

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H.B. 35  
Feb 1, 2017  
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40026-MM-20 (01/31)

Short Title: Protect North Carolina Workers Act. (Public)

Sponsors: Representatives Cleveland, Millis, and Conrad (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE NUMBER OF EMPLOYERS WHO ARE REQUIRED TO PARTICIPATE IN THE FEDERAL E-VERIFY PROGRAM; TO REPEAL THE E-VERIFY EXEMPTION FOR TEMPORARY EMPLOYEES; AND TO EXCLUDE FARM WORKERS FROM THE DEFINITION OF EMPLOYEE UNDER ARTICLE 2 OF CHAPTER 64 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 64-25 reads as rewritten:

**"§ 64-25. Definitions.**

The following definitions apply in this Article:

- (1) Commissioner. – The North Carolina Commissioner of Labor.
- (2) Employ. – Hire an employee.
- (3) Employee. – Any individual who provides services or labor for an employer in this State for wages or other remuneration. ~~The term does not include an individual whose term of employment is less than nine months in a calendar year.~~ The term does not include a farm worker, an independent contractor, or an individual who provides domestic service in a private home that is sporadic, irregular, or intermittent.
- (4) Employer. – Any person, business entity, or other organization that transacts business in this State and that employs ~~25~~ five or more employees in this State. This term does not include State agencies, counties, municipalities, or other governmental bodies.
- (5) E-Verify. – The federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
- (5a) Farm worker. – An individual who maintains farms, crops, or livestock by doing physical labor or operating machinery under the supervision of a farmer, rancher, or other agricultural manager. The term includes those who perform tasks related to growing and harvesting grains, fruits, vegetables, nuts, Christmas trees, and other agricultural crops but does not include those who merely plant, transplant, or transport trees.
- (5b) Independent contractor. – Any individual or entity who carries on independent business, contracts to do a piece of work according to the individual or entity's own means and methods, and is subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the



\* D R H 4 0 0 2 6 - M M - 2 0 \*

- 1                    individual or entity calls itself, shall be determined on a case-by-case basis.
- 2                    Factors to be considered in that determination include, but are not limited to,
- 3                    whether the individual or entity supplies the tools or materials; makes services
- 4                    available to the general public; works for a number of clients at the same time;
- 5                    has an opportunity for profit or loss as a result of labor or services provided;
- 6                    invests in the facilities for work; directs the order or sequence in which the
- 7                    work is to be done; and determines the hours during which the work is to be
- 8                    done.
- 9                    (6)    Unauthorized alien. – As defined in 8 U.S.C. § 1324a(h)(3)."
- 10                   **SECTION 2.** This act becomes effective October 1, 2017.