

REQUEST FOR TECHNICAL CHANGE

May 5, 2014

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

RULE CITATION: 25 NCAC 01B .0414

**DEADLINE FOR RECEIPT: UPON RECEIPT OR AS SOON THEREAFTER AS
PRACTICABLE**

***NOTE WELL: This request when viewed on computer may extend several pages.
Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its opinion review of this rule or set of rules your agency filed with the RRC for review by the RRC at its next meeting. The Commission has not yet met and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

The brackets in this rule are unnecessary.

In lines 5 and 6 it seems to me that "State" and "Commission" should be restored to the rule.

Please retype or otherwise correct the rule(s) or submission form(s) as necessary and deliver it to our office at 1711 New Hope Church Rd, Raleigh, North Carolina 27609.

If you have any questions or problems concerning this request, please contact me.

Joseph J DeLuca,
Commission Counsel

1 25 NCAC 01B .0414 is adopted under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, **with changes** as follows:

3
4 **25 NCAC 01B .0414 SITUATIONS IN WHICH ATTORNEY'S FEES MAY BE AWARDED**

5 ~~Attorney's~~ For cases arising before ~~[January 1, 2012]~~ **August 21, 2013**, attorney's fees may be awarded by the
6 State ~~Personnel~~ **Human Resources** Commission only in the following situations:

- 7 (1) the grievant is reinstated in accordance with Rule .0428 of this Section;
- 8 (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether
9 the grievant has been reinstated;
- 10 (3) the grievant is determined, by the Commission or by the agency's internal grievance procedure, to
11 have been discriminated against or harassed in violation of G.S. 126-16 or G.S. 126-36;
- 12 (4) the grievant is awarded back pay as the result of a successful grievance alleging a violation of G.S.
13 126-7.1;
- 14 (5) the grievant is the prevailing party in a final appeal of a Commission decision; **or**
- 15 (6) any combination of the situations listed in this Rule.

16 Attorney's fees may be awarded when any of the above situations occur, either within the agency internal grievance
17 procedure, in an appeal to the State ~~Personnel~~ **Human Resources** Commission, or in an appeal of a
18 State ~~Personnel~~ **Human Resources** Commission decision.

19
20 *History Note: Authority G.S. 126-4(11); **126-7.1**;*
21 *Eff. September 1, 1987;*
22 *Amended Eff. March 1, 1996; July 1, 1989;*
23 *Temporary Amendment Eff. February 18, 1999;*
24 *Amended Eff. ~~August 1, 2000.~~ August 1, 2000;*
25 *Temporary Amendment Eff. May 26, 2014.*

REQUEST FOR TECHNICAL CHANGE

May 5, 2014

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

RULE CITATION: 25 NCAC 01H .0902

**DEADLINE FOR RECEIPT: UPON RECEIPT OR AS SOON THEREAFTER AS
PRACTICABLE**

The Rules Review Commission staff has completed its opinion review of this rule or set of rules your agency filed with the RRC for review by the RRC at its next meeting. The Commission has not yet met and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

In (14), page 3 line 5, remove the underlining from “[is].”

Please retype or otherwise correct the rule(s) or submission form(s) as necessary and deliver it to our office at 1711 New Hope Church Rd, Raleigh, North Carolina 27609.

If you have any questions or problems concerning this request, please contact me.

Joseph J DeLuca,
Commission Counsel

1 25 NCAC 01H .0902 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, **with changes** as follows:

3 **25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION IN FORCE PRIORITY**
4 **CONSIDERATION**

5 Upon written notification of imminent separation through reduction in force (RIF), **an employee a career state**
6 **employee** shall receive priority consideration for positions at an equal or lower salary grade (or salary grade
7 equivalency) for a period of 12 months pursuant to ~~G.S. 126-7.1(e1)~~. G.S. 126-7.1, unless the priority has been
8 satisfied in accordance with this section. The following conditions apply:

9 ~~(1) If the applicants for reemployment for a position include State employees currently possessing~~
10 ~~priority consideration as a result of RIF, a RIF employee with more than 10 years of service shall~~
11 ~~receive priority consideration over a RIF employee having less than 10 years of service in the~~
12 ~~same or related position classification;~~

