



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 20, 2019

Lars Nance
Rulemaking Coordinator, SHRC
Sent via email only to: Lars.Nance@nc.gov

Re: Extension of the Period of Review for 25 NCAC 01E .0210 and All Rules Submitted in 01I

Dear Mr. Nance:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amanda J. Reeder
Commission Counsel

cc: Denise Mazza, OSHR

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919/431-3000
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Assistants
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Division
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Burgos, Alexander N

Subject: FW: RRC Request for Technical Changes

Attached are 25 NCAC 01E .0704 and .0705, reviewed as specified in the Request for Technical Change for each, and the Request for Technical Change pages with answers to additional questions regarding these 2 rules.

As for 25 NCAC 01E .0210 and 25 NCAC 01I .1702, .1805, .1902, .1903, .1905, .2003, .2105, .2302, .2303, .2304, .2305, .2306, .2307 and .2310, NC OSHR request an extension of time to continue working on those technical changes.

Please let us know if you have any questions regarding our submissions or our request for an extension.

Thank you for your assistance in this matter.

Denise H. Mazza

Paralegal

Desk: 919 807-4815

denise.mazza@nc.gov

North Carolina Office of State Human Resources

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From: Reeder, Amanda J <amanda.reeder@oah.nc.gov>

Sent: Tuesday, May 28, 2019 2:54 PM

To: Nance, Lars F <lars.nance@nc.gov>; Mazza, Denise H <denise.mazza@nc.gov>

Cc: Reeder, Amanda J <amanda.reeder@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RRC Request for Technical Changes

Please acknowledge receipt of this email!

Good afternoon, Lars and Denise!

I am the attorney reviewing the above-referenced rules submitted by the State Human Resources Commission for RRC review at the June 20, 2019 meeting. The meeting will begin at 9 a.m.

As reflected in the attached document, I am asking for technical changes to most of the rules and a few forms. I need the properly formatted electronic copies of the rewritten rules emailed directly to me by 5 p.m. on Tuesday, June 11, 2019. You can bring physical copies of the rules and forms to the meeting.

Regarding the forms: As a rulemaking coordinator, I fully understand and respect saving a copy of a form to the desktop and just using that version every time I file rules. However, we now have a new version of the form that was updated in March of this year. ([Here's a link](#) to the page with the updated form.) In addition, the old version of the form that you saved and submitted lists Denise's personal email address (Denise.Mazza@Live.com), rather than her State government address. Except for those forms that I specifically asked to be changed in the attached, you do not need to update the forms now. However, going forward, I encourage you to delete your saved versions and use the new version of the form with the correct email addresses.

Please let me know if you have any questions or concerns regarding the attached. I am always happy to assist!

Amanda

*Amanda J. Reeder
Counsel to the Rules Review Commission
NC Office of Administrative Hearings
919/431-3079*

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .0210

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In (b), line 5, capitalize "State" since you mean NC. Please note the same for (c), line 9,

On line 7, state "The employee shall cease to accumulate leave or be entitled to take sick leave."

On line 8, replace "is" with "shall be"

In (c), line 10, what is the "discretion" here? How is this determined? Are there guidelines for this?

On line 11, state "All benefits shall accrue..."

On line 11, insert a comma after "exhausted"

On line 14, replace "is" with "shall be" or "shall be determined"

Please indent (c)(1) and (2).

In (f), line 20, replace "is" with "shall not"

And considered by whom?

In (g), line 22, define "valid claim"

On line 24, insert dashes into the citation. "G.S. 28A-25-6" And that is for small estates, so will this always apply?

In (h), line 25, I do not see that Rule 02I .2005 addresses separation due to workers compensation. Is this the correct cross-reference?

On line 25, I recommend replacing "will" with "shall"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2019

On line 27, replace “which” with “that”

In (i), use articles throughout this Paragraph. “If the employee ...” “... excess vacation leave over the 240” (And note, this is throughout the entire Paragraph, lines 29-33)

On line 29, hyphenate “240-hour”

On line 30, what do you mean by “to be carried forward”? Is this leave that was carried forward, or are you speaking in future tense?

On lines 30-31, what is “carried on leave account”?

On line 31, insert a comma after “year”

In the History Note, line 34, do not cite to 28A as rulemaking authority here.

You need to insert a new line on Page 2, line 4, to show the new amended effective date, that comes after the last action on this Rule, which was a finding by the agency that the Rule was necessary without substantive public interest. In addition, the date needs to be updated to July 1, 2019, as rules cannot have retroactive effective dates. It will look like this:

*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. July 1, 2019.*

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: May 28, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01E .0210 is amended as published in 33:12 NCR 1338 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.

(b) When separated from 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 ceases to accumulate leave and ceases to be entitled to take sick leave. The last day of work is the date of separation.

(c) When separated from 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 accrue while leave is being exhausted including holidays that occur during the period. Unused 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 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 not considered as dual compensation.

(g) In the case of a deceased employee, the employing agency shall make a payment for unpaid salary, 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.

(h) In the case of an employee separated due to a workers' compensation injury pursuant to 25 NCAC 01I .2005, vacation and sick leave accumulated only during first 12 months of workers' compensation leave will be exhausted by lump sum payment, along with other unused vacation/bonus leave which was on hand at time of injury, as well as any bonus leave granted subsequently.

