

Civil No-Contact Orders for the Protection of Employees from Workplace Violence

This Act creates a new procedure to allow an employer to obtain a civil no-contact order against a person who has harmed, threatened to harm, or stalked an employee of the employer. Upon a finding that the employee has been the victim of unlawful conduct, the court is authorized to issue temporary or permanent orders restraining the conduct of the perpetrator. “Unlawful conduct” is defined to include bodily injury, attempted bodily injury, stalking and communicating a threat. Permissible remedies include ordering the perpetrator not to:

- Visit, assault, molest or interfere with the employee or the employer at the workplace;
- Stalk the employee at the workplace;
- Harass, abuse or injure the employee or employer at the workplace; or
- Contact the employee or employer by any means at the workplace.

Temporary orders may be granted for up to 10 days and may be issued ex parte and after normal business hours under certain circumstances. Permanent orders may be granted for up to one year. All orders may be renewed.

Submitted as:

North Carolina

Session Law 2004-165

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish Civil No-Contact
2 Orders for the Protection of Employees from Workplace Violence.”

3

4

Section 2. [*Definitions.*] As used in this Act:

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(a) Civil no-contact order. - An order granted under this Act, which includes a remedy
6 authorized by section 6 of this Act.

7

(b) Employer. - Any person or entity that employs one or more employees. Employer also
8 includes [this State] and its political subdivisions.

9

(c) Unlawful conduct. - Unlawful conduct means the commission of one or more of the
10 following acts upon an employee, but does not include acts of self-defense or defense of others:

11

(1) Attempting to cause bodily injury or intentionally causing bodily injury.

12

(2) Willfully, and on more than one occasion, following, being in the presence of,
13 or otherwise harassing, as defined in [insert citation], without legal purpose and with the intent to
14 place the employee in reasonable fear for the employee’s safety.

15

(3) Willfully threatening, orally, in writing, or by any other means, to physically
16 injure the employee in a manner and under circumstances that would cause a reasonable person
17 to believe that the threat is likely to be carried out and that actually causes the employee to
18 believe that the threat will be carried out.

19

20 Section 3. [*Civil No-Contact Orders; Persons Protected.*] An action for a civil no-contact
21 order may be filed as a civil action in [district court] by an employer on behalf of an employee
22 who has suffered unlawful conduct from any individual that can reasonably be construed to be
23 carried out, or to have been carried out, at the employee's workplace. The employee that is the
24 subject of unlawful conduct shall be consulted prior to seeking an injunction under this Act in
25 order to determine whether any safety concerns exist in relation to the employee's participation
26 in the process. Employees who are targets of unlawful conduct who are unwilling to participate
27 in the process under this Act shall not face disciplinary action based on their level of
28 participation or cooperation.

29
30 Section 4. [*Commencement of Action; Venue.*]

31 (a) An action for a civil no-contact order is commenced by filing a verified complaint for
32 a civil no-contact order in any [civil district court] or by filing a motion in any existing civil
33 action.

34 (b) A complaint or motion for a civil no-contact order shall be filed in the county where
35 the unlawful conduct took place.

36
37 Section 5. [*Process for Action for No-contact Order.*]

38 (a) Any action for a civil no-contact order requires that a separate summons be issued and
39 served. The summons issued pursuant to this Act shall require the respondent to answer within
40 [10 days] of the date of service. Attachments to the summons shall include the verified complaint
41 for the civil no-contact order and any temporary civil no-contact order that has been issued and
42 the notice of hearing on the temporary civil no-contact order.

43 (b) Service of the summons and attachments shall be by the sheriff by personal delivery
44 in accordance with [insert citation], and if the respondent cannot with due diligence be served by
45 the sheriff by personal delivery, the respondent may be served by publication by the complainant
46 in accordance with [insert citation].

47 (c) The court may enter a civil no-contact order by default for the remedy sought in the
48 complaint if the respondent has been served in accordance with this section and fails to answer as
49 directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties
50 or set by the court.