13 ~~(2)~~(1) For employees receiving notification of **imminent** separation from trainee or flat rate positions,
14 the salary grade for which priority is to be afforded shall be determined as follows: For employees
15 in flat rate positions, the salary grade shall be the grade which has as its maximum a rate nearest to
16 the flat rate salary of the eligible employee. For eligible employees in trainee status, the salary
17 grade shall be the salary grade of the full class;

18 ~~(3)~~(2) ~~An employee notified~~ **For employees receiving notification** of imminent separation through
19 reduction in force while actively possessing priority consideration from a previous reduction in
20 force shall retain the initial priority for the remainder of the 12-month priority period. A new
21 priority consideration period shall then **be afforded begin** at the salary grade (or salary grade
22 equivalency), ~~salary rate and appointment status~~ of the position held at the most recent notification
23 of separation; ~~separation, separation and shall expires~~ **expire** 12 months from the most recent
24 notification date;

25 ~~(4)~~(3) ~~An employee who, If~~ after receiving formal notice of **impending imminent** reduction in force, **an**
26 **employee retires, retires** or applies for retirement **or leaves state government employment** prior to
27 the separation ~~date date,~~ **waives the** **an employee has no** right to priority ~~consideration.~~
28 ~~consideration; An employee who applies for retirement after being separated through reduction in~~
29 ~~force may exercise priority consideration;~~

30 ~~(5)~~(4) ~~Priority consideration is intended to provide employment at an equal or appointment status to that~~
31 ~~held at the time of notification. Acceptance of a position at a lower appointment status shall not~~
32 ~~affect priority.~~ Employees notified of separation from permanent full-time positions shall have
33 priority consideration **to for** permanent full-time and permanent part-time positions. Employees
34 notified of separation from permanent part-time positions shall have priority
35 consideration **to for** permanent part-time positions only;

- 1 ~~(6)(5)~~ Employees who have priority status at the time of application for a vacant position, and who apply
2 during the designated agency recruitment period, shall be continued as priority applicants until the
3 selection process is complete;
- 4 ~~(7)(6)~~ ~~An~~ If an employee with priority status may not decline applies for a position but declines an
5 interview or offer of the position, ~~interviews or offers for positions within 35 miles of the~~
6 ~~employee's original work station without losing~~ the employee loses priority and ~~any remaining~~
7 ~~severance salary continuation,~~ if the position is at an ~~appointment status,~~ a salary grade (or salary
8 grade equivalency), ~~and or~~ salary rate equal to or greater than that held at the time of notification;
- 9 (7) If an employee with priority status is placed in a position within 35 miles of the employee's
10 original work station prior to the separation due to reduction in force, the employee does not lose
11 priority if the position is at a lower salary grade (or salary grade equivalency) or salary rate less
12 than that held at the time of notification, notification and if the position is at the same appointment
13 status;
- 14 (8) An employee with priority status may accept a temporary position at any level and retain
15 priority consideration, ~~consideration~~ and ~~severance salary continuation.~~ An employee receiving
16 severance salary continuation shall not be employed under a contractual arrangement in any State
17 agency, other than State universities and community colleges, until 12 months have elapsed since
18 the separation as provided by G.S. 143-27.2; G.S. 126-8.5;
- 19 (9) When priority has been granted for a lower salary grade (or salary grade equivalency) ~~or and~~
20 salary rate than that held at the time of notification, the employee retains priority for higher salary
21 grades (or salary grade equivalencies) ~~and salary rate~~ up to and including that held at the time of
22 the notification of separation;
- 23 (10) An employee with priority consideration may accept employment outside State government or in a
24 State position not subject to the State Personnel Human Resources Act and retain such
25 consideration through the 12-month priority period;
- 26 (11) Priority consideration is terminated when an eligible employee:
27 (a) ~~refuses an interview or offer for a position within 35 miles of the employee's original~~
28 ~~workstation if the position is at an appointment status and the same salary grade (or~~
29 ~~salary grade equivalency) salary grade (or salary grade equivalency) and salary rate equal~~
30 ~~to or greater than that held at the time of notification;~~
31 ~~(b)~~ (a) accepts a position equal to or greater than the salary rate or employee's salary grade (or
32 salary grade equivalency) grade (or salary grade equivalency), salary rate and
33 appointment status of the full-time or part-time position held at the time
34 of ~~notification;~~ notification, in accord with subparagraph (4) above; or
35 ~~(c)~~ (b) has received 12 months priority consideration;
- 36 (12) Priority consideration for employees notified of or separated through reduction in force does not
37 include priority to any exempt positions;