(i) If employee returns to permanent duty after workers' compensation leave, excess vacation leave over 240 hour maximum to be carried forward to next calendar year may be used after returning to work or carried on leave account until end of calendar year at which time any excess vacation shall be converted to sick leave. If employee separates during period excess vacation is allowed, vacation leave exceeding 240 hours to be paid in lump sum may not exceed amount accumulated during first 12 months of workers' compensation leave.

History Note: Authority G.S. 28A 25-6(a),(c); 126 4;

Eff. February 1, 1976;

Amended Eff. April 1, 2019; December 1, 1988; January 1, 1993;

Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire June 29, 1989;

Permanent Amendment for Publication in the NCAC

1 Amended Eff. December 1, 2008; December 1, 2007; July 1, 1995; March 1, 1989;
2 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,
3 2016.
4

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .1702

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

I recommend making this a two Paragraph rule, with the first Paragraph stating the definition of "immediate family" on lines 21 through 24. The second Paragraph would be the remaining language.

On line 23, what is "based on the listing"? Do you mean "with those individuals."?

On line 24, define "comparable to" and state who will determine this.

On lines 24-25, why do you need the language "if either occupies a position ... considerations."? Doesn't that repeat lines 18-20?

If you do not it, why do you use "requires" on line 24? Who determines if it's required here, but doesn't need to for line 18?

In the History Note, line 30, strike "2016." before "2016;"

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: May 28, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01I .1702 is amended as published in 33:12 NCR 1339 as follows:

25 NCAC 01I .1702 EMPLOYMENT OF RELATIVES

~~(a) The employment of close relatives within the same department or work unit of a local government agency subject to G.S. Chapter 126 is to be avoided unless significant recruitment difficulties exist. If there are fewer than three other available eligibles for a vacancy and it is necessary for relatives to be considered for employment or if two individuals are already employed and marry, the following will apply:~~

~~Two members of an immediate family shall not be employed within the same department or work unit of a local government agency subject to G.S. Chapter 126 if such employment will result in one supervising a member of his immediate family or where one member occupies a position which has influence over the other's employment, promotion, salary administration and other related management or personnel considerations.~~

~~(b) The term "immediate family" shall be understood to refer to that degree of closeness of relationship which would suggest that problems might be created within the work unit or that the public's philosophy of fair play in providing equal opportunity for employment to all qualified individuals would be violated. This would include wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step, half and in law relationships as appropriate based on the above listing.~~

Members of an immediate family shall not be employed within the same agency if the employment results in one member supervising another member of the employee's immediate family, or if one member will occupy a position that has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This includes employment on a permanent, temporary, or contractual basis. The term "immediate family" includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is are the step-, half- and in-law relationships based on the listing in this Rule. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position that requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

History Note: Authority G.S. 126-4;

Eff. August 3, 1992;

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

Amended Eff. July 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .1805

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

On the Submission for Permanent Rule form, Box 2, there is a small typographical error in the name of the Rule. (You have "Classifications") Please correct the name.

What is your authority for this delegation of Commission authority? If you are relying upon G.S. 126-3(8), cite to that in your History Note.

On line 5, so that I'm clear – did you intend to state, "tentative pay grades salaries"?

On line 6, define "insufficient" Who determines this? And based upon what?

On line 7, define "sufficient" Who determines this?

On line 8, replace "which" with "that"

On line 10, what are "all applicable"?

On line 10, what do you mean by "regulations"? Federal regulations? I doubt it, since you say it's "approved" by the SHRC. Therefore, you either need to define or delete "regulations"

In the History Note, line 16, strike "2016." before "2016;"

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: May 28, 2019

25 NCAC 01I .1805 is amended as published in 33:12 NCR 1340 as follows:

**25 NCAC 01I .1805 ~~TENTATIVE AND FLAT-RATE PROVISIONS FOR~~ TENTATIVE TEMPORARY
CLASSIFICATION**

The State Human Resources Director is authorized to establish temporary classifications with tentative pay grades ~~or~~
~~flat-rate~~ salaries when insufficient information is available to make permanent classification and pay
recommendations to the State Human Resources Commission. When sufficient information is available, the Director
will make a recommendation to the State Human Resources Commission which will incorporate the temporary class
and pay into the permanent classification plan and pay plan. Such temporary ~~classes,~~ classes and tentative pay
grades ~~and flat-rate salaries~~ shall be administered according to all applicable rules and regulations approved by the
State Human Resources Commission.

History Note: Authority G.S. 126-4;

Eff. August 3, 1992;

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

Amended Eff. July 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .1902

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In (a), line 4, define "publicized" and "open opportunity"

In (b), line 6, replace "which" with "that"

On line 7, delete or define "prominently"

On line 8, what is "described"? Is this to state that it will include everything listed on lines 8-9?

On line 8, replace "which" with "that"

On line 8, do you need to retain "at a minimum"?

On line 8, what are "key" duties and who determines this?

On lines 10-11, what do you mean here? What is "permissible"? Do you mean that someone can ask for a waiver of this Rule? If so, state that? And what do you mean by "understudy" and when is this going to be allowed, given the language in G.S. 126-7.1?

In (c), line 14, replace "will" with "shall"

On line 14, what is "appropriate"? If you mean what is listed in Paragraph (b), state that.

In (d), line 19, replace "which" with "that"

On line 19, is "listed" appropriate? Isn't it that the vacancy won't be posted at all?

