Bojangles Restaurants, Inc., 2003, 284 F.Supp.2d 320](#) . [Civil Rights 1166](#)

Former employee's allegations that she was terminated from her employment because of her race in violation of anti-discrimination policy of North Carolina Equal Employment Protection Act (NCEEPA) were sufficient to state claim against former employer for wrongful discharge in violation of public policy under North Carolina law. [Jackson v. Blue Dolphin Communications of North Carolina, L.L.C., 2002, 226 F.Supp.2d 785](#) . [Civil Rights 1122](#)

Former employee's allegations that she was terminated for refusing to sign false affidavit to be used in future court proceeding were sufficient to state claim against former employer for wrongful discharge in violation of public policy under North Carolina law. [Jackson v. Blue Dolphin Communications of North Carolina, L.L.C., 2002, 226 F.Supp.2d 785](#) . [Labor And Employment 783](#)

County's discharge of female employee did not violate North Carolina Equal Employment Practices Act (NCEEPA), even if employee had been placed under stress by male supervisor; decision to terminate employee was based on her not finding suitable alternative employment with county during her one year leave of absence, employee did not consider all possible offers, and decision was implemented by woman. [DeWitt v. Mecklenburg County, 1999, 73 F.Supp.2d 589](#) . [Civil Rights 1169](#)

Because the evidentiary standards for § 1981 employment discrimination claims and wrongful or bad faith discharge under North Carolina law were the same, employee's failure to present substantial evidence to support her § 1981 claim precluded finding that she prevailed on wrongful or bad faith discharge claims. [Hawkins v. Pepsico, Inc., 1998, 10 F.Supp.2d 548](#) , affirmed [203 F.3d 274](#) , certiorari denied [121 S.Ct. 181, 531 U.S. 875, 148 L.Ed.2d 125](#) , rehearing denied [121 S.Ct. 613, 531 U.S. 1031, 148 L.Ed.2d 524](#) . [Civil Rights 1744](#)

At-will employee's allegations that he was fired in retaliation for exercising his rights under his employer's "open door" policy did not give rise to cause of action for wrongful discharge under North Carolina law, inasmuch as question of how employer handled appeals of management decisions was not matter which implicated general public policy concerns. [Percell v. International Business Machines, Inc., 1991, 765 F.Supp. 297](#) , reconsideration denied [785 F.Supp. 1229](#) , affirmed [23 F.3d 402](#) . [Labor And Employment 777](#)

North Carolina courts, in recognizing cause of action for wrongful discharge in violation of public policy, did not intend to allow claims based on North Carolina Equal Employment Practices Act, in which legislature acknowledged public policy against employment discrimination but chose not to provide aggrieved employees with private right of action beyond that already afforded by federal discrimination statutes. [Percell v. International Business Machines, Inc., 1991, 765 F.Supp. 297](#) , reconsideration denied [785 F.Supp. 1229](#) , affirmed [23 F.3d 402](#) . [Civil Rights 1704](#)

At-will employee's allegation that she was terminated because of her "opposition to what she believed in good faith to be a number of sexually discriminatory employment practices" by employer did not implicate public policy concerns expressed in North Carolina statute and also failed to satisfy other requirements for wrongful discharge claim, insofar as employee was not required to engage in unlawful conduct, her employer's alleged statutory violation did not threaten public safety, and she had available remedy under Title VII. [Leach v. Northern Telecom, Inc., 1991, 141 F.R.D. 420](#) , reconsideration denied. [Civil Rights 1502](#) ; [Civil Rights 1704](#) ; [Civil Rights 1720](#)

Employer had no duty to reasonably accommodate employee, who refused to comply with employer's directive requiring all employees to get a flu vaccine, for the purpose of employee's action alleging wrongful discharge in violation of public policy due to employee's religious beliefs. [Head v. Adams Farm Living, Inc., 2015, 242 N.C.App. 546, 775 S.E.2d 904](#) . [Civil Rights 1162\(2\)](#)