1 (13) When an employee with priority status accepts a position at a lower salary rate or lower
2 employee's salary grade (or salary grade equivalency) grade (or salary grade equivalency) or
3 salary rate and is subsequently terminated by disciplinary action, any remaining priority
4 consideration ceases; and

5 (14) An employee with priority status ~~may be~~ **[is] required to shall** serve a new probationary
6 period ~~only when:~~ **when** there is a break in ~~service.~~ **service,** **as defined in [25 NCAC 01D**
7 **.0114.] Rule 01D .0114 of this Title.**

8 (a) ~~the essential duties and responsibilities of the position into which the employee is being~~
9 ~~reemployed are significantly different from those of the position held at the time of~~
10 ~~reduction in force notification;~~

11 (b) ~~the prior, documented performance history of the employee indicates performance~~
12 ~~failings; or~~

13 (c) ~~the prior, documented unacceptable personal conduct of the employee would make a~~
14 ~~probationary period a prudent protection of agency interests.~~

15 ~~A decision by an agency to require a new probationary period shall not, however, nullify the~~
16 ~~employee's right to a future period of priority reemployment status should that employee receive~~
17 ~~reduction in force notification again while serving in probationary status.~~

18 *History Note:* Authority G.S. 126-4(6),(10); G.S. 126-7.1;

19 Eff. March 1, 1987;

20 Amended Eff. December 1, 1995; April 1, 1993; June 1, 1992; January 1, 1990;

21 Recodified from 25 NCAC 01D .0511 Eff. December 29, 2003;

22 Amended Eff. ~~February 1, 2007~~ February 1, 2007;

23 Temporary Amendment Eff. May 26, 2014.

24

25

REQUEST FOR TECHNICAL CHANGE

May 5, 2014

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

RULE CITATION: 25 NCAC 01H .1001

**DEADLINE FOR RECEIPT: UPON RECEIPT OR AS SOON THEREAFTER AS
PRACTICABLE**

The Rules Review Commission staff has completed its opinion review of this rule or set of rules your agency filed with the RRC for review by the RRC at its next meeting. The Commission has not yet met and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

In (b) line 12 please highlight (but do not underline or strike through) the restored language, "Upon notice to the agency that priority is being requested, the." Bracket and highlight the immediately following "The" and strike through it but do not underline it.

The same instructions apply in (c) lines 22 and 23, "Upon notice to the agency that priority is being requested, the "The."

In (d) page 2 line 3 remove the underlining from "equivalency".

Please retype or otherwise correct the rule(s) or submission form(s) as necessary and deliver it to our office at 1711 New Hope Church Rd, Raleigh, North Carolina 27609.

If you have any questions or problems concerning this request, please contact me.

Joseph J DeLuca,
Commission Counsel

1 25 NCAC 01H .1001 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, **with changes** as follows:

3 **25 NCAC 01H .1001 EXEMPT PRIORITY CONSIDERATION – POLICY AND SCOPE**

4 (a) The rules in this Section H.1000 apply to employees hired on or before August 20, 2013 and removed from:

- 5 (1) Exempt policymaking positions for reasons other than just cause; and
- 6 (2) Exempt managerial positions for reasons other than just cause. ~~cause but not because the~~
7 ~~employee's selection violated G.S. 126-14.2; and~~
- 8 (3) ~~Exempt managerial positions because the employee's selection violated G.S. 126-14.2.~~

