

TEMPORARY RULE
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2103

DEADLINE FOR RECEIPT: Friday, November 22, 2024

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 5, what does the phrase “shall be at the minimum of the range or at a salary rate within the salary range” actually require? I think there’s a bit of ambiguity here, because it sounds like you’re trying to say that the salary shall be at the minimum of the range unless the hiring authority determines otherwise, but the Rule does not state what factors the hiring authority will use to make that determination. If it’s merely at the hiring authority’s discretion, then the phrase “shall be at the minimum of the range” is not actually a requirement.

In (a), lines 7-8, what is being required? The language “Boards of County Commissioners or their designees should exercise judgment when setting salaries above the minimum of the range, to avoid creating salary inequities within the jurisdiction” is not actually a requirement.

In (a), line 8, delete the comma following “range”.

In (a), lines 9-13, how are any of these metrics determined, and who makes these determinations?

In (b) generally, who makes these determinations?

In (b), lines 16-17, are there any guidelines to govern this exercise of discretion?

In (b), lines 18-19, it appears it is again an exercise of discretion to adjust the salary to the higher step in the range. Are there any guidelines as to when this should or should not occur?

In (c), line 22, I believe there’s a typo. Should it read “...or the salary may be reduced...”?

In (c), generally, who makes these determinations?

Brian Liebman
Commission Counsel

Date submitted to agency: November 20, 2024

In (c), generally, are there any guidelines to govern this exercise of discretion?

Speaking generally to (b) and (c), it seems to me that the only requirements are that if someone is promoted or demoted, they shall make at least the minimum of the salary range for their new position. Everything else is discretionary, but the Rule does not state who exercises this discretion or give any guidelines as to how the discretion shall be exercised.

In (d), the text on the first lines of both (1) and (2) needs to be brought to the left to match up with the line below.

In (d)(1), lines 29-30, are there any guidelines to govern this exercise of discretion?

In (d)(2), lines 32-33, are there any guidelines to govern this exercise of discretion?

In (e), line 34, who shall make the evaluation?

In (e), line 35, please define “frequent”.

In (e), lines 36-37, what does the phrase “...and are not necessarily limited to the full elapse of specified intervals” mean?

In (e), p.2, lines 2-4, per the style guide explanatory parentheticals are not allowed. If you’d like to include this information, you can make a “note”. See 26 NCAC 02C .0110.

In (e), line 5, under what metrics is it determined that an employee has “earned an increase”?

In (e), line 8, define “sufficient additional education or experience”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency:

State Human Resources Commission

2. Rule citation & name:

25 NCAC 011 .2103 Salary Rate

3. Action:

☐ Adoption

☒ Amendment

☐ Repeal

4. Was this an Emergency Rule:

☐ Yes

☒ No

Effective date:

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: August 21, 2024

b. Proposed Temporary Rule published on the OAH website: August 28, 2024

c. Public Hearing date: September 6, 2024

d. Comment Period: September 4, 2024 to September 25, 2024

e. Notice pursuant to G.S. 150B-21.1(a3)(2): September 6, 2024

f. Adoption by agency on: November 13, 2024

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: n/a

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: NC Sess Law 2024-23, Section 7
Effective date: June 28, 2024
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ Other:

Explain:

Section 7 of Session Law 2024-23 instructed the State Human Resources Commission (SHRC) to adopt temporary rules, followed by permanent rules, concerning the hiring and compensation of trainees for local government positions that are subject to the State Human Resources Act and to submit those rules and notice of public hearing to the Codifier of Rules no later than 60 days from the effective date of that act.

To fulfill the session law, SHRC staff developed the enclosed temporary rule, which amends 25 NCAC 011 .2103 to give local governments greater salary flexibility for trainees. The revised temporary rule and notice of public hearing was submitted to the Codifier of Rules pursuant to G.S. 150B-21.1(a3)(1) on August 21, 2024. This followed the temporary rule being submitted to the SHRC at a special meeting held under N.C.G.S. § 126-2(h) on August 15, 2024. The temporary rule was approved unanimously by the members of the SHRC on the same date and by the Governor's Office on August 20, 2024. After the public comment period and hearing resulted in no comments, the SHRC met on Oct. 17, 2024 to approve the rule being adopted and submitted to the Rules Review Commission. The Governor's Office approved this action under G.S. 126-4 on November 13, 2024, at which time the rule was adopted under G.S. 126-4 by the SHRC.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The session law requires "temporary rules, followed by permanent rules" on this subject, signaling a legislative intent to put in place a rule using the abbreviated notice-and-comment procedures for temporary rules, while still moving forward with full notice-and-hearing procedures under the permanent rulemaking process once the temporary rules are complete. In the temporary rulemaking process, no public comments were received, which also suggests that it is in the public interest to move forward with a temporary rule.

It is also in the public interest to move forward with the temporary rule because the subject matter of the rule is important. Rule 011 .2103 applies to local government employees who are subject to the State Human Resources Act. These are employees of local social services departments; county or district health departments; local emergency management agencies that receive federal grant-in-aid funds; and area mental health, developmental disabilities, and substance abuse authorities. The primary portion of the rule that is being changed, Paragraph .2103(e), will allow trainees to be paid up to the 25th percentile of the position's salary range, replacing language that limits trainee salaries to the minimum of the range. For executive branch state agencies, the same flexibility has been important, allowing an 82% increase in the number of trainees hired on a year-to-year basis. In the current job environment, with a reduced number of applications for government jobs and persistently high vacancy rates, trainees are an important tool for recruitment.

