

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .0210

DEADLINE FOR RECEIPT: Friday, January 10, 2020

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 call our office to inquire concerning the staff recommendation.

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

Please insert page numbers (See Rule 26 NCAC 02C .0108(1)(f))

In (a), I do not understand the new language on line 5. Paragraphs (h) and (i) also provide for lump sum of vacation leave. Should this language be removed, or should "only" on line 4 be deleted?

In (b), line 8, what do you mean by "any scheduled holiday"? Do you mean pay for that holiday? If you are saying that the employee is not entitled to claim the holiday, why not state that? Should this language mirror what is in (c), line 12 (only in the inverse)?

On lines 8-9, are you saying the cessation of accumulation of leave or use of sick leave will begin after the date of separation? If so, I think you can clarify this on line 7 by stating that after the date of separation, the employee is not entitled to holiday, and shall cease to accumulate leave or be entitled to sick leave.

In (c), line 11, is there any guidance regarding "at the discretion of the employee's supervisor"?

In (c)(1), line 17, and (c)(2), line 18, consider replacing "is" with "shall be"

In (d), line 19, is this all leave or just vacation leave?

In (g), line 24, what is a "valid claim"?

On line 26, are you saying that the monetary value will never be over \$5000, as that is the cap under G.S. 28A-25-6(a)? Should you just cite to G.S. 28A-25-6 instead?

In (h)(1), line 29, (h)(2), line 31, and (h)(3), line 33, I recommend deleting "Payment of" and ending (h)(1), line 30, and (h)(2), line 32, with semicolons, rather than periods. Then insert an "and" at the end of line 32. Please make a conforming change to (i)(1) through (3) on Page 2.

On line 29, and elsewhere the term is used in this Rule, what is "eligible for payout"?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 31, 2019

In (i), line 34, consider replacing “remains” with “shall remain”

On line 35, do you need “excess” in light of the phrase “over the 240-maximum” that follows it?

On Page 2, line 1, please replace “they” with “he or she”

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 31, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01E .0210 is amended as published in 34:06 NCR 503 as follows:

25 NCAC 01E .0210 SEPARATION: PAYMENT OF VACATION LEAVE

(a) The agency shall pay an employee in a lump sum for vacation leave only at the time of ~~separation~~. separation, except as set forth in Paragraph (h) or (i) of this Rule.

(b) When separated from ~~state~~State service due to resignation, dismissal, or death, an employee shall be paid in a lump sum for accumulated vacation leave not to exceed a maximum of 240 hours. The employee is not entitled to any scheduled holiday occurring after the last day of work. The employee ~~shall cease to~~ shall ~~cease to~~ accumulate leave ~~and ceases to or~~ be entitled to take sick leave. The last day of work ~~is~~ shall be the date of separation.

(c) When separated from ~~state~~State service due to service retirement, early retirement, or reduction in force, an employee may, at the discretion of the employee's supervisor, elect to exhaust vacation leave after the last day of work but prior to the effective date of the separation. All benefits shall accrue while leave is being ~~exhausted~~ exhausted, including holidays that occur during the period. Unused vacation leave not exhausted shall be paid in a lump sum not to exceed 240 hours. An employee who was reduced in force and who had over 240 hours of vacation leave at the time of separation shall have the excess leave reinstated when reemployed within one year. The date of separation ~~is~~ shall be determined as follows:

(1) If leave is exhausted, the last day of leave is the date of separation.

(2) If no leave is exhausted, the last day of work is the date of separation.

(d) If an employee separates and is overdrawn on leave, the employing agency shall deduct the value of the overdrawn leave from the final salary check.

(e) The employing agency shall make a retirement deduction from all leave payments.

(f) Receipt of lump sum leave payment and retirement benefit ~~is~~ shall not be considered as dual compensation.

(g) In the case of a deceased employee, the employing agency shall make a payment for unpaid salary, vacation leave, and travel, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, the employing agency must make a payment in accordance with the provisions of G.S. ~~28A-25-6~~ 28A-25-6(a).

(h) In the case of an employee separated due to a workers' compensation injury pursuant to 25 NCAC 01C.1007(a)(3), leave shall be paid in a lump sum as follows:

(1) Payment of unused vacation and bonus leave eligible for payout already earned as of the date of injury.

(2) Payment of unused vacation and sick leave accumulated only during the first 12 months of workers' compensation leave.

(3) Payment of any unused bonus leave eligible for payout granted on or after the date of injury.

(i) If the employee returns to permanent duty after workers' compensation leave, vacation leave remains available for use after returning to work until the end of the calendar year, at which time any excess vacation leave over the 240-hour maximum shall be converted to sick leave. If the employee separates for any reason during the calendar

Permanent Amendment for Publication in the NCAC

year in which they returned to work after workers' compensation leave, the employee shall be paid a lump sum for unused leave as follows:

- (1) Payment of unused vacation and bonus leave eligible for payout already earned as of the date of injury.
- (2) Payment for unused vacation leave accumulated during the first 12 months of workers' compensation leave.
- (3) Payment of any unused bonus leave eligible for payout granted on or after the date of injury.

*History Note: Authority G.S. ~~28A-25-6(a),(c)~~; 126-4;
Eff. February 1, 1976;
Amended Eff. December 1, 1988; January 1, 1993;
Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire June 29, 1989;
Amended Eff. December 1, 2008; December 1, 2007; July 1, 1995; March 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,
~~2016-2016~~;
Amended Eff. February 1, 2020.*