9 (b) A career State employee with less than 10 years cumulative service in subject positions prior to placement in an
10 exempt policymaking position, who is removed from an exempt policymaking position for reasons other than just
11 cause, shall receive a one-time priority. This priority shall be exercised by the employee within one year following
12 the date of the employee's separation. **Upon notice to the agency that priority is being requested, the [The]**
13 employee shall be offered any available non-exempt position for which the employee has applied and is qualified
14 when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent
15 subject position held prior to placement in the exempt policymaking position unless an offer has been made to, and
16 accepted by, a person qualified under **25 NCAC 01H .1005 Rule 01H .1005 of this Section** or an employee notified
17 of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to
18 the State ~~Personnel~~Human Resources Act.

19 (c) A career State employee with less than 10 years cumulative service in subject positions prior to placement in an
20 exempt managerial position, who is removed from an exempt managerial position for reasons other than just
21 cause ~~but not because the employee's selection violated G.S. 126-14.2~~, shall receive a one-time reemployment
22 priority, to be exercised by the employee within one year following the date of the employee's separation. **Upon**
23 **notice to the agency that priority is being requested, the [The]** employee shall be offered any available non-exempt
24 position for which the employee has applied and is qualified, when the position applied for is equal to or below the
25 salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt
26 managerial position unless an offer has been made to, and accepted by, a person qualified under **25 NCAC 01H**
27 **.1005, Rule 01H .1005 of this Section,** or an employee notified of or separated by a reduction in force, or a current
28 State employee with greater cumulative State service subject to the State ~~Personnel~~Human Resources Act.

29 (d) ~~A career State employee with less than 10 years of service who was removed from an exempt managerial~~
30 ~~position because the employee's selection violated G. S. 126-14.2 shall receive a one-time reemployment priority, to~~
31 ~~be exercised by the employee within one year following the date of the employee's separation. Upon notice to the~~
32 ~~agency that priority is being requested, the employee shall be offered any available non-exempt position for which~~
33 ~~the employee has applied and is qualified, when the position applied for is equal to or below the salary grade (or~~
34 ~~salary grade equivalency) of the most recent position held prior to placement in the exempt managerial position~~
35 ~~unless an offer has been made to, and accepted by, a person qualified under 25 NCAC 01H .1005, or an employee~~
36 ~~notified of or separated by a reduction in force, or a current State employee with greater cumulative State service~~
37 ~~subject to the State Personnel Act.~~

1 ~~(e)~~ (d) The priority considerations described in ~~Paragraph~~ Paragraphs ~~(a)~~, (b) and (c) of this Rule shall expire when
2 a formal written offer is extended for employment in the position for which the employee has applied regardless of
3 the position's salary grade (or salary grade ~~equivalency~~; equivalency) if the employee has notified the agency in
4 writing that the employee wishes to exercise priority consideration.

5 (f) If an eligible exempt employee applies for and accepts a position through the regular, non-priority selection
6 process, which is at a salary grade (or salary grade equivalency) below that held in the most recent subject position,
7 that person shall retain the one-time priority for higher level positions for the remainder of the 12-month period.

8 (g) ~~(e)~~ If an employee does not receive notice as described in ~~25 NCAC 01H .0630(b)~~; Rule 01H .0630(b) of this
9 Subchapter, the employee remains subject to the State ~~Personnel~~ Human Resources Act until 10 working days after
10 the employee receives written notification of the exempt status. If an otherwise eligible employee is removed from
11 the position designated as exempt, the employee has priority consideration to a position at the same salary grade (or
12 salary grade equivalency) as the most recent subject position.

