

OUR INSIGHTS

New NC Law Clarifies Scope of Some State Law Claims for Wrongful Termination

Authors: Phillip J. Strach (Raleigh), Parker R. Himes (Charlotte)

Published Date: March 24, 2016

On March 23, 2016, Governor Pat McCrory signed into law House Bill 2, commonly known as the Public Facilities Privacy and Security Act. The act contains a significant provision clarifying North Carolina common law in the area of wrongful termination claims brought under state law.

Prior to the passage of the act, in the early 2000s, some state and federal courts in North Carolina began to recognize a cause of action for wrongful termination based on the Equal Employment Practices Act (EEPA) (N.C.G.S. 143-422.2). These courts found that the EEPA's prohibition on discrimination based on race, religion, color, national origin, age, sex, or handicap by employers that regularly employ 15 or more employees could provide a basis for a claim for wrongful discharge. The EEPA, which the North Carolina General Assembly enacted in 1977, did not contain any language allowing wrongful termination claims or any other type of civil claim. The Supreme Court of North Carolina has never expressly ruled on whether a public policy wrongful discharge claim can be based on the EEPA.

Now, the Public Facilities Privacy and Security Act has expressly clarified that the EEPA does not provide any such claim. According to the act, the EEPA "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." Workers may continue to bring claims for employment discrimination based on the protected classes listed in the EEPA in federal court based on federal laws prohibiting employment discrimination. Additionally, employers may still be subject to public policy wrongful discharge claims based upon the public policy contained in other North Carolina statutes.

The Public Facilities Privacy and Security Act's clear stance on whether a wrongful termination claim can be based on the EEPA provides helpful clarity for employers on an issue that has been unresolved for many years. Employers should note that employees may continue to file lawsuits for wrongful termination pursuant to EEOC claims under federal law.

Phillip J. Strach (Raleigh)

Mr. Strach is a trial lawyer who regularly represents management in



labor/employment law and related matters. A significant area of Phil's representation of employers and management includes advising clients on covenants not to compete and litigating claims involving restrictive covenants, trade secrets, and other business-related litigation. Phil also regularly defends management and employers in employment discrimination cases and counsels management on how to prevent or reduce the risk...

Parker R. Himes (Charlotte)



Mr. Himes practices in all areas of employment law and has experience defending claims in state and federal court and administrative tribunals, including the U.S. Supreme Court, the U.S. Court of Appeals for the Seventh Circuit, the U.S. District Court for the Northern District of Illinois (in which he is a member of the Trial Bar), the Illinois Supreme Court, the EEOC, the NLRB, the Department of Education's Office of Civil Rights, and the Securities & Exchange Commission. Mr. Himes...
