

### § 168A-3. Definitions.

The following definitions apply in this Chapter:

- (1) Covered governmental entity. – Any State department, institution, agency, or any political subdivision of the State or any person that contracts with a State department, institution, agency, or political subdivision of the State for the delivery of public services, including, but not limited to, education, health, social services, recreation, and rehabilitation.
- (1a) Disabling condition. – Any condition or characteristic that renders a person a person with a disability.
- (1b) Discriminatory practice. – Any practice prohibited by this Chapter.
- (2) Employer. – Any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.
- (3) Employment agency. – A person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.
- (4) Recodified as G.S. 168A-3(7a).
- (4a) Information technology. – As defined in G.S. 143B-1320. The term also specifically includes information transaction machines.
- (5) Recodified as G.S. 168A-3(1).
- (6) Labor organization. – An organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
- (7) Person. – Any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.
- (7a) Person with a disability. – Any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. The following definitions apply in this subdivision:
  - a. Physical or mental impairment. – Any of the following:
    1. Any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect, or illness, affecting a body system, including, but not limited to, neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.
    2. Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

"Physical or mental impairment" excludes (i) sexual preferences; (ii) active alcoholism or drug addiction or abuse; and (iii) any disorder, condition, or disfigurement which is temporary in nature, lasting six months or fewer, and leaving no residual impairment. A disorder, condition, or disfigurement that is episodic or in remission is a physical or

mental impairment if it would substantially limit a major life activity when active.

- b. Major life activities. – Functions, including, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, eating, sleeping, lifting, bending, standing, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- c. Has a record of such an impairment. – Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.
- d. Is regarded as having an impairment. – Any of the following:
  - 1. Has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation.
  - 2. Has a physical or mental impairment that substantially limits major life activities because of the attitudes of others.
  - 3. Has none of the impairments defined in sub-subdivision a. of this subdivision but is treated as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as (i) medication, medical supplies, equipment, or appliances, low-vision devices, which do not include ordinary eyeglasses or contact lenses, prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; (ii) use of assistive technology; (iii) reasonable accommodations or auxiliary aids or services; or (iv) learned behavioral or adaptive neurological modifications.

- (8) Place of public accommodations. – Includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.
- (9) Qualified person with a disability. – All of the following:
  - a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a disability, other employees, the employer's customers, or the public.
  - b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public accommodation.
  - c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are

uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.

- (10) Reasonable accommodations. – All of the following:
- a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job. "Reasonable accommodation" does not require that an employer do any of the following:
    1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be employed.
    2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned.
    3. Reassign duties of the job in question to one or more other employees where the reassignment would increase the skill, effort, or responsibility required of the other employee or employees from that required prior to the change in duties.
    4. Alter, modify, change, or deviate from bona fide seniority policies or practices.
    5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally.
    6. Repealed by Session Laws 2002-163, s. 2, effective January 1, 2003.
    7. Make any changes that would impose on the employer an undue hardship.
  - b. With regard to a place of public accommodations and a covered governmental entity, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, providing auxiliary aids and services needed to make aurally and visually delivered materials available, as needed, to individuals with hearing or sight impairments, providing mechanical aids or other assistance, or using alternative accessible locations. Reasonable accommodations do not require efforts which would impose an undue hardship on the entity involved.
- (11) Undue hardship. – A significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:
- a. The nature and cost of the accommodations needed under this Chapter.
  - b. The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of

persons employed at the facility, the effect on expenses and resources at the facility, and any other impact on the operation of the facility.

- c. The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type, and location of the covered entity's facilities.
- d. The type of operations of the covered entity, including the composition, structure, and functions of the workforce of the entity, the geographic separateness of the particular facility to the covered entity, and the administrative or fiscal relationship of the particular facility to the covered entity. (1985, c. 571, s. 1; 1999-160, s. 1; 1999-456, s. 44; 2002-163, s. 2; 2011-94, s. 1; 2015-241, s. 7A.4(hh); 2018-47, s. 14.)