In the History Note, line 25, strike "2016." before "2016;"

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: May 28, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01I .1902 is amended as published in 33:12 NCR 1340 as follows:

25 NCAC 01I .1902 POSTING AND ANNOUNCEMENT OF VACANCIES

(a) Vacant positions to be filled will be publicized by the agency having the vacancy to permit an open opportunity for all interested employees and applicants to apply.

(b) Vacancies which will be filled from within the agency workforce shall have an application period of not less than seven calendar days. These vacancies will be prominently posted in an area known to ~~employees, and~~ employees and will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum training and experience standard, and contact person for each position to be filled. An exception to this posting requirement will be permissible where a formal, pre-existing "understudy" arrangement has been established by management.

(c) Any vacancy for which an agency wishes to consider outside applicants or outside applicants concurrently with the internal workforce ~~shall may~~ be listed with the local ~~Job Service Office of the Employment Security Commission~~ NCWorks Career Center of the Division of Employment Security. Listings will include the appropriate announcement information and vacancies so listed shall have an application period of not less than seven ~~work~~ calendar days.

(d) If an agency makes an effort to fill a vacancy from within, and is unsuccessful, the listing with the ~~Employment Security Commission~~ Division of Employment Security ~~would may~~ take place when the decision is made to recruit outside. A vacancy which an agency will not fill for any reason shall not be listed; if conditions change, it shall then be treated as a new vacancy.

History Note: Authority G.S. 126-4;

Eff. August 3, 1992;

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

Amended Eff. July 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .1903

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In (a), line 7, delete or define "official"

What do you mean by the language on lines 8-9? If you are saying that local agencies are not required to accept applications for a position that is not vacant, then why not just state that?

In (c), line 12, as "applicant" is singular, state "he or she"

Also on line 12, do you mean "shall" rather than "may"? If not, then are you saying a local agency may hire someone who makes a false statement of material fact on the application?

In (c)(1) through (4), retain the verbs you had ("lacks" "has" "fails") to be consistent with "he or she"

In (c)(4), line 16, what are "essential" duties?

In the History Note, line 22, strike "2016." before "2016;"

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: May 28, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01I .1903 is amended as published in 33:12 NCR 1341 as follows:

25 NCAC 01I .1903 APPLICANT INFORMATION AND APPLICATION

~~(a) The primary source of public information and referral for vacancies in subject local government programs is the Employment Security Commission. Interested persons may contact their local ESC Job Service Office. Other sources may also be designated by local departments and agencies.~~

~~(a)(b)~~ Persons applying for a local vacancy must complete and submit the official application form designated by the hiring authority. ~~authority and approved by the reviewing state agency.~~ It is not necessary for local agencies to accept official application forms in the absence of an actual vacancy under active recruitment.

~~(b)(c)~~ Each agency shall be responsible for evaluating the accuracy of statements made in an application and may seek job-related evidence of the applicant's suitability for employment.

~~(c)(d)~~ An applicant may be disqualified if ~~he~~ they:

- (1) ~~lack lacks~~ any of the preliminary qualifications established for the class of the position being applied for;
- (2) ~~has have~~ made a false statement of material fact in the application process;
- (3) ~~fails failed~~ to submit ~~an a~~ completed application ~~correctly or~~ within the prescribed time limits;
- (4) ~~lack lacks~~ the physical or mental ability to perform the essential duties of the position even with reasonable accommodation.

History Note: Authority G.S. 126-4;

Eff. September 1, 1992;

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

Amended Eff. July 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .1905

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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 format this Rule correctly, including indents.

In (a), I recommend rearranging the Subparagraphs to make the Rule easier to read. I would make (a)(2) into (a)(1), then (a)(3) into (a)(2), and (a)(1) into (a)(3). Keep (a)(4) in the same spot.

In current (a)(1), line 34, define "fair and valid"

In current (a)(2), line 37, replace "are" with "is" or "shall be"

On Page 2, line 1, "identified" how?

On line 2, who will identify them? The agency?

On line 3, delete or define "substantially"

In current (a)(3), line 5, define "validly"

In (a)(4), line 7, define "timely"

In (b)(1), line 12, define "business need"

On line 13, is "competencies and knowledge" part of one phrase? If not, insert a comma after "competencies"

On line 13, insert a comma after "skills"

On line 14, define "direct" and "logical"

On lines 14-15, what are the "class administration guidelines developed by the Office of State Human Resources"? Where are they found? And what authority does the Office have to develop these outside of rulemaking?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2019

On lines 16-17, what is excluded here? If this applies to all employment in local government, why do you need the language at all?

In (d)(2), line 18, perform what successfully? And what is “successfully”?

On line 18, define “Reasonable”

And who can make this substitution? The local agency?

In (d)(3), line 20, replace “is” with “shall be”

On line 22, define “logical”

In (d)(4), line 24, define “questionable selection situations” Who determines when those occur?