Former employer's discharge of employee did not violate public policy as provided in the Equal Employment Practices Act, in that employee's rhinitis was temporary and did not make him either a handicapped or qualified handicapped person as defined by the Handicapped Persons Protection Act (NCHPPA), and thus, employee was not entitled to an exception to the employment-at-will doctrine. [Simmons v. Chemol Corp., 2000, 137 N.C.App. 319, 528 S.E.2d 368](#) . [Civil Rights 1218\(3\)](#)

Remedy of wrongful discharge was unavailable to professor employed under teaching appointment of definite duration; he was limited to action in contract. [Claggett v. Wake Forest University, 1997, 126 N.C.App. 602, 486 S.E.2d 443](#) . [Action 27\(1\)](#)

Tort of wrongful discharge arises only in context of employment at will. [Claggett v. Wake Forest University, 1997, 126 N.C.App. 602, 486 S.E.2d 443](#) . [Labor And Employment 758](#)

Breach of contract, rather than tort of wrongful discharge, is remedy for wrongfully discharged employee who is employed for definite term or who is subject to discharge only for just cause. [Claggett v. Wake Forest University, 1997, 126 N.C.App. 602, 486 S.E.2d 443](#) . [Labor And Employment 852](#)

Employee has private cause of action under North Carolina common law for wrongful discharge in violation of public policy, specifically North Carolina's Equal Employment Practices Act (NCEEPA), when employee is discharged because she has refused to accede to the sexual advances of her supervisor. [Townsend v. Shook, 2009, 323 Fed.Appx. 245, 2009 WL 1101613](#) , Unreported, on remand [2009 WL 1789369](#) . [Civil Rights 1720](#)

State hospital's termination of staff psychologist on ground that he was involved in patient abuse and gross professional misconduct was not pretext for retaliation for his reporting of psychiatrist's sexual harassment of nurse, in violation of Title VII, even though termination was later overturned on administrative appeal, where decision makers had no knowledge that psychologist had reported discrimination to his immediate supervisors. [Morley v. North Carolina Dept. of Health and Human Services/Broughton Hosp., 2002, 2002 WL 1796813](#) , Unreported, affirmed [53 Fed.Appx. 253, 2002 WL 31839174](#) .

Wrongful constructive discharge

Under North Carolina law, no public policy exception to the employment-at-will doctrine is recognized for constructive, as opposed to actual, discharges. [Gallimore v. Newman Machine Co., Inc., 2004, 301 F.Supp.2d 431](#) . [Labor And Employment 826](#)

Employee who was allegedly forced to resign due to disability-related absenteeism could not establish claim for wrongful constructive discharge under North Carolina's Equal Employment Protection Act (NCEEPA); North Carolina did not recognize an independent employment tort for wrongful constructive discharge. [Arbia v. Owens-Illinois, Inc., 2003, 2003 WL 21297330](#) , Unreported. [Civil Rights 1123](#) ; [Labor And Employment 851](#)

Bad faith discharges

North Carolina does not recognize cause of action for bad faith discharge. [Percell v. International Business Machines, Inc., 1991, 765 F.Supp. 297](#) , reconsideration denied [785 F.Supp. 1229](#) , affirmed [23 F.3d 402](#) . [Labor And Employment 843](#)

Retaliatory discharge

Jury's finding that black employee was not discharged in bad faith in violation of North Carolina public policy was against clear weight of the evidence, including documentary evidence, which showed that employee was demoted for her insistence that employer hire black applicant and her unwillingness to fire applicant because of applicant's race, and employee was discharged soon after employer sent memo to employment agency stating that it was possible that an applicant would be needed "right away" and requesting that they not send black applicants. [Mayse v. Protective Agency, Inc., 1991, 772 F.Supp. 267](#) . [Civil Rights 1744](#)

Misconduct

Under Title VII or North Carolina Equal Employment Practices Act (EEPA), if a plaintiff can show that persons not in protected class engaged in similar misconduct, yet were not punished or received less severe punishments, employer, in turn, must show that there was a valid reason for the apparently disparate actions

it took regarding her. [Faulkner v. Tyco Electronics Corp., 2008, 552 F.Supp.2d 546](#) . [Civil Rights 1536](#) ; [Civil Rights 1744](#)