13 *History Note:* Authority G.S. 126-1.1; 126-5; S.L. 2013-382, sections 4.3, 4.4, 4.6, and 7.6.;

14 *Eff. March 1, 1987;*

15 *Amended Eff. June 1, 1994; June 1, 1992; November 1, 1988;*

16 *Recodified from 25 NCAC 01D .0512 Eff. December 29, 2003;*

17 *Amended Eff. ~~February 1, 2007~~. February 1, 2007;*

18 *Temporary Amendment Eff. May 26, 2014.*

19

REQUEST FOR TECHNICAL CHANGE

May 5, 2014

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

RULE CITATION: 25 NCAC 01J .0610

**DEADLINE FOR RECEIPT: UPON RECEIPT OR AS SOON THEREAFTER AS
PRACTICABLE**

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In (a) lines 6 and 7 it took me a few seconds and two or three readings to understand the requirement. While I won't raise any issue, do you think "[u]nacceptable personal conduct may be work-related ~~or and~~ non-work-related ~~conduct~~ and may be intentional or unintentional" would sound better and be any clearer?

Please retype or otherwise correct the rule(s) or submission form(s) as necessary and deliver it to our office at 1711 New Hope Church Rd, Raleigh, North Carolina 27609.

If you have any questions or problems concerning this request, please contact me.

Joseph J DeLuca,
Commission Counsel

1 25 NCAC 01J .0610 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01J .0610 WRITTEN WARNING**

4 (a) The supervisor shall monitor and promote the satisfactory performance of work assignments and assure that
5 employees do not engage in unacceptable personal conduct. All types of performance-related job inadequacies may
6 constitute unsatisfactory job performance under this Section. Unacceptable personal conduct may be work-
7 related and or non-work-related conduct and may be intentional or unintentional. When the supervisor determines
8 that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of
9 disciplinary action that an employee must receive. The supervisor may elect to issue a written warning for grossly
10 inefficient job performance or unacceptable personal conduct. ~~conduct, without waiving the agency's right to the~~
11 ~~treat future occurrences of the same conduct as subject to immediate dismissal.~~ The written warning must:

- 12 (1) ~~Inform~~ inform the employee that this is a written warning, and not some other non-disciplinary
13 process such as counseling;
- 14 (2) ~~Inform~~ inform the employee of the specific issues that are the basis for the warning;
- 15 (3) ~~Tell~~ tell the employee what specific improvements if applicable must be made to address these
16 specific issues;
- 17 (4) ~~Tell~~ tell the employee the time frame allowed for making the required improvements/corrections.
18 Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job
19 performance and immediate correction is required for grossly inefficient job performance or
20 unacceptable personal conduct; and
- 21 (5) ~~Tell~~ tell the employee the consequences of failing to make the required improvements/corrections;

22 (b) A written warning must be issued in accordance with the procedural requirements of this Section, and include
23 any applicable appeal rights.

24
25 *History Note: Authority G.S. 126-4; G.S. 126-34.02;*
26 *Eff. February 1, 1976;*
27 *Amended Eff. October 1, 1995; November 1, 1990; January 1, 1989; ~~September 1, 1988.~~*
28 *September 1, 1988;*
29 *Temporary Amendment Eff. May 26, 2014.*

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REQUEST FOR TECHNICAL CHANGE

May 5, 2014

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

RULE CITATION: 25 NCAC 01J .1101

**DEADLINE FOR RECEIPT: UPON RECEIPT OR AS SOON THEREAFTER AS
PRACTICABLE**

The Rules Review Commission staff has completed its opinion review of this rule or set of rules your agency filed with the RRC for review by the RRC at its next meeting. The Commission has not yet met and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

In (b)(1) line 10 there needs to be a space inserted between "color," and "disability."

In (b)(2) line 14 "Hostile" needs to be lowercase.

In (c) line 26 should "creed" be deleted as it is in (b)(1) line 10?

Please retype or otherwise correct the rule(s) or submission form(s) as necessary and deliver it to our office at 1711 New Hope Church Rd, Raleigh, North Carolina 27609.

If you have any questions or problems concerning this request, please contact me.

Joseph J DeLuca,
Commission Counsel

1 25 NCAC 01J .1101, originally proposed to be repealed, is amended under temporary procedures, as originally
2 published on the OAH website on October 28, 2013, **with changes** as follows:

3 **25 NCAC 01J .1101 UNLAWFUL WORKPLACE HARASSMENT AND RETALIATION**

4 (a) Purpose. The purpose of this Rule is to establish that the State of North Carolina prohibits in any form unlawful
5 workplace harassment or retaliation based on opposition to unlawful workplace harassment of state employees or
6 applicants and to require that every agency and university with employees subject to the State Human Resources Act
7 establish policies and programs to ensure that work sites are free of unlawful workplace harassment and retaliation.