In the History Note, line 29, strike “2016.” before “2016;”

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

25 NCAC 01I .1905 is amended as published in 33:12 NCR 1340 as follows:

25 NCAC 01I .1905 SELECTION

~~(a) Selection of Applicants:~~

~~(1) — The selection of applicants for appointment will be based upon a relative consideration of their qualifications for the position to be filled. Advantage will be given to applicants determined to be best qualified and hiring authorities must shall reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection.~~

~~(2) — Selection procedures and methods will be validly related to the duties and responsibilities of the vacancy to be filled. In any vacancy instance, the same selection process will be used consistently with all the applicants. Equal employment consideration will be afforded. Reference checking and other means of verifying applicant qualifications may be employed as necessary. It should be recognized and explained to persons applicants selected that the probationary period is a required extension of the selection process.~~

~~(b) Minimum Qualifications:~~

~~(1) — The employee or applicant must possess at least the training and experience requirements, or their minimum equivalent, set forth in the state class specification for the class of the position to be filled. This shall apply in new appointments, promotions, demotions, transfers, and reinstatements.~~

~~(2) — The training and experience requirements serve as indicators of the possession of the skills, knowledges, and abilities which have been shown through job evaluation to be important to successful performance, and as a guide to primary sources of recruitment. It is recognized that a specific quantity of formal education or numbers of years of experience does not always guarantee possession of the necessary skills, knowledges, and abilities for every position. Qualifications necessary to perform successfully may be attained in a variety of combinations. In evaluating qualifications, reasonable substitutions of formal education and job related experience, one for the other, will be made upon request by the local appointing authority to the appropriate state review agency.~~

~~(3) — Management is responsible for determining the vacancy specific qualifications that are an addition to minimum class standards. Such qualification requirements must bear a logical and job related relationship to the minimum standard. Management shall be accountable for the adverse effects resulting from the use of qualification standards that are +unreasonably construed.~~

~~(4) — The review authority for qualifications in questionable selection situations rests first with the respective Regional Personnel Office and Central Office of the Department of Human Resources, or in the state Office of Crime Control and Public Safety, and finally with the Office of State Human Resources.~~

(a) Selection of Applicants:

(1) Agencies shall select from the pool of the most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence.

(2) Using fair and valid selection criteria, the agency shall review the credentials of each applicant in order to determine who possesses the minimum qualifications including selective criteria. "Selective criteria" are defined as

1 additional minimum qualifications identified by the agency. From those applicants who meet the minimum
2 qualifications, a pool of the most qualified candidates shall be identified. The pool of most qualified candidates shall
3 be those individuals determined to be substantially more qualified than other applicants. The individual selected for
4 the position shall be from among the most qualified applicants.

5 (3) Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to
6 be filled.

7 (4) The agency shall provide timely written notice of non-selection to all unsuccessful candidates in the most
8 qualified pool.

9 (b) Minimum Qualifications:

10 (1) The employee or applicant must possess at least the minimum qualifications set forth in the class specification
11 of the vacancy being filled. Additional minimum qualifications, if any, included on the specific vacancy announcement
12 must also be met. The additional qualifications shall have a documented business need. Qualifications include training,
13 experience, competencies and knowledge, skills and abilities. The minimum qualifications on the vacancy
14 announcement shall bear a direct and logical relationship to the minimums on the class specification, class
15 administration guidelines developed by the Office of State Human Resources, and the specific position description.
16 This requirement shall apply in new appointments, promotions, demotions or reassignments, transfers, and
17 reinstatements.

18 (2) Qualifications necessary to perform successfully may be attained in a variety of combinations. Reasonable
19 substitutions of formal training and job-related experience, one for the other, may be made.

20 (3) Agency management is responsible for determining and defending the vacancy-specific qualifications that
21 are in addition to minimum training and experience requirements. Such vacancy-specific qualifications shall bear a
22 logical and job-related relationship to the minimum requirements.

23 (4) The Office of State Human Resources shall make the final determination as to whether the employee or
24 applicant meets the minimum qualifications in questionable selection situations.

25
26 *History Note: Authority G.S. 126-4;*

27 *Eff. August 3, 1992;*

28 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*
29 *2016. 2016;*

30 *Amended Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2003

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In this Rule, what is the difference between a "salary grade" (see line 5) and a "classification" (line 17)?

In (b), line 7, define "practical and feasible"

On lines 7 and 8, never use the word "should" in a Rule. Either state "shall" or "may" but do not state "should" Replace the term here with the appropriate verb.

On line 8, define "demonstrated capacity"

On line 8, should this state "If a promotion..."?

On line 9, what "class" is this?

On line 10, who determines whether the employee "may" be promoted by waiver? The local government agency?

In (c), line 13, define "work-against appointment"

On line 13, state "his or her"

On line 14, state "he or she" and note the same for line 15.

In (d), line 18, consider replacing "will" with "shall"

In (e), line 23, insert a comma after "qualified"

On line 25, consider replacing "will" with "shall"

In the History Note, line 32, strike "2016." before "2016;"

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: May 28, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01I .2003 is amended as published in 33:12 NCR 1342 as follows:

25 NCAC 01I .2003 PROMOTION

(a) ~~A promotion is a change to a classification at a higher level. Promotion is an advancement from one position to another with a higher salary grade. This may result from movement to another position or by the present position being reallocated to a higher classification as a result of increases in the level of duties and responsibilities.~~

(b) When it is practical and feasible, a vacancy should be filled by promotion of a qualified ~~permanent~~ employee. Selection for promotion should be based upon demonstrated capacity, and quality of services. If promotion results from movement to another position, the candidate must possess the minimum training and experience for the class. If the promotion results from the present position being reallocated to a higher classification, the employee may be promoted by waiver of the stated training and experience requirements. ~~requirements if he has satisfactorily performed for a minimum of three months prior to the reallocation.~~

(c) An employee in a work-against appointment cannot be promoted, upon reallocation of his position, by waiver of training and experience requirements until he has served at least one year in the work-against class or until qualified for the new class. The incumbent in a work-against situation must be promoted as soon as he meets the qualifications for the higher class or the position must be reallocated to the lower class.

