

640.00 INTRODUCTION TO "EMPLOYMENT RELATIONSHIP" SERIES.

NOTE WELL: The June 2009 replacement instruction N.C.P.I.-Civil 640.00 ("Employment Relationship - Status of Person as Employee") has been removed from this location and is renumbered as N.C.P.I.-Civil 640.01.

These instructions relate to issues arising out of employment relationships. The series is divided into five topical areas:

1. *Preliminary Issues.* One frequent preliminary issue is whether the plaintiff was actually an employee or something else (such as an independent contractor). N.C.P.I.-Civil 640.01 addresses this issue. Another preliminary issue in termination cases is whether the employee quit voluntarily or was terminated. This issue is addressed in N.C.P.I.-Civil 640.03.

2. *Contract Issues.* Liability for an unlawful termination may arise *ex contractu* or *ex delicto*. N.C.P.I.-Civil 640.10, 640.12 and 640.14 involve issues arising from a contended breach of a contract of employment.

3. *Tort Issues.* N.C.P.I.-Civil 640.20 and 640.22 involve issues arising from a possible tortious termination of the employment relationship.

N.C.P.I.-Civil 640.27 and 640.28 involve alleged discriminatory conduct by an employer, and N.C.P.I.-Civil 640.29 (A), (B), (C), (D) and (E) deal with alleged violations of the North Carolina Whistleblower Act.

4. *Damages.* N.C.P.I.-Civil 640.30 instructs the jury as to damages for breach of employment contract, wrongful termination or adverse employment action. N.C.P.I.-Civil 640.32 deals with an employee's duty to mitigate damages.

5. *Employer Liability for Co-Worker Torts.* N.C.P.I.-Civil 640.40 and 640.42 do not necessarily involve termination issues. Rather, these

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instructions are to be used where an employee seeks recovery from an employer because of some tort committed by a co-worker (such as intentional infliction of emotional distress incidental to sexual harassment).

6. *Wage and Hour Act Claim.* N.C.P.I.-Civil 640.60 and 640.65 involve claims and damages brought under the Wage & Hour Act, N.C. Gen. Stat. § 95-25 *et seq.*