Fact that a plaintiff was legitimately disciplined for misconduct does not necessarily preclude recovery based on discrimination under Title VII or North Carolina Equal Employment Practices Act (EEPA); key is whether persons not in the protected class engaged in similar misconduct, yet were not punished or received less severe punishments. [Faulkner v. Tyco Electronics Corp., 2008, 552 F.Supp.2d 546](#) . [Civil Rights 1138](#)

Liability of supervisors and managers

An action for wrongful discharge under North Carolina's Equal Employment Protection Act (NCEEPA) can only be asserted against the employer and not against a supervisor in his or her individual capacity. [Arbia v. Owens-Illinois, Inc., 2003, 2003 WL 21297330](#) , Unreported. [Civil Rights 1113](#) ; [Civil Rights 1736](#)

Practice and procedure, generally

Employee's immediate supervisor and senior manager of department he worked in could not be individually liable for wrongful discharge under North Carolina Equal Employment Practices Act (EEPA). [Chung v. BNR, Incorporated/Northern Telecom, Inc., 1997, 16 F.Supp.2d 632](#) . [Civil Rights 1113](#)

Former employee's allegations of sexual harassment in violation of Title VII were sufficient allegations of wrongful discharge in violation of public policy under North Carolina law to overcome motion to dismiss for failure to state a claim, in light of essentially identical public policies behind Title VII and North Carolina anti-discrimination law. [Phillips v. J.P. Stevens & Co., Inc., 1993, 827 F.Supp. 349](#) . [Civil Rights 1740](#)

Issues of whether employer's discharge of employee was predicated upon her reporting sexual harassment and in violation of public policy were for jury in wrongful discharge action. [Whitt v. Harris Teeter, Inc., 2004, 165 N.C.App. 32, 598 S.E.2d 151](#) , review denied [359 N.C. 75, 359 N.C. 643, 605 S.E.2d 151](#) , reversed [359 N.C. 625, 614 S.E.2d 531](#) . [Civil Rights 1749](#)

ALJ's conclusion of law that evidence of racial animus by supervisor for county department of social services "may not be used to establish" pretext for employment discrimination was error. [Enoch v. Alamance County Dep't of Social Services, 2004, 164 N.C.App. 233, 595 S.E.2d 744](#) . [Civil Rights 1137](#) ; [Civil Rights 1710](#)

Court did not abuse its discretion in sexual harassment action by refusing to allow presentation of certain information that employer had obtained from its accountant the previous evening showing the number of employees who worked for employer during relevant period as sanction for employer's failure to supplement discovery request, where former employee objected to evidence by stating that she had unsuccessfully requested such information from employer during discovery and had not had opportunity to review evidence. [Russell v. Buchanan, 1998, 129 N.C.App. 519, 500 S.E.2d 728](#) , review denied [348 N.C. 501, 510 S.E.2d 655](#) . [Pretrial Procedure 45](#)

Any error arising out of court's modification of jury instruction regarding burden of establishing number of employees required under Title VII and North Carolina sexual harassment law did not warrant new trial, where evidence presented by both employee and employer created inference that employer had requisite number of employees. [Russell v. Buchanan, 1998, 129 N.C.App. 519, 500 S.E.2d 728](#) , review denied [348 N.C. 501, 510 S.E.2d 655](#) . [New Trial 41\(3\)](#)

State Personnel Commission applied appropriate evidentiary standards and legal principles to evaluate claim of correctional officer alleging racial discrimination in promotion decision on grounds of disparate treatment where Commission's findings and conclusions clearly set out elements of each step of disparate treatment analysis including employee's prima facie case, state's rebuttal and employee's showing of pretext, as well as shifting burdens of production and employee's burdens of proof for showing racial discrimination. [North Carolina Dept. of Correction v. Hodge, 1990, 394 S.E.2d 285, 99 N.C.App. 602](#) . [Public Employment 544](#)

Supreme Court looks to federal decisions for guidance in establishing evidentiary standards and principle of law to be applied in discrimination cases. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Courts 97\(6\)](#)

Ultimate burden of persuading trier of fact that defendant intentionally discriminated against plaintiff remains at all times with plaintiff. [North Carolina Dept. of Correction v. Gibson, 1983, 301 S.E.2d 78, 308 N.C. 131](#) . [Civil Rights 1710](#)

