

MEMORANDUM OF UNDERSTANDING

Between

The North Carolina Department of Labor

Occupational Safety and Health Division

And

Employment Discrimination Bureau

I. PURPOSE AND SCOPE

This Memorandum of Agreement is entered into by and between the Occupational Safety and Health Division (herein “OSH”) and the Employment Discrimination Bureau (herein “EDB”), both divisions within the North Carolina Department of Labor. The purpose of this agreement is to describe and document the allocation of responsibilities and resources within the Department of Labor relating to enforcement of the Retaliatory Employment Discrimination Act of North Carolina, N.C.G.S. §§ 95-240 to - 245 (herein “REDA”), which prohibits discrimination or retaliatory action against any employee because that employee has exercised, among other rights, any right arising under the Occupational Safety and Health Act of North Carolina, N.C.G.S. §§ 95-126 to - 155 (herein “OSHANC”), or by REDA. This Agreement does not address allocation of enforcement authority and activities among different agencies, but instead documents an already-existing allocation of resources between two units within a single agency, the North Carolina Department of Labor.

II. COORDINATED ACTIVITIES

OSH and EDB agree as follows:

1. EDB is vested with authority for investigating claims of discrimination or retaliation against an employee for exercising any right protected under OSHANC.
2. EDB is responsible for investigating and resolving claims of discrimination and/or retaliation against employees for exercising rights protected under North Carolina’s Workers Compensation, Wage & Hour, and Mine Safety & Health Acts, among other laws, as well as for allegations arising under OSHANC.
3. The enforcement provisions of REDA are equally as effective as the enforcement provisions of the Federal Occupational Safety and Health Act in protecting employees from discrimination or retaliation for exercising any rights afforded by the Federal Act.

4. The Department of Labor has assigned three full time equivalent positions funded through state and/or federal OSH-related appropriations to the EDB Division, for the express purpose of enforcing the provisions of REDA as it pertains to claims of discrimination or retaliation against an employee for exercising a right arising under OSHANC.
5. EDB and OSH have in place and continue to develop processes and procedures for expeditiously sharing information, referrals, and providing technical assistance to one another on an as-needed basis.
6. OSH and EDB will continue to provide cross-training to maintain each staff's awareness of the other's policies and procedures. Where potential for cooperative or joint investigations occur, EDB and OSH will cooperate to ensure that neither division's goals nor procedures are subordinated, endangered, or violated.
7. EDB will participate with OSH in all monitoring and evaluation of North Carolina's occupational safety and health anti-discrimination protection program, and will, with assistance from OSH as needed, maintain all relevant records required by the United States Department of Labor.
8. To the extent possible, EDB will treat all OSH-related REDA complaints in such a priority manner as to maintain program performance outcomes and statistics within the United States Department of Labor's performance expectations for state-operated occupational safety and health anti-discrimination programs. This will include making a determination as soon as possible but no later than 90 days after the filing of the complaint.
9. This agreement may be modified upon written agreement of the Deputy Commissioner for Safety & Health and the Deputy Commissioner for Standards & Inspections, or by unilateral decision of the North Carolina Commissioner of Labor. This agreement, or subsequent modifications thereof, shall remain in effect until terminated by written agreement of the Deputy Commissioner for Safety & Health and the Deputy Commissioner for Standards & Inspections, or by unilateral termination by the Commissioner of Labor.

Signed the 28th day of November, 2011

Signed on Original

Allen McNeely
Deputy Commissioner
Occupational Safety & Health Division

Signed on Original

Andy Frazier
Deputy Commissioner
Division of Standards & Inspections