

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE LLP
ATTORNEYS AT LAW

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Be Clear With Employees About Their Workers' Compensation Duties

When an employee suffers an on-the-job injury, he or she is to complete a North Carolina Industrial Commission Form 18, Notice of Accident to Employer and Claim of Employee. The Form 18 says in boldface print: "EMPLOYEE - This form must be filed with the Industrial Commission within two years of the date of injury . . . or your claim may be barred." And at the bottom, the Form 18 tells the injured employee to "retain one signed copy of this notice, mail one signed copy to the Industrial Commission . . . and furnish employer with one signed copy."

In *Gore v. Myrtle/Mueller*, an HR staff member helped the employee complete the Industrial Commission Form 18. As the employee was walking out of the office, the staff member said she would "check the Form 18" and "find out where it needs to go," intending to convey that she would determine who else at the Company or its insurance carrier needed to receive the form.

Fast forward more than two years. The employee files a claim with the Industrial Commission for this injury she reported to the HR staff over two years ago. Her legal problem, however, is the two-year statute of limitations provision in N.C. Gen. Stat. § 97-24, which requires that a compensation claim be filed within two years of the injury. The Company's workers' compensation insurance carrier argues that the claim is barred by the two-year limitations provision and that the employee simply waited too long to file her claim.

According to the Supreme Court of North Carolina, the offhand comment to the employee about finding out "where [the Form 18] needs to go" prevented the employer and its insurance company from asserting the two-year limitations defense. The Court concluded that the employee "was under the reasonable belief and reasonably relied upon her perception that the forms would be properly filed with the Industrial Commission." Despite finding no evidence of fraud, bad faith, or intent to mislead on the part of the employer and its HR manager, the Court excused the late filing and, after considering the merits of the employee's claim, affirmed an award of compensation to her.

TIP

If you assist an employee in completing a Form 18, avoid any statements the employee might construe as your "taking care of it." Instead, make sure the employee understands it is *her* responsibility, not the employer's, to file the Form 18 with the Industrial Commission.



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The firm restricts its practice in the labor and employment area to the representation of management.

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