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**A SUMMARY OF NORTH CAROLINA EMPLOYMENT LAW**

(For use only by clients and potential clients of Goldsmith, Goldsmith & Dews, P.A.)

The Employment at Will Doctrine. Under the laws of North Carolina and of most states, an employer is free to fire or demote an employee for any reason, or for no reason at all. This is known as the "employment at will" doctrine. It means that if your boss decides one day that he does not like the way you are dressed, he can fire you. The law does not require that the company be fair, or that it have just cause, or that the facts upon which it is relying are true.

There are a few exceptions to this basic rule, which we will now discuss briefly.

Contracts of Employment. An employer cannot fire an employee if doing so would breach a contract of employment. Such a contract, to give you protection, must be for a definite term (month, years, etc.) and meet certain other requirements. If you have a contract of employment, you should definitely consult with us. Please be aware that under current North Carolina law, an employee handbook or personnel policy will probably not be held to constitute a contract.

Discrimination. Another exception to the general rule is where the employer's action violates some specific legal prohibition against discrimination. "Discrimination," however, does not mean simply that the employer has favored another employee over you for personal reasons, family relationships, "office politics," or the like. Instead, illegal discrimination means some adverse action taken against you – such as termination, refusal to hire, refusal to promote, harassment, or paying less wages – because of your race, sex, national origin, religion, age, or disability. Such cases are difficult to prove, but if you believe you are the victim of such discrimination and have some evidence to support that belief, you should consult with an attorney. Persons suffering from a physical or mental disability may have additional rights, such as the right to require the company to make "reasonable accommodation" for their condition under the Americans with Disabilities Act.

Retaliation. An employer is forbidden to retaliate against an employee for taking some action the employee is specifically entitled to take under the law. For example, if you file a worker's compensation claim, or an OSHA complaint about unsafe work conditions, or a complaint with the Department of Labor (federal or state) about an employer's failure to pay minimum wage or overtime, and your employer fires you for that reason, then you may have a case and you should consult with an attorney.

Union Members. If you are a member of a union you probably have a grievance procedure that can save your job or improve your working conditions. If you are a union member and have been treated unfairly by the employer or the union itself, you should consult with an attorney. Even if you are not in a union, the law protects your right to act with other employees to improve your working conditions. For example, if you get together with a group of other employees and seek to talk to management about some condition of the job or about your pay, hours of work, etc., the company cannot retaliate against you for that action. That is called "concerted activity" and is protected by the National Labor Relations Act, a federal labor law.

The "Public Policy" Exception. In recent years, the courts have begun to create certain very narrow exceptions to the employment-at-will doctrine in cases where an employer's termination of an employee is so outrageous as to violate some well-established public policy (usually, this means a public policy that is expressed somewhere in the state statutes). This is called a "wrongful discharge" action. For example, a nurse employed by a hospital, who was ordered to testify falsely (that is, commit perjury) in a malpractice action against the hospital, was held to have a legal claim. In another case, a truck driver who was ordered to falsify the records showing his road time and rest time in violation of federal DOT regulations was also held to have a case. If you think the company's action in your case rises to the level of these two examples or violates some equally important public policy, we will be glad to discuss it further with you.

Government Employees. For a person employed by federal, state, or local governmental agencies, there are some additional rules that apply. In certain situations, such employees, unlike those in private employment, may not be terminated without due process of law. In some cases, the employer must show "just cause" to terminate a public employee, and the employee may be entitled to a grievance hearing. Please contact us if you are a public employee and believe your rights have been violated.

The above does not purport to be a complete explanation of employment law or an exhaustive list of all the exceptions to the employment at will doctrine. We will discuss your individual situation at our office consultation. Please remember that we do not represent you at this point; you must first consult with us, and we must agree on the terms of representation.

We hope this brief summary has been of help to you.