(d) An employee in probationary or trainee status may be promoted to another position in a higher classification if the person is qualified for such an appointment. The employee's probationary period will continue ~~until performance meets the required standard, as certified by the appointing authority, except that in no case shall the duration be longer than nine months after initial probationary appointment (unless the person is in trainee status).~~ for the duration defined in G.S. 126-1.1.

(e) An employee in probationary status occupying a position at the time it is reallocated upward may be promoted to the new class if the person possesses the minimum training and experience requirements; if not qualified the employee shall remain at the former level working against the higher classification or be separated. If promoted during the probationary period, the employee will continue in probationary status until ~~performance meets the required standard, but in no case shall the duration be longer than nine months after the duration defined in G.S. 126-1.1 has been satisfied, beginning with the initial probationary appointment. (unless the person is in trainee status).~~

History Note: Authority G.S. 126-4;

Eff. August 3, 1992;

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

Amended Eff. July 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2105

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In order to show this is a repeal, you will not delete the History Note. Instead, retain the current History Note and insert a Repealed Eff. date, like so:

*History Note: Authority G.S. 126-4; 126-5; 126-9;
Eff. August 3, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,
~~2016-2016~~;
Repealed Eff. July 1, 2019.*

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: May 28, 2019

25 NCAC 01I .2105 is repealed as published in 33:12 NCR 1342 as follows:

25 NCAC 01I .2105 OTHER PAY

History Note: Authority G.S. 126-4; 126-5; 126-9;

~~*Eff. August 3, 1992;*~~

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2302

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

On the Submission for Permanent Rule form, box 2, you do not have the correct Rule name. Please either correct the form or rename the Rule.

In (a), line 4, I believe "work-related" is hyphenated.

On line 4, define "satisfactorily"

On line 5, define "relevant"

On line 5, insert a comma after "plan"

What is the purpose of Paragraph (b)? What are you trying to convey here? I suggest deleting it altogether to avoid any ambiguity issues with this Rule.

If you want to retain it:

What is the purpose of the language on line 6?

On line 6, do you mean "Rule" rather than "Section"?

On line 7, do you actually mean "Rule" here?

On line 8, define "unsatisfactory performance"

On line 8, how will the determination to use personal conduct be made?

What do you mean on line 10 by "regardless of the basis of disciplinary actions"?

On line 12, do not use "Should" Use "If"

On line 12, what do you mean by "later deteriorate"?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2019

In (c), line 15, end the sentence after “actions.” Then state “One or more written warnings, followed by...”

On line 16, replace “which” with “that”

In (d), line 18, “designated” by whom?

On line 20, do you mean “this” Section?

In the History Note, please insert the new Amended Eff. date on line 33.

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

Permanent Amendment for Publication in the NCAC

25 NCAC 01I .2302 is amended as published in 33:12 NCR 1342 as follows:

25 NCAC 01I .2302 DISMISSAL FOR UNSATISFACTORY PERFORMANCE OF DUTIES

(a) Unsatisfactory Job Performance is work related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan or as directed by the management of the work unit or agency.

(b) The intent of this Section is to assist and promote improved employee performance, rather than to punish. This Rule covers all types of performance-related inadequacies. This Section does not require that successive disciplinary actions all concern the same type of unsatisfactory performance. Disciplinary actions related to personal conduct may be included in the successive system for performance-related dismissal provided that the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal on the basis of inadequate performance. Disciplinary actions administered under this Section are intended to bring about a permanent improvement in job performance. Should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance with further disciplinary action.

(c) In order to be dismissed for a current incident of unsatisfactory job performance, an employee must first receive at least two prior disciplinary actions: First, one or more written warnings, followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal.

(d) Prior to the decision to dismiss an employee, the agency director or designated management representative must conduct a ~~pre-dismissal~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of the Section.

(e) An employee who is dismissed must receive written notice of the specific reasons for the dismissal as well as notice of any applicable appeal rights.

(f) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 01B .0432~~, 25 NCAC 01J .1316. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

History Note: Authority G.S. 126-4; 126-35;

Eff. August 3, 1992;

Amended Eff. July 1, 2019; April 1, 2001; December 1, 1995;

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2303

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In (a), line 4, why is "Grossly Inefficient Job Performance" capitalized? It is not elsewhere the phrase is used in the Rule (For instance, see (b),line 11))

On lines 4-5, I suggest you replace "occurs in instances in which" with "means"

On line 5, define "satisfactorily"

Please properly indent (a)(1) and (2).

In (a)(1), line 8, what is "serious" harm?

On line 8, who determines if the potential was created?

On line 9, who is the "client" here?

In (a)(2), line 10, define "serious" for impact.

In (b), line 11, replace "is" with "shall be"

On line 12, what is "current"? Are you trying to state that any past incidents cannot be considered?

In (c), line 15, who will make this designation? The head of the agency?