51
52 Section 6. [*Civil No-Contact Order; Remedy.*]

53 (a) Upon a finding that the employee has suffered unlawful conduct committed by the
54 respondent, the court may issue a temporary or permanent civil no-contact order. In determining
55 whether or not to issue a civil no-contact order, the court shall not require physical injury to the
56 employee or injury to the employer's property.

57 (b) The court may grant one or more of the following forms of relief in its orders under
58 this Act:

59 (1) Order the respondent not to visit, assault, molest, or otherwise interfere with
60 the employer or the employer's employee at the employer's workplace, or otherwise interfere
61 with the employer's operations.

62 (2) Order the respondent to cease stalking the employer's employee at the
63 employer's workplace.

64 (3) Order the respondent to cease harassment of the employer or the employer's
65 employee at the employer's workplace.

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

68 (5) Order the respondent not to contact by telephone, written communication, or
69 electronic means the employer or the employer's employee at the employer's workplace.

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

71 (c) A civil no-contact order shall include the following notice, printed in conspicuous
72 type: "A knowing violation of a civil no-contact order shall be punishable as contempt of court
73 which may result in a fine or imprisonment."
74

75 Section 7. [*Temporary Civil No-Contact Order; Court Holidays and Evenings.*]

76 (a) A temporary civil no-contact order may be granted ex parte, without written or oral
77 notice to the respondent, only if both of the following are shown:

78 (1) It clearly appears from specific facts shown by a verified complaint or
79 affidavit that immediate injury, loss, or damage will result to the complainant, or the
80 complainant's employee before the respondent can be heard in opposition.

81 (2) Either one of the following:

82 I. The complainant certifies to the court in writing the efforts, if any, that
83 have been made to give the notice and the reasons supporting the claim that notice should not be
84 required.

85 II. The complainant certified to the court that there is good cause to grant
86 the remedy because the harm that the remedy is intended to prevent would like occur if the
87 respondent were given any prior notice of the complainant's efforts to obtain judicial relief.

88 (b) Every temporary civil no-contact order granted without notice shall:

89 (1) Be endorsed with the date and hour of issuance.

90 (2) Be filed immediately in the clerk's office and entered of record.

91 (3) Define the injury, state why it is irreparable and why the order was granted
92 without notice.

93 (4) Expire by its terms within such time after entry, not to exceed [10 days].

94 (5) Give notice of the date of hearing on the temporary order as provided in
95 section 9(a) of this Act.

96 (c) If the respondent appears in court for the hearing for a temporary order, the
97 respondent may elect to file a general appearance and testify. Any resulting order may be a
98 temporary order, governed by this section. Notwithstanding the requirements of this section, if
99 all requirements of section 8 of this Act have been met, the court may issue a permanent order.

100 (d) When the court is not in session, the complainant may file a complaint for a
101 temporary order before any judge or magistrate designated to grant relief under this Act. If the
102 judge or [magistrate] finds that there is an immediate and present danger of abuse against the
103 complainant or employee of the complainant and that the complainant has satisfied the
104 prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a
105 temporary civil no-contact order. The [chief district court judge] may designate for each county
106 at least one judge or magistrate to be reasonably available to issue temporary civil no-contact
107 orders when the court is not in session.
108

109 Section 8. [*Permanent Civil No-Contact Order.*] Upon a finding that the employee has
110 suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may
111 issue if the court additionally finds that process was properly served on the respondent, the
112 respondent has answered the complaint and notice of hearing was given, or the respondent is in
113 default. No permanent civil no-contact order shall be issued without notice to the respondent.
114

115 Section 9. [*Duration; Extension of Orders.*]

116 (a) A temporary civil no-contact order shall be effective for not more than [10 days] as
117 the court fixes, unless within the time so fixed the temporary civil no-contact order, for good
118 cause shown, is extended for a like period or a longer period if the respondent consents. The
119 reasons for the extension shall be stated in the temporary order. In case a temporary civil no-
120 contact order is granted without notice and a motion for a permanent civil no-contact order is
121 made, it shall be set down for hearing at the earliest possible time and takes precedence over all
122 matters except older matters of the same character. When the motion for a permanent civil no-
123 contact order comes on for hearing, the complainant may proceed with a motion for a permanent
124 civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the
125 temporary civil no-contact order. On [two days'] notice to the complainant or on such shorter
126 notice to that party as the judge may prescribe, the respondent may appear and move its
127 dissolution or modification. In that event the judge shall proceed to hear and determine such
128 motion as expeditiously as the ends of justice require.

