

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

1

SENATE BILL 921

Short Title: Workplace Violence.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO CONTRIBUTE TO THE PREVENTION OF WORKPLACE
3 VIOLENCE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 95 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 23.

8 "Workplace Violence Prevention.

9 "**§ 95-260. Definitions.**

10 The following definitions apply in this Article:

11 (1) Unlawful conduct. – Unlawful conduct means the commission of one
12 or more of the following acts upon an employee, but does not include
13 acts of self-defense or defense of others:

14 a. Attempting to cause bodily injury or intentionally causing
15 bodily injury.

16 b. Willfully, and on more than one occasion, following, being in
17 the presence of, or otherwise harassing, as defined in
18 G.S. 14-277.3, without legal purpose and with the intent to
19 place the employee in reasonable fear for the employee's safety.

20 c. Willfully threatening, orally, in writing, or by any other means,
21 to physically injure the employee in a manner and under
22 circumstances that would cause a reasonable person to believe
23 that the threat is likely to be carried out and that actually causes
24 the employee to believe that the threat will be carried out.

25 (2) Employer. – Any person or entity that employs one or more
26 employees. Employer also includes the State of North Carolina and its
27 political subdivisions.

28 "**§ 95-261. Institution of civil action; temporary restraining orders.**

1 (a) Any employer whose employee has suffered unlawful conduct from any
2 individual that can reasonably be construed to be carried out, or to have been carried
3 out, at the employee's workplace may seek an injunction under this Article on behalf of
4 the employee by filing a petition alleging unlawful conduct against the employee. The
5 employee that is the subject of unlawful conduct shall be consulted prior to seeking an
6 injunction under this section in order to determine whether any safety concerns exist in
7 relation to their participation in the process. Employees who are targets of unlawful
8 conduct who are unwilling to participate in the process under this section shall not face
9 disciplinary action based on their level of participation or cooperation.

10 (b) Upon filing a petition with the court for an injunction, the petitioner may
11 move the court for a temporary restraining order if the petitioner also files an affidavit
12 that shows, to the satisfaction of the court, reasonable proof that an employee has
13 suffered unlawful conduct by the respondent and that great or irreparable harm will
14 result to the employee if the temporary restraining order is not granted. The affidavit
15 shall further show that the petitioner has conducted a reasonable investigation into the
16 underlying facts that are the subject of the petition. If it clearly appears to the court that
17 there is a danger of further unlawful conduct against the employee, the court may enter
18 ex parte orders as it deems necessary to protect the employee from unlawful conduct.
19 Upon the issuance of a temporary restraining order under this subsection, a hearing shall
20 be held within 10 days from the date of issuance of the order or within seven days from
21 the date of service of process on the respondent, whichever occurs later. When no
22 temporary restraining order is issued, a hearing shall be held after five days' notice of
23 the hearing to the respondent or after five days from the date of service of process on
24 the respondent, whichever occurs first.

25 (c) The district court division of the General Court of Justice shall have original
26 jurisdiction over actions instituted under this Article. Except for proceedings involving a
27 nonresident respondent, the court of competent jurisdiction of the county where the
28 unlawful conduct occurred has jurisdiction over all proceedings under this Article. For
29 proceedings under this Article involving a nonresident respondent, the court of
30 competent jurisdiction where the petitioner's workplace is located has jurisdiction when
31 the act involving unlawful conduct meets the elements for personal jurisdiction under
32 G.S. 1-75.4.

33 **"§ 95-262. Relief.**

34 (a) The court may include any one or more of the following orders in its
35 temporary restraining order or its injunction under this Article:

- 36 (1) Order the respondent not to visit, assault, molest, or otherwise interfere
37 with the employer or the employer's operations, or the employer's
38 employee at the employer's workplace.
- 39 (2) Order the respondent to cease stalking the employer's employee at the
40 employer's workplace.
- 41 (3) Order the respondent to cease harassment of the employer or the
42 employer's employee at the employer's workplace.

1 (4) Order the respondent not to abuse or injure the employer, including the
2 employer's property, or the employer's employee at the employer's
3 workplace.

4 (5) Order the respondent not to telephone the employer or the employer's
5 employee at the employer's workplace.

6 (6) Order other relief deemed necessary and appropriate by the court.

7 (b) An injunction issued pursuant to this Article shall be for a fixed period of
8 time not to exceed one year. Upon application of the petitioner, a judge may renew the
9 original or any succeeding order for up to one additional year.

10 (c) A copy of any order entered and filed under this Article shall be issued to
11 each party. In addition, a copy of the order shall be issued promptly to and retained by
12 the police department of the city where the petitioner's workplace is located. If the
13 petitioner's workplace is not located in a city, or is located in a city with no police
14 department, copies shall be issued promptly to and retained by the sheriff and the
15 county police department, if any, of the county in which the workplace is located.

16 **"§ 95-263. Enforcement of orders.**

17 (a) A party may file a motion for contempt for violation of any order entered
18 pursuant to this Article.

19 (b) A valid protective order entered pursuant to this Article shall be enforced by
20 all North Carolina law enforcement agencies without further order of the court.

21 **"§ 95-264. Limits on liability of employers.**

22 (a) An employer and an employer's agents who act in accordance with this
23 Article shall be presumed to be acting in good faith and, unless lack of good faith is
24 shown by clear and convincing evidence, are immune from civil liability for actions
25 taken under this Article.

26 (b) Any employer, or its employee or invitee, that does not utilize the procedures
27 of this Article shall not be liable for negligence, and evidence of the failure to utilize the
28 procedures of this Article shall not be admissible as evidence of negligence.

29 **"§ 95-265. Scope of Article; other remedies available.**

30 This Article does not expand, diminish, alter, or modify the duty of any employer to
31 provide a safe workplace for employees and other persons. This Article does not limit
32 the ability of an employer or employee to pursue any other civil or criminal remedy
33 provided by law. This Article does not apply in circumstances where an employee or
34 representative of employees is engaged in union organizing, union activity, a labor
35 dispute, or any activity or action protected by the National Labor Relations Act,
36 29 U.S.C. § 151, et seq. Nothing in this Article is intended to change the National Labor
37 Relations Act's preemptive regulation of legally protected activities, nor to change the
38 right of the State and its courts to regulate activities not protected by the National Labor
39 Relations Act."

40 **SECTION 2.** There is appropriated from the General Fund to the Attorney
41 General's Office of the Department of Justice the sum of one thousand five hundred
42 dollars (\$1,500) for the 2003-2004 fiscal year to be used to educate the public about
43 workplace violence.

1 **SECTION 3.** Section 1 of this act becomes effective January 1, 2004. The
2 remainder of this act becomes effective July 1, 2003.