On line 16, is the cross-reference to 25 NCAC 01I .2308 intended to capture Item (4) of that Rule? If so, is there an issue that the Rule continues to refer to a "pre-dismissal" conference?

In (d), line 17, replace "Such" with "The"

On line 18, I suggest replacing "must" with "shall"

In the History Note, please add the latest Amended Eff. date to line 29, at the bottom of the note.

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: May 28, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01I .2303 is amended as published in 33:12 NCR 1343 as follows:

25 NCAC 01I .2303 DISMISSAL FOR GROSSLY INEFFICIENT JOB PERFORMANCE

(a) ~~Gross Inefficiency (Grossly Inefficient Job Performance)~~ Grossly Inefficient Job Performance occurs in instances in which the employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency and that failure results in:

(1) ~~the creation of the potential for death or serious harm bodily injury to a client(s), an employee(s), members of the public or to a person(s)~~ death or serious harm or the creation of the potential for death or serious harm, to a client(s), an employee(s), members of the public or to a person(s) over whom the employee has responsibility; or

(2) the loss of or damage to agency property or funds that result in a serious impact on the agency or work unit.

(b) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

(c) Prior to dismissal of an employee with ~~permanent career~~ status on the basis of grossly inefficient job performance, there shall be a ~~pre-dismissal~~ pre-disciplinary conference between the employee and the agency director or designated management representative. This conference shall be held in accordance with the provisions of 25 NCAC 01I .2308.

(d) Dismissal for grossly inefficient job performance requires written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 01B .0432~~. 25 NCAC 01J .1316. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

History Note: Authority G.S. 126-4(7a);

Eff. August 3, 1992;

Amended Eff. July 1, 2019; April 1, 2001; December 1, 1995;

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2304

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In (a), line 5, define "active"

In (b), line 6, state "Unacceptable personal conduct means:"

Please properly indent (b)(1) through (10).

In (b)(1), line 7, define "reasonably" and to whom?

On line 8, what is the "reasonable person" standard you are referring to?

In (b)(2), line 9, replace "which" with "that" and capitalize "State" if you mean NC.

In (b)(3), who will determine this?

In (b)(4), line 4, define "willful" and "known or written" How will these rules be known if they are not written anywhere?

In (b)(8), line 17, replace "which" with "that"

On line 17, what is a "reasonable" order?

Line 17, "authorized" by whom?

On line 18, I suggest replacing "is" with "shall be"

So that I'm clear – you are saying in (b)(8) that all other Subparagraphs require written warning prior to dismissal, but not (b)(8)? If so, how does that work with G.S. 126-35, which only allows suspension for this?

§ 126-35. Just cause; disciplinary actions for State employees.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2019

(a) No career State employee subject to the North Carolina Human Resources Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the agency through the agency grievance procedure for a final agency decision. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. If the employee is not satisfied with the final agency decision or is unable, within a reasonable period of time, to obtain a final agency decision, the employee may appeal to the Office of Administrative Hearings. Such appeal shall be filed not later than 30 days after receipt of notice of the final agency decision. The State Human Resources Commission may adopt, subject to the approval of the Governor, rules that define just cause.

(b) through (d) Repealed by Session Laws 2013-382, s. 6.1, effective August 21, 2013, and applicable to grievances filed on or after that date. (1975, c. 667, s. 10; 1989 (Reg. Sess., 1990), c. 1025, s. 2; 1991, c. 65, s. 7; c. 354, s. 5; c. 722, s. 1; 2000-190, s. 13; 2012-187, s. 8.4; 2013-382, ss. 6.1, 9.1(c).)

On line 19, do not add "warning." and do not delete "warning;" As you published it correctly, just retain what you published.

In (b)(9), line 20, be sure to underline "exhausted;" (as you did in the Register, so do not show it as a change), and insert an "or" at the end of the line.

In (b)(10), line 21, what is "necessary" and who determines this? Based upon what?

In (c), please note my earlier question about the different terminology in Rule 01I .2308.

In (d), line 26, replace "Such" with "The"

On line 27, replace "must" with "shall"

In the History Note, line 33, G.S. 126-34 is repealed. Do you want to cite to G.S. 126-35 instead?

Also, please put the Amended Eff. date at the bottom of the History Note.

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: May 28, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01I .2304 is amended as published in 33:12 NCR 1343 as follows:

25 NCAC 01I .2304 DISMISSAL FOR UNACCEPTABLE PERSONAL CONDUCT

(a) Employees may be dismissed for a current incident of unacceptable personal ~~conduct~~, conduct without any prior active disciplinary actions.

(b) Unacceptable personal conduct is:

(1) conduct on or off the job that is reasonably related to the employee's job duties and responsibilities for which no reasonable person should expect to receive prior warning; ~~or~~

(2) ~~job-related~~ conduct which constitutes violation of state or federal law; ~~or~~

(3) conviction of a felony ~~or an offense involving moral turpitude~~ that is detrimental to or impacts the employee's service to the agency; ~~or~~

(4) the willful violation of known or written work rules; ~~or~~

(5) conduct unbecoming an employee that is detrimental to the agency's service; ~~or~~

(6) the abuse of client(s), patient(s), ~~student(s)~~ or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned or in the custody of the agency; ~~or~~

(7) falsification of an employment application or other employment documentation; ~~or~~

(8) insubordination which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning. ~~warning; or~~

(9) absence from work after all authorized leave credits and benefits have been ~~exhausted.~~ exhausted;

(10) failure to maintain or obtain necessary credentials or certifications.