In employment discrimination action, the State Personnel Commission properly applied Title VII evidentiary standards without shifting burden of proof from employee to employer. [North Carolina Dept. of Correction v. Gibson, 1982, 293 S.E.2d 664, 58 N.C.App. 241](#) , reversed [301 S.E.2d 78, 308 N.C. 131](#) . [Public Employment 542](#)

Jurisdiction

District Court would decline to exercise supplemental jurisdiction over employee's state law claim for wrongful discharge in violation of public policy, once employee's ADA claim was dismissed on employer's motion for summary judgment. [28 U.S.C.A. §§ 1367\(c\)\(3\)](#) ; Americans with Disabilities Act of 1990, §§ 2 et seq., [42 U.S.C.A. §§ 12101 et seq.](#) ; [Person v. Wal-Mart Stores Inc., 1999, 65 F.Supp.2d 361](#) . [Federal Courts 2564](#)

District Court, after dismissing former employee's ADEA claims, would exercise supplemental jurisdiction over employee's state law claim that discharge violated North Carolina public policy prohibiting employment discrimination; case had already advanced to summary judgment stage, parties had expended time, energy, and resources compiling vast amount of deposition testimony and other discovery, and law at issue in state law claim was well-settled. [Bannerman v. Burlington Industries, Inc., 1997, 7 F.Supp.2d 645](#) . [Federal Courts 2564](#)

Former employee's state law claims for wrongful discharge on basis of handicap and withholding of bonus were so closely related to federal claim of disability discrimination that they formed part of same case or controversy and were within district court's supplemental jurisdiction. [McCullough v. Branch Banking and Trust Co., Inc., 1993, 844 F.Supp. 258](#) , affirmed [35 F.3d 127](#) , certiorari denied [115 S.Ct. 1101, 513 U.S. 1151, 130 L.Ed.2d 1069](#) . [Federal Courts 2548](#)

Declining supplemental jurisdiction was appropriate exercise of discretion as to discharged employee's claim of handicap discrimination and withholding of bonus, even though dismissal would create inconvenience; state claims presented complex and unsettled issues of North Carolina law, inconvenience of filing case and summary judgment motion in state court was not undue, and considerations of comity, fairness, and judicial economy outweighed inconvenience. [McCullough v. Branch Banking and Trust Co., Inc., 1993, 844 F.Supp. 258](#) , affirmed [35 F.3d 127](#) , certiorari denied [115 S.Ct. 1101, 513 U.S. 1151, 130 L.Ed.2d 1069](#) . [Federal Courts 2548](#)

Private right of action

Black female employee did not have private right of action for sexual harassment or retaliation under North Carolina Equal Employment Practices Act (NCEEPA). [McLean v. Patten Communities, Inc., 2003, 332 F.3d 714](#) . [Civil Rights 1720](#)

North Carolina's Equal Employment Practices Act (NCEEPA) did not provide employee with private right of action for sexual harassment. [Smith v. First Union Nat. Bank, 2000, 202 F.3d 234](#) . [Civil Rights 1720](#)

North Carolina Equal Employment Practices Act does not create private right of action for retaliation or provide source of public policy concerning retaliation. [Swann v. Source One Staffing Solutions, 2011, 778 F.Supp.2d 611](#) . [Civil Rights 1720](#)

Section of the North Carolina's Equal Employment Practices Act (NCEEPA) pronouncing the State's public policy does not create a private right of action; it is only applicable to common law wrongful discharge claims or in connection with other specific statutory remedies. [Strickland v. Jewell, 2007, 562 F.Supp.2d 661](#) . [Action 3](#) ; [Civil Rights 1720](#)

North Carolina's Equal Employment Practices Act (NCEEPA) did not provide employee with private right of action for alleged employment discrimination on the basis of age, race, sex or retaliation. [Bratcher v. Pharmaceutical Product Development, Inc., 2008, 545 F.Supp.2d 533](#) . [Civil Rights 1720](#)

No private cause of action exists under North Carolina Equal Employment Practices Act (NCEEPA). [Royster v. Costco Wholesale Corp., 2005, 378 F.Supp.2d 595](#) . [Civil Rights](#) 1720

