

## **STATUS REPORT**

**March 20, 2014**

AGENCY: NC STATE HUMAN RESOURCES COMMISSION / OFFICE OF STATE  
HUMAN RESOURCES

RULE CITATION: 25 NCAC – ALL TEMPORARY RULES FILED IN JANUARY  
25 NCAC 01J .1310

At its January 31, 2014 meeting, the Rules Review Commission objected to all the temporary rules filed by the agency in accordance with G.S. 150B-21.1 and -21.9.

The Commission objected to these rules based on ambiguity. Based on the lack of proper formatting throughout these rules and their failure to comply with the Office of Administrative Hearings formatting requirements they are not suitable for inclusion in the NC Administrative Code at this time. At the same time there are discrepancies between filings that the agency has made and what they indicated they intended to file on a chart submitted with the filings. There is also a discrepancy in that the agency submitted filings of different versions of the same rule in a number of instances and it is unclear which version the agency intended to file. Based on all these problems the rules are deemed ambiguous and need necessary revisions.

At the present time the agency and counsel have been closely reviewing each of these rules. The agency intends to withdraw a number of the filed rules based on the fact that the changes in them are not necessitated by S.L. 2013-352 (HB 834). In addition it intends to remove a number of changes proposed in other rules for the same reason – although it will go forward with other changes in those rules since they believe the changes are required by the recent legislation.

Finally the agency wishes to attempt to craft some language that might satisfy opponents of these rules. This language would address the authority of the agency to draft rules concerning what may be awarded or denied to parties as a result of grievances and other disputes and what the proper role for administrative law and other judges is in those situations. This likely would require receiving the approval of the State Human Resources Commission for this approach.

That last situation also applies to Rule 01J .1310 which the Commission objected to based on ambiguity

Joseph J DeLuca,  
Commission Counsel



# 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 01J .1310 -- Interest

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: 12/30/13

b. Proposed Temporary Rule published on the OAH website: 1/7/14

c. Public Hearing date: 1/28/14

d. Comment Period: 1/31/14

e. Notice pursuant to G.S. 150B-21.1(a3)(2): 12/30/13

f. Adoption by agency on: 2/13/14

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]: 2/28/14

h. Rule approved by RRC as a permanent rule:

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: HB 834 [Session Law 2013-382]  
Effective date: 8/21/13
- ☐ 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:
- ☐ State Medical Facilities Plan.
- ☐ Other:

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2014 FEB 18 AM 10:55  
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ADMIN HEARINGS

**Explain:** This rule is very similar to a rule which currently appears in Subchapter 1B (State Personnel Commission). Its virtual twin is being amended to clarify that it applies to matters which arose before the effective date of the recent amendments to the State Human Resources Act. The adoption of this rule as a temporary rule is required by the terms of G.S. 126-34.01 and 126-34.02, which are derived from HB 834. Adherence to usual notice and hearing schedules may result in employees' not knowing in a timely manner about the changes in law which might then mislead employees regarding whether the employee would be entitled to interest on any award obtained as the result of a successful grievance.

25 NCAC 01J .1310 is proposed to be adopted under temporary procedures as follows:

**25 NCAC 01J .1310 INTEREST**

The state shall not be required to pay interest on any back pay award.

History Note: Authority S. L. 2013-382:

Temporary Adoption Eff. February 28, 2014.