Because the entire rule is reviewed when any portion is changed, the SHRC, based on the recommendations of staff, also made clarifying changes to other portions of Rule 011 .2103 in an effort to resolve any issues in advance where the rule could be deemed not to be "clear and unambiguous" under G.S. 150B-19.1(a). For example, the changes to Paragraph .2103(a) are meant to define the term "salary inequities," which was already present in the existing text of the rule.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Dekhasta Becton Rozier

Title:

Chair, State Human Resources Commissions

E-Mail: dbrozier@becton.law

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

25 NCAC 01I .2103 is amended under temporary procedures with changes as follows:

25 NCAC 01I .2103 SALARY RATES

(a) New Appointments. The entrance salary rate for an employee in a non-trainee appointment shall be at the minimum of the range or at a salary rate within the salary range assigned to the class. The entrance salary rate for an employee class unless an employee is hired in a trainee appointment shall be set pursuant to Paragraph (e) of this Rule. ~~Discretion should be exercised by boards.~~ Boards of county commissioners or their designees should exercise judgment, when setting on new appointments salaries above the minimum of the range, to avoid creating salary inequities within the jurisdiction. “Salary inequities,” for purposes of this Rule, means comparing the salaries of employees in the same job classification or in closely related job classifications at the same local government employer who have comparable levels of education and experience; duties and responsibilities; productivity; funding availability; and knowledge, skills, and abilities. Employees in trainee appointments are not comparable for purposes of this salary inequity analysis.

(b) Promotion. When a promotion occurs, the employee's salary shall be increased, if it is below the new minimum, to at least the minimum rate of the salary range assigned to the class to which the employee is promoted. If an employee's current salary is already above the new minimum salary rate, ~~his~~ the employee's salary may be adjusted upward or left unchanged at the discretion of local management, provided that the adjusted salary does not exceed the maximum of the assigned salary range. If the salary falls between steps in the salary range, it may be adjusted to the next higher step in the range.

(c) Demotion. When an employee's current salary falls above the maximum of the range for the lower class, ~~his~~ the employee's salary may remain the same until general schedule adjustments or range revisions bring it back within the lower range or may the salary be reduced to any step in the lower salary range, as long as the reduced salary does not fall below the minimum salary rate of that range. If the employee's current salary falls between steps in the lower range, it may be reduced to the next lower step.

(d) Salary Adjustments; Salary Plan Revisions. When the salary rates in the salary plan are changed or a class is moved to a higher or lower salary grade, the following adjustments shall be made in incumbents' salary rates:

(1) When it is an upward revision and the employee's current salary is less than the minimum salary rate of the salary range for the classification, the employee's salary shall be adjusted to at least the minimum of the range. If the employee's salary is already at or above the new minimum of the range, management may elect to increase the salary to another step within the range. An employee's salary may not, however, exceed the maximum of the range.

(2) If there is a downward revision, management may elect to reduce each employee's salary rate by a corresponding amount or allow the salary rates to remain the same.

(e) Trainee Adjustments. During a trainee ~~appointment~~ appointment, an evaluation of the individual's performance and progress on the job is to be made at frequent intervals. As a general guide, salary increases are provided at specified intervals. These increases are not automatic, and are not necessarily limited to the full elapse of specified intervals. Salary adjustments may be either advanced or delayed depending upon the progress of the employee. ~~In cases where salary adjustments have been advanced, the trainee's salary will not be adjusted to the minimum of the~~

1 ~~range for the regular classification until the employee meets all education and experience requirements for the~~
2 ~~appointment.~~ The salary rate for a trainee shall be no lower than 10% below the minimum of the position's salary
3 range (for example, \$90,000 if the salary range is \$100,000 to \$140,000), and no higher than the 25th percentile of the
4 position's salary range (for example, \$110,000 if the salary range is \$100,000 to \$140,000). Adjustments are to be
5 given upon recommendations by the appointing authority and the supervisor that the employee has earned an increase.
6 Trainee salary adjustments shall not be awarded if an employee has unsatisfactory job performance as defined in 25
7 NCAC 01I .2302(a). The trainee's salary must not exceed that of any existing non-trainee employee in the same
8 classification at the same local government, unless the employee possesses sufficient additional education or
9 experience to qualify for a higher rate. When the employee with a trainee appointment has successfully completed
10 the training and experience requirements for the classification, ~~he the employee~~ must be given a ~~regular permanent~~
11 appointment to that ~~classification~~ classification, and ~~his the employee's~~ salary must be set pursuant to Paragraph (a)
12 of this Rule. Pursuant to Paragraph (a) of this Rule, the former trainee's salary must be set increased at least to the
13 minimum of the salary range.

14 (f) An employee's salary cannot be raised by merit increases to exceed the maximum salary rate of the salary range
15 assignment to ~~his~~ the employee's class.

16
17 *History Note: Authority G.S. ~~126-4~~; 126-4(2), (3), (6); S.L. 2024-23, s. 7;*

18 *Eff. August 3, 1992;*

19 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*
20 *~~2016~~ 2016;*

21 *Temporary Amendment Eff. ~~[December 1, 2024.]~~ January 1, 2025.*