

# LABOR ACTIVITY BY PUBLIC EMPLOYEES IN NORTH CAROLINA: A BRIEF LEGAL GUIDE

---

## Rights Under the U.S. Constitution

Public employees enjoy certain rights under the U.S. Constitution to speak out and engage in concerted action concerning matters that affect their jobs and their interests as citizens.

### Freedom of Expression

The 1st Amendment protects “the freedom of speech, ... [and] the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” These protections apply to restrictions or retaliation by government bodies or officials at the federal, state, and local levels.

Under the 1<sup>st</sup> Amendment, public employees have the right to speak on matters of public concern, without facing reprisals from their employers.<sup>1</sup> However, public employees may be fired or disciplined for statements critical of workplace management or internal operations, or for statements made as part of their job duties.<sup>2</sup> Public school teachers and college faculty may be subject to some restrictions on their in-class speech to avoid interference with educational goals.<sup>3</sup>

### Freedom of Association

The Constitution also protects the freedom of association against government interference. This includes the right to join & support organizations to advance shared beliefs and interests.

The right of association applies to membership in employee organizations. Public employees thus have a right to join and support unions to advocate for their shared interests as workers.<sup>4</sup>

## Restrictions Under North Carolina Law

North Carolina law denies public employees certain basic labor rights that private-sector employees generally enjoy.

### Collective Bargaining

NC law prohibits collective bargaining agreements between government employers and unions representing their employees.<sup>5</sup> Even if a public employer voluntarily agrees to a collective bargaining agreement, it would be legally unenforceable.

### Strikes & Work Stoppages

NC law bans strikes by public employees.<sup>6</sup> A “strike” is any concerted work stoppage or slowdown aimed at inducing the employer to comply with employee demands.<sup>7</sup> Public employees may be fired or otherwise disciplined for engaging in an illegal strike.

Courts have upheld these restrictions against constitutional challenge, holding that the 1<sup>st</sup> Amendment does not protect the rights to engage in collective bargaining or to strike.<sup>8</sup>

---

Prepared by Eric M. Fink, Associate Professor, Elon University School of Law, Greensboro, North Carolina. This work is licensed under a Creative Commons Attribution-NonCommercial 3.0 United States License.

**Disclaimer: This document provides general information about the law. It is not offered as legal advice & does not establish an attorney-client relationship. To obtain legal advice about a particular situation or problem, you should consult with a licensed attorney.**

1. Pickering v. Board of Education, 391 U.S. 563 (1968)
2. Connick v. Meyers, 461 U.S. 138 (1983); Garcetti v. Ceballos, 547 U.S. 410 (2006)
3. Bishop v. Aronov, 926 F.2d 1066 (11th Cir. 1991)
4. Atkins v. City of Charlotte, 296 F.Supp. 1068 (W.D.N.C. 1969).
5. North Carolina General Statutes, § 97-98
6. North Carolina General Statutes, § 97-98.1
7. North Carolina General Statutes, § 97-98.2
8. Winston-Salem/Forsyth County Unit, NCAE v. Phillips, 381 F.Supp. 644 (M.D.N.C. 1974); Atkins v. City of Charlotte, 296 F.Supp. 1068 (W.D.N.C. 1969)