North Carolina statute stating that persons had right to “obtain and hold employment without discrimination or abridgment on account of handicap” was policy statement by the North Carolina Legislature, and did not create private cause of action. [Morris v. BellSouth Telecommunications, Inc., 2004, 302 F.Supp.2d 515](#) . [Civil Rights](#) 1720

Plaintiffs can properly allege wrongful discharge in violation of public policy based on violation of anti-discrimination policy of North Carolina Equal Employment Protection Act (NCEEPA), even though NCEEPA provides no private right of action. [Jackson v. Blue Dolphin Communications of North Carolina, L.L.C., 2002, 226 F.Supp.2d 785](#) . [Civil Rights](#) 1720

Middle school chorus teacher had no private right of action for wrongful discharge, under the North Carolina Equal Employment Practices Act (NCEEPA), against county board of education. [Barbier v. Durham County Bd. of Educ., 2002, 225 F.Supp.2d 617](#) . [Education](#) 607 ; [Public Employment](#) 792

North Carolina Equal Employment Practices Act does not provide a private right of action for discrimination or retaliatory discharge. [Hazel v. Medical Action Industries, Inc., 2002, 216 F.Supp.2d 541](#) . [Action](#) 3 ; [Civil Rights](#) 1720

Private cause of action for disability discrimination and retaliation does not exist under North Carolina Equal Employment Practices Act (NCEEPA). [McNeil v. Scotland County, 2002, 213 F.Supp.2d 559](#) , affirmed [53 Fed.Appx. 242, 2002 WL 31829657](#) , certiorari denied [123 S.Ct. 2578, 539 U.S. 927, 156 L.Ed.2d 605](#) . [Action](#) 3 ; [Civil Rights](#) 1720

North Carolina's Equal Employment Practices Act (NCEEPA) did not provide employee with private right of action for sexual harassment, retaliation, or emotional distress. [Schulze v. Meritor Automotive, 2000, 163 F.Supp.2d 599](#) . [Civil Rights](#) 1720

Although no private right of action for sexual harassment existed under North Carolina Equal Employment Practices Act (EEPA), female employees alleging that pervasive sexual harassment resulted in their constructive discharge could assert claim for common-law wrongful discharge in violation of North Carolina public policy against sexual discrimination as stated in EEPA. [Cox v. Indian Head Industries., Inc., 2000, 123 F.Supp.2d 892](#) . [Civil Rights](#) 1123 ; [Civil Rights](#) 1720

North Carolina Equal Employment Practices Act (NCEEPA) did not provide employee, who alleged constructive discharge in violation of state's public policy against sexual discrimination in the workplace, with a private right of action. [McFadden v. Trend Community Health Services, 2000, 114 F.Supp.2d 427](#) . [Civil Rights](#) 1720

North Carolina Equal Employment Practices Act (NCEEPA) did not provide employee with private right of action for disparate treatment, hostile work environment or retaliatory discharge. [DeWitt v. Mecklenburg County, 1999, 73 F.Supp.2d 589](#) . [Action](#) 3 ; [Civil Rights](#) 1720

North Carolina Equal Employment Practices Act (NCEEPA) did not provide female employee with private right of action for sexual harassment. [Ridenhour v. Concord Screen Printers, Inc., 1999, 40 F.Supp.2d 744](#) . [Civil Rights](#) 1720

Pleadings

Employee's pro se complaint alleging that she was discharged because of her disability was sufficient, when liberally construed, to state wrongful discharge claim under North Carolina's Equal Employment Protection Act (NCEEPA); employee alleged that she was discharged in violation of North Carolina's public policy against disability discrimination as set out in the Act. [Arbia v. Owens-Illinois, Inc., 2003, 2003 WL 21297330](#) , Unreported. [Civil Rights](#) 1740

Summary judgment

Genuine issue of material fact existed as to whether employer's proffered reasons for employee's termination were pretext to terminate employee based on his age, precluding summary judgment in wrongful termination action. [Johnson v. Crossroads Ford, Inc., 2013, 230 N.C.App. 103, 749 S.E.2d 102](#) , review denied [367 N.C. 283, 752 S.E.2d 471](#) . [Judgment](#) 181(21)

