



# NORTH CAROLINA INDUSTRIAL COMMISSION

## November 2020 Quarterly Update

### Full Commission Section and General/ Administrative Updates

- The Full Commission is now hearing all oral arguments by video conference via Microsoft Teams. All oral arguments that are normally recorded continue to be recorded by a court reporter.
- The Commission initiated emergency and temporary rulemaking on October 28, 2020, proposing a new rule (11 NCAC 23E .0302) that will allow the Commission to waive or vary its rule requirements in conformity with any emergency Order or directive of the Chief Justice of the North Carolina Supreme Court in the interests of justice or to protect the public health or safety. The emergency rule was approved by the Codifier of Rules and became effective November 6, 2020. A public hearing on the temporary rule will be held on Thursday, December 10, 2020 at 2 p.m. via teleconference only. The **teleconference number** is **1-888-363-4735** and the **access code** is **4465746**. Written comments for the proposed new rule may be submitted through December 11, 2020 to Gina Cammarano, Rulemaking Coordinator. Written comments should be submitted **via email** at [gina.cammarano@ic.nc.gov](mailto:gina.cammarano@ic.nc.gov), if at all possible.
- A notice of proposed rulemaking by the Commission was published in the November 2, 2020 North Carolina Register regarding permanent amendments to Rules 11 NCAC 23A .0109, 11 NCAC 23B .0105, and 11 NCAC 23G .0104. These proposed rule amendments also will be considered at the December 10, 2020 public hearing. Written comments for these proposed permanent rule amendments may be submitted through January 4, 2021 to Gina Cammarano and, if at all possible, written comments should be submitted via email.

### Deputy Commissioner Section

- The Deputy Commissioner Section is pleased to welcome Tiffany Mack Smith as a Deputy Commissioner. Ms. Smith began practicing law in 2011 and has focused her practice primarily in the areas of workers' compensation and social security disability. Ms. Smith earned her J.D. from North Carolina Central University School of Law, where she graduated *cum laude* and was the Executive

Editor of the North Carolina Central Law Review. Ms. Smith will be hearing cases assigned to the Charlotte Regional Office.

- Deputy Commissioner hearings are continuing to be held via Webex, with in-person hearings being allowed only when good cause is shown. As of November 2020, the Deputy Commissioner Section has eliminated the temporary backlog of cases that was caused by the COVID-19 pandemic.
- On October 22, 2020, Deputy Commissioner Kevin Howell presented practical tips and considerations for Deputy Commissioner Webex hearings at a free webinar open to the public and facilitated by the Workers' Compensation Section of the North Carolina Bar Association.

### **Mediation Section**

- On August 20, 2020, the Rules Review Commission approved a temporary amendment to Rule 11 NCAC 23G .0104 that makes remote mediations the default manner of conducting mediations so long as this is the default manner of conducting mediations under the *Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions*. This rule amendment is consistent with the requirement under G.S. §97-80(c) that the Industrial Commission's mediation rules be substantially similar to the mediation rules for use in the Superior Court division. The Industrial Commission is currently undertaking permanent rulemaking for this rule amendment.

### **Criminal Investigations & Employee Classification Division**

- The Criminal Investigations Section has resumed field investigations since the State moved into Phase 3 of reopening.
- The Employee Classification Section continues to work with the North Carolina Division of Employment Security, the North Carolina Data Analytics Center, and the SAS Institute to improve the Employee Classification Application. Additionally, new data from the North Carolina Department of Revenue is being migrated into the Employee Classification Application and will be available to the Industrial Commission soon, thereby enhancing its efforts to identify employers not complying with the Employee Fair Classification Act.