

# North Carolina's New State Budget Makes Changes to Occupational Safety and Health Rules and Bars Local Wage Payment Laws

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On September 22, 2023, the North Carolina General Assembly approved a budget for the period from July 1, 2023, through June 20, 2025. After its passage, Governor Roy Cooper announced that he would allow the [budget](#) to become law without his signature.

## Quick Hits

- The time during which the North Carolina Department of Labor has to cite an employer for a violation of the Occupational Safety and Health Act of North Carolina is now six months from the date of the violation rather than six months from the date that the inspection began.
- The North Carolina Department of Labor will have to publish a notice and go through the state's rulemaking process before adopting any new standard promulgated by the federal Occupational Safety and Health Administration (OSHA).
- Any local ordinances adopted by counties or municipalities establishing minimum wage, overtime, or leave laws that are different from the North Carolina Wage and Hour Act are unenforceable.
- North Carolina's state budget takes effect on October 2, 2023, and runs through June 30, 2025.

In addition to setting spending levels for North Carolina state government for the next two years, the budget contained a number of policy changes widely reported in the news media, including tax cuts and expanded Medicaid eligibility and school choice. The budget also included three key provisions impacting employers that have not received the same level of media attention—two dealing with occupational safety and health issues, and the third preempting wage and hour standards established by local governments.

## OSHANC Statute of Limitations Change

Effective October 1, 2023, the North Carolina Department of Labor (NCDOL) will have six months following the occurrence of any Occupational Safety and Health Act of North Carolina (OSHANC) violation to issue a citation to employers. With this change, the OSHANC statute of limitations will revert to the way it was before last year's budget when the statute of limitations was modified to allow NCDOL to cite violations that occurred at any previous time so long as the citation was issued within six months "following the initiation of an inspection" by NCDOL.

This modification brings North Carolina's statute of limitations back in line with the statute of limitations in the majority of the twenty-two "state plan" states like North Carolina that administer and enforce their own occupational safety and health laws, and the statute of limitations in the twenty-eight states where the federal government is responsible for the administration and enforcement of occupational safety and health laws.

Had this change not been made, NCDOL could have issued a citation to an employer for any violation going back to the 1970s when North Carolina adopted its own OSHA-approved state plan, so long as a citation was issued within six months after NCDOL opened its inspection. NCDOL will still have the authority to do this for all inspections initiated between October 1, 2022, and October 1, 2023, when the new statute of limitations provision takes effect.

In almost every occupational safety and health inspection, NCDOL requests an employer's OSHA 300 illness and injury logs for the year in which the inspection occurred, plus the previous three years. With this change, employers can only be cited for failing to record work-related illnesses and injuries on their OSHA 300 logs where the failure to record an illness or injury occurred within six months of when the citation was issued. This change also prohibits NCDOL from reviewing OSHA 300 logs and issuing citations related to accidents and injuries based on violations of OSHA standards that occurred more than six months before the citation was issued. As a result, employers that receive citations may want to consider carefully whether the factual allegations on which the citations are based occurred within the previous six months.

#### **All New Occupational Safety and Health Standards Must Be Approved by the Rules Review Commission**

The budget eliminates an exception in state law that had allowed NCDOL to adopt occupational safety and health standards identical to regulations adopted by the U.S. Department of Labor (DOL) without going through the usual process of providing public notice of the text of the standard to be adopted, taking comments, or holding a hearing on the adoption of the new standard, and submitting it for review by the North Carolina Rules Review Commission, the agency responsible for reviewing and approving rules and regulations adopted by North Carolina's state agencies. As a result of this change, any changes to OSHA standards adopted by NCDOL on or after July 1, 2023, the effective date of this provision, will be subject to oversight by the Rules Review Commission.

Under federal law, in order to maintain its "state plan" status, NCDOL must adopt and maintain occupational safety and health standards that are "at least as effective" as federal OSHA standards. Earlier this year, Arizona was [permitted to keep its state plan status](#) after resolving a dispute with the DOL over its failure to adopt certain federal OSHA rules and standards. All "occupational safety and health standards" promulgated by federal OSHA and "any modifications, revision, amendments or revocations" of those standards are [automatically adopted under North Carolina law](#) "unless the Commissioner [of Labor] decides to adopt an alternative State rule as effective as the federal requirement." But the adoption of rules by NCDOL has always been subject to the Rules Review Commission's process unless an exception like the one eliminated in this year's budget applied.

Although it is not clear what the outcome might be if a dispute arises between NCDOL and the Rules Review Commission over the necessity of adopting any federal occupational safety and health standard, employers may have a basis to challenge the legality of any OSHA standard adopted by NCDOL on or after July 1, 2023, that does

not go through the notice and rulemaking process that applies to other state agencies. It is also unclear how this change may impact NCDOL's ability to adopt policies and interpretations of OSHA standards, such as federal OSHA's Multi-Employer Citation Policy, that do not rise to the level of being official occupational safety and health standards. The North Carolina Court of Appeals has, however, on at least one occasion, determined that NCDOL need not follow the formal rulemaking process prior to adopting "nonbinding interpretive statements," even if an interpretation impacts how the agency applies and enforces OSHA standards.

### **Prohibition on Adoption of Wage and Hour Laws by Local Governments**

The budget also states that the policies set forth in the North Carolina Wage and Hour Act "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 compensation of employees, such as the wage levels of employees, hours of labor, payment of earned wages, benefits, leave, or well-being of minors in the workforce." This change does not prohibit any unit of local government from "regulating, compensating, or controlling its own employees" or enacting measures to comply with the terms of a block grant or economic development incentive programs.

The practical effect of this provision is that it bars counties, municipalities, or any other local governments from, among other things, adopting minimum wage, overtime, or paid leave laws that differ from those contained in state law and nullifies any such provisions that have been adopted since July 1, 2023, the effective date of this budget provision. Employers in states that do not have such a prohibition are often faced with a patchwork of local wage and hour laws that can create compliance headaches. As a result of this change, any modification to North Carolina's minimum wage, overtime, or paid leave laws will need to be enacted on a statewide basis because the North Carolina Constitution already prohibits the General Assembly from enacting local laws regulating labor matters.

The General Assembly has permitted local government units to enact local ordinances regulating private employment practices or public accommodations since December 1, 2020. Since then, multiple counties and municipalities have enacted nondiscrimination ordinances that have generally mirrored state and federal nondiscrimination laws applicable to private-sector employers, although some have added protected categories prohibiting discrimination against employees based on "natural hair or hairstyle" and "political affiliation."

The law that [allowed for the adoption](#) of these local nondiscrimination ordinances left open the possibility that local governments could also enact their own wage and hour requirements. This budget provision does not affect these nondiscrimination ordinances but instead only prohibits enforcement of wage and hour ordinances adopted by local government units that apply to private-sector employers and employees and differ from state law.

Ogletree Deakins will continue to monitor developments and will publish updates on the [North Carolina](#) blog as additional information becomes available.

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