District court did not abuse its discretion in ruling on all of issues raised by employer's summary judgment motion on discharged employee's claims alleging wrongful retaliatory discharge under North Carolina law, common law fraud, wrongful discharge due to age and disability discrimination in violation of state and federal law, and violation of North Carolina's Wage and Hour Act following dismissal of federal claims; federal issues before district court were closely connected to state claims, and district court had long and close familiarity with facts. [Hardin v. Belmont Textile Machinery Co.](#), 2009, 355 Fed.Appx. 717, 2009 WL 4609773 , Unreported, on remand 2010 WL 2650911 . [Federal Courts](#) 2564

Genuine issues of material fact as to whether employee was meeting employer's legitimate expectations when he was terminated, whether the employer transferred his job duties to younger workers, and whether the employer's explanation that the employee was terminated for poor job performance was pretextual precluded summary judgment for the employer on the employee's age discrimination claim under North Carolina law. [Reed v. Buckeye Fire Equipment](#), 2007, 241 Fed.Appx. 917, 2007 WL 2173616 , Unreported. [Federal Civil Procedure](#) 2497.1

Presumptions and burden of proof

Where disparate discipline is alleged under Title VII or North Carolina Equal Employment Practices Act (EEPA), a plaintiff must show that employees outside protected class acted in substantially the same manner, yet received a lesser degree of punishment; such a showing usually requires direct comparisons in order to raise a presumption that defendant's disparate treatment stemmed from plaintiff's sex rather than from other distinguishing characteristics between the instances. [Faulkner v. Tyco Electronics Corp.](#), 2008, 552 F.Supp.2d 546 . [Civil Rights](#) 1172 ; [Civil Rights](#) 1537 ; [Civil Rights](#) 1744

Throughout the McDonnell Douglas test, the burden of proving discriminatory animus under Title VII or North Carolina Equal Employment Practices Act (EEPA) remains on Plaintiff. [Faulkner v. Tyco Electronics Corp.](#), 2008, 552 F.Supp.2d 546 . [Civil Rights](#) 1536 ; [Civil Rights](#) 1744

Employer rebutted employee's prima facie case of disparate treatment based on age in car dealership's employment practices by producing evidence of legitimate, nondiscriminatory reason for employee's dismissal, i.e. [Johnson v. Crossroads Ford, Inc.](#), 2013, 230 N.C.App. 103, 749 S.E.2d 102 , review denied 367 N.C. 283, 752 S.E.2d 471 . [Civil Rights](#) 1210

Burden of proof was on employee, in wrongful termination suit based on alleged age discrimination, to disprove employer's affirmative defense that employee was terminated for stealing, based on McDonnell Douglas evidentiary standards that shifted burden to employee if employer articulated legitimate, nondiscriminatory reason for termination; North Carolina Supreme Court directed that courts look to federal decisions for guidance in establishing evidentiary standards and principles of law to be applied in discrimination cases, and Supreme Court explicitly adopted federal evidentiary standards in evaluating state claim for employment discrimination. [Johnson v. Crossroads Ford, Inc.](#), 2013, 230 N.C.App. 103, 749 S.E.2d 102 , review denied 367 N.C. 283, 752 S.E.2d 471 . [Civil Rights](#) 1744 ; [Courts](#) 97(5)

When prima facie case of discrimination is established, presumption arises that employer unlawfully discriminated against employee. [North Carolina Dept. of Correction v. Gibson](#), 1983, 301 S.E.2d 78, 308 N.C. 131 . [Civil Rights](#) 1710

Once prima facie case of discrimination is established, employer has burden of producing evidence to rebut presumption of discrimination raised by prima facie case. [North Carolina Dept. of Correction v. Gibson](#), 1983, 301 S.E.2d 78, 308 N.C. 131 . [Civil Rights](#) 1710

In race discrimination action brought by black correctional program assistant, State Personnel Commission erroneously placed burden of proof on Department of Correction to show absence of discrimination. [North Carolina Dept. of Correction v. Gibson](#), 1983, 301 S.E.2d 78, 308 N.C. 131 . [Public Employment](#) 611