(c) Prior to dismissal of an employee with ~~permanent-career~~ status on the basis of unacceptable personal conduct, there shall be a ~~pre-dismissal~~ pre-disciplinary conference between the employee and the agency director or designated management representative. This pre-disciplinary conference shall be held in accordance with the provisions of 25 NCAC 01I .2308.

(d) Dismissals for unacceptable ~~job performance~~ personal conduct require written notification to the employee. Such written notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 01B .0432.~~ 25 NCAC 01J .1316. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

History Note: Authority G.S. 126-4; 126-34;

Eff. August 3, 1992;

Amended Eff. July 1, 2019; April 1, 2001; December 1, 1995;

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2305

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In (a), line 4, define "promote" and "satisfactory"

On line 6, I am just checking – you mean all of Section .2300?

On lines 6-7, why do you need to re-define "unacceptable personal conduct" as it is already defined in Rule .2304? I suggest deleting this sentence as redundant.

So that I'm clear – on lines 7-9, you are mandating a written warning for unsatisfactory job performance, and on lines 9-10, saying that a warning is not required for unacceptable personal conduct or grossly inefficient job performance? If so, what is your authority to skip the written warning in light of G.S. 126-35?

Please properly indent (a)(1) through (6).

In (a)(1), line 11, why are you adding "in writing" when you state "written"? It appears to be redundant and I suggest you delete it.

In (a)(4), line 18, define "immediate"

In (b), what specific procedural requirements are you referring to?

In the History Note, please put the Amended Eff. date at the bottom, on line 30.

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: May 28, 2019

25 NCAC 01I .2305 is amended as published in 33:12 NCR 1343 as follows:

25 NCAC 01I .2305 WRITTEN WARNING

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and ~~acceptable standards of personal conduct.~~ assure that employees do not engage in unacceptable personal conduct. All types of performance-related job inadequacies may constitute unsatisfactory job performance under this Section. Unacceptable personal conduct may be work-related or non-work-related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee ~~must~~ shall receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning ~~must~~ shall:

(1) Inform the employee in writing that this is a written warning, and not some other non-disciplinary process such as counseling;

(2) Inform the employee of the specific issues that are the basis for the warning;

(3) Tell the employee what specific ~~improvements~~ corrections, if applicable, must be made to address these specific issues;

(4) Tell the employee the time frame allowed for making the required ~~improvements/corrections.~~ corrections. ~~Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance.~~ Immediate correction is required for grossly inefficient job performance or unacceptable personal conduct;

(5) Tell the employee the consequences of failing to make the required ~~improvements/corrections.~~ corrections; and

(6) Tell the employee of any appeal rights provided by agency policy.

(b) A written warning ~~must~~ shall be issued in accordance with the procedural requirements of this Section. ~~Section,~~ ~~including any applicable appeal rights.~~

History Note: Authority G.S. 126-4;

Eff. August 3, 1992;

Amended Eff. July 1, 2019; December 1, 1995;

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2306

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In (a), line 5, what is your authority to allow a suspension without notice for grossly inefficient job performance, given the language in G.S. 126-35?

On line 9, delete the "a" before "management" As it is not currently in the Code and you did not publish it, do not show this as a change – simply do it.

In (b), line 13, strike "for" As you did publish it correctly I the Register, do not show it as a change – simply do it.

In the History Note, please insert the new Amended Eff. date on line 22.

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: May 28, 2019

25 NCAC 01I .2306 is amended as published in 33:12 NCR 1344 as follows:

25 NCAC 01I .2306 DISCIPLINARY SUSPENSION WITHOUT PAY

(a) An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action or without any prior warning for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance. A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two full work weeks. Prior to placing any employee on disciplinary suspension without ~~pay-pay~~, the agency director or designated a management representative shall conduct a ~~pre-suspension~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of this Section. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights.

(b) An agency ~~may impose~~ has the option of imposing the same periods of disciplinary suspension without pay for upon all employees as long as the period is the same as for employees exempt from the overtime provisions of the FLSA as set forth in this Section.

History Note: Authority G.S. 126-4(6); 126-35;

Eff. August 3, 1992;

Amended Eff. July 1, 2019; April 1, 2001; December 1, 1995;

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2307

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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 properly indent (a)(1) through (4) and (b)(1) through (3).

In (b)1), line 16, delete the "or" at the end of the line.

In (c), line 24, what are the procedural requirements you are referring to?

In the History Note, I recommend inserting a citation to G.S. 126-35.

Please put the new Amended Eff. date on line 31.

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: May 28, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01I .2307 is amended as published in 33:12 NCR 1344 as follows:

25 NCAC 01I .2307 DEMOTION

(a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct.

~~(b)(1)~~ Unsatisfactory Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.

~~(c)(2)~~ Grossly Inefficient Job Performance. An employee may be demoted for grossly inefficient job performance without any prior disciplinary action.

~~(d)(3)~~ Unacceptable Personal Conduct. An employee may be demoted for unacceptable personal conduct without any prior disciplinary action.

~~(e)(4)~~ An employee who is demoted ~~must~~ shall receive written notice of the specific reasons for the demotion, as well as notice of any applicable appeal rights.