129 (b) A permanent civil no-contact order shall be effective for a fixed period of time not to
130 exceed [one year].

131 (c) Any temporary or permanent order may be extended one or more times, as required,
132 provided that the requirements of section 7 or section 8 of this Act, as appropriate, are satisfied.
133 The court may renew a temporary or permanent order, including an order that previously has
134 been renewed, upon a motion by the complainant filed before the expiration of the current order.
135 The court may renew the order for good cause. The commission of an act of unlawful conduct by
136 the respondent after entry of the current order is not required for an order to be renewed. If the
137 motion for extension is uncontested and the complainant seeks no modification of the order, the
138 order may be extended if the complainant's motion or affidavit states that there has been no
139 material change in relevant circumstances since entry of the order and states the reason for the
140 requested extension. Extensions may be granted only in open court and not under the provisions
141 of section 7(d) of this Act.

142 (d) Any civil no-contact order expiring on a court holiday shall expire at the close of the
143 [next court business day].

144

145 Section 10. [*Notice of Orders.*]

146 (a) The clerk of court shall deliver on the same day that a civil no-contact order is issued
147 a certified copy of that order to the sheriff.

148 (b) Unless the respondent was present in court when the order was issued, the sheriff
149 shall serve that order upon the respondent and file proof of service in the manner provided for
150 service of process in civil proceedings. If process has not yet been served upon the respondent, it
151 shall be served with the order.

152 (c) A copy of the order shall be issued promptly to and retained by the police department
153 of the municipality of the employer's workplace. If the employer's workplace is not located in a
154 municipality or in a municipality with no police department, copies shall be issued promptly to
155 and retained by the sheriff and the county police department, if any, of the county in which the
156 employer's workplace is located.

157 (d) Any order extending, modifying, or revoking any civil no-contact order shall be
158 recorded, issued, and served in accordance with the provisions of this Act.

159

160 Section 11. [*Violation of Valid Order.*] A violation of an order entered pursuant to this
161 Act is punishable as contempt of court.

162

163 Section 12. [*Employment Discrimination Unlawful.*]

164 (a) No employer shall discharge, demote, deny a promotion, or discipline an employee
165 because the employee took reasonable time off from work to obtain or attempt to obtain relief
166 under this Act. An employee who is absent from the workplace shall follow the employer's usual
167 time-off policy or procedure, including advance notice to the employer, when required by the
168 employer's usual procedures, unless an emergency prevents the employee from doing so. An
169 employer may require documentation of any emergency that prevented the employee from
170 complying in advance with the employer's usual time-off policy or procedure, or any other
171 information available to the employee which supports the employee's reason for being absent
172 from the workplace.

173 (b) The [Commissioner of Labor] shall enforce the provisions of this section, including
174 the rules and regulations issued pursuant to the Act.

175
176 Section 13. [*Scope of Article; Other Remedies Available.*] This Act does not expand,
177 diminish, alter, or modify the duty of any employer to provide a safe workplace for employees
178 and other persons. This Act does not limit the ability of an employer, employee, or victim to
179 pursue any other civil or criminal remedy provided by law. This Act does not apply in
180 circumstances where an employee or representative of employees is engaged in union
181 organizing, union activity, a labor dispute, or any activity or action protected by the National
182 Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Act is intended to change the
183 National Labor Relations Act's preemptive regulation of legally protected activities, nor to
184 change the right of the State and its courts to regulate activities not protected by the National
185 Labor Relations Act.

186
187 Section 14. [*Severability.*] [Insert severability clause.]

188
189 Section 15. [*Repealer.*] [Insert repealer clause.]

190
191 Section 16. [*Effective Date.*] [Insert effective date.]