~~(f)(b)~~ Disciplinary demotions may be accomplished in three ways:

(1) The employee may be demoted to a lower pay grade with a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary range for the new lower pay ~~grade; grade; or~~

(2) The employee may be demoted to a lower pay grade without a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary rate for the new lower pay grade; or

(3) The employee may be demoted while retaining the same pay grade with a reduction in salary rate. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay ~~grade. grade or~~ the special entry rate, if in effect.

~~(g)(c)~~ Prior to the decision to demote an employee for disciplinary reasons, the agency director or ~~designated a~~ management representative ~~must~~ shall conduct a ~~pre-demotion~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of this Section.

History Note: Authority G.S. 126-4;

Eff. August 3, 1992;

Amended Eff. July 1, 2019; April 1, 2001; December 1, 1995;

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2310

DEADLINE FOR RECEIPT: Tuesday, June 11, 2019

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:

In (a), line 4, insert a comma after "suspended"

On line 5, state "his or her"

On line 5, replace "such" with "the"

On line 6, I suggest replacing "with" before "his agency" with "pursuant to"

On line 6, both places, state "his or her"

What authority are you relying upon to state there is no right to an appeal in this circumstance on line 8, and again in (c), Page 2, lines 6-7? Is it G.S. 126-34.01? If so, I suggest adding this to the History Note.

In (b), line 23, state "his or her"

On line 23, insert a comma after "suspension"

On line 24, replace "such" with "the"

In (c), Page 2, line 5, insert a comma after "harassment"

In (d), line 8, why is "Final Agency Decision" capitalized here, when it is not elsewhere in the Rule?

On line 10, why are you capitalizing "Petition for Contested Case Hearing" both places?

And what authority are you relying upon to set a 30-day limit to file at OAH?

In the History Note, line 13, why are you citing to G.S. 150B-23?

Also on line 13, G.S. 150B-36 was repealed in 2011. Please delete it.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 28, 2019

Please put the new Amended Eff. date at the end of the History Note on line 18.

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: May 28, 2019

Permanent Amendment for Publication in the NCAC

25 NCAC 01I .2310 is amended as published in 33:12 NCR 1344 as follows:

25 NCAC 01I .2310 APPEALS

(a) An employee with ~~permanent-career~~ status as defined in G.S. 126-1.1 who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his agency ~~or county grievance procedure, procedure whichever is applicable.~~ If an employee does not appeal his demotion, suspension or dismissal through the agency grievance procedure within 15 calendar days, then the employee shall have no right to file a contested case with the Office of Administrative Hearings under G.S. 126-35. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to agency management, within 30 calendar days of the alleged harassing action, and the agency must be given 60 calendar days in which to take remedial action, if any, unless the agency has waived the 60 day period, and the employee has acknowledged such waiver. An appeal to the State Human Resources Commission of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of written notification of the remedial action, if any, taken by the agency.

(b) ~~Grievances which allege discrimination not including unlawful workplace harassment may at the election of the employee, proceed through the agency or county procedure or proceed directly to the State Human Resources Commission (SHRC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SHRC. A direct appeal to the SHRC (such appeal involving a contested case hearing by the OAH and a decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.~~

(b) If an employee appeals his demotion, suspension or dismissal through the agency grievance procedure, then the initial dismissal letter written notice of such action shall not constitute the final agency decision, but the final agency decision shall be the decision made at the conclusion of the employee's appeal through the agency grievance procedure.

~~(c) Grievances filed on an untimely basis (see G.S. 126-35, G.S. 126-36, and G.S. 126-38) must be dismissed. Allegations of discrimination, if raised more than 30 calendar days after the party alleging discrimination became aware or should have become aware of the alleged discrimination, must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after written notification of remedial action, if any, taken by the agency must be dismissed. (a) An A An career state employee with permanent status with career status as defined in N. C. G. S. 126-1.1 who has been demoted, suspended without pay as a disciplinary measure or dismissed shall have 15 calendar days from the date of his or her receipt of written notice of such action to file an appeal with his or her agency or county grievance procedure, whichever is applicable. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to agency management, within 30 calendar days of the alleged harassing action, and the agency must be given 60 calendar days~~

Permanent Amendment for Publication in the NCAC

1 in which to take remedial action, if any, unless the agency has waived the 60 day period, and the employee has
2 acknowledged such waiver. An appeal to the State Human Resources Commission Office of Administrative Hearings
3 of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S.
4 150B-23 and within 30 calendar days of written notification of the remedial action, if any, taken by the agency.

5 (c) Grievances that allege discrimination, harassment or retaliation shall follow the agency grievance procedure.
6 Employees who do not follow the agency grievance procedure shall have no right to file a contested case with the
7 Office of Administrative Hearings.

8 (d) If the employee has completed the agency grievance process and is not satisfied with the Final Agency Decision,
9 or is unable to obtain a final agency decision within 90 days from the date the grievance was filed, the employee may
10 file a Petition for Contested Case Hearing in the Office of Administrative Hearings. A Petition for Contested Case
11 Hearing must be filed within 30 calendar days after the grievant receives the final agency decision.

12
13 *History Note: Authority G.S. 126-35; ~~126-36; 126-38~~; 150B-23; 150B-36;*

14 *Eff. December 1, 1995;*

15 *Amended Eff. July 1, 2019; July 18, 2002;*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*
17 *2016.*