8 (b) As used in this Rule:

9 (1) “unlawful workplace harassment” means unsolicited and unwelcome speech or conduct based
10 upon race, sex, ~~creed~~, religion, national origin, age, color, disability, or genetic information that
11 creates a hostile work environment or under circumstances involving quid pro quo.

12 (2) “hostile work environment” means an environment that both a reasonable person would find
13 hostile or abusive and one that the particular person who is the object of the harassment perceives
14 to be hostile or abusive. Whether a hostile work environment exists is determined by looking at all
15 of the circumstances, including the frequency of the allegedly harassing conduct, its severity,
16 whether it is physically threatening or humiliating, and whether it unreasonably interferes with an
17 employee's work performance.

18 (3) “quid pro quo” harassment means unwelcome sexual advances, requests for sexual favors, or
19 other verbal or physical conduct when:

20 (A) submission to such conduct is made either explicitly or implicitly a term or condition of
21 an individual's employment; or

22 (B) submission to or rejection of such conduct by an individual is used as the basis for
23 employment decisions affecting such individual.

24 (4) “retaliation” means adverse action taken because of opposition to unlawful workplace harassment.

25 (c) Policy. No state employee shall engage in conduct that falls under the definition of unlawful workplace
26 harassment or retaliation, and no personnel employment decisions shall be made on the basis of race, sex, ~~creed~~,
27 religion, national origin, age, color, disability, or genetic information.

28 (a) Purpose. The purpose of this Rule is to establish that the State of North Carolina prohibits in any form unlawful
29 workplace harassment or retaliation based on opposition to unlawful workplace harassment of state employees or
30 applicants and to require that every agency and university with employees subject to the State Personnel Act
31 establish policies and programs to ensure that work sites are free of unlawful workplace harassment and retaliation.

32 (b) As used in this Rule:

33 (1) ~~Unlawful workplace harassment is defined as~~ unsolicited and unwelcome speech or conduct based
34 upon race, sex, ~~creed~~, religion, national origin, age, color, or ~~disabling condition as defined by~~
35 ~~G.S. 168A-3 that creates a hostile work environment or circumstances involving quid pro quo.~~

36 (2) ~~Hostile Work Environment is one that both a reasonable person would find hostile or abusive and~~
37 ~~one that the particular person who is the object of the harassment perceives to be hostile or~~

1 abusive. Hostile work environment is determined by looking at all of the circumstances, including
2 the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening
3 or humiliating, and whether it unreasonably interferes with an employee's work performance.

4 ~~(3) Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or
5 other verbal or physical conduct when:~~

6 ~~(A) submission to such conduct is made either explicitly or implicitly a term or condition of
7 an individual's employment; or~~

8 ~~(B) submission to or rejection of such conduct by an individual is used as the basis for
9 employment decisions affecting such individual.~~

10 ~~(4) Retaliation is defined as adverse action taken because of opposition to unlawful workplace
11 harassment.~~

12 ~~(e) Policy. No state employee shall engage in conduct that falls under the definition of unlawful workplace
13 harassment or retaliation as defined in Paragraph (b) of this Rule, and no personnel decisions shall be made on the
14 basis of race, sex, creed, religion, national origin, age, color, or disabling condition as defined by G.S. 168A-3.~~

15 **(d) All employees are guaranteed the right to work in an environment free from unlawful workplace harassment and
16 retaliation.**

17 ~~(e) Grievances. Any current or former state employee who feels he or she has been the victim of unlawful
18 workplace harassment or retaliation in violation of this Rule shall file a grievance through the departmental
19 grievance procedure. Filing such a written complaint is a prerequisite to any further appeal to the Office of
20 Administrative Hearings regarding unlawful workplace harassment or retaliation. After the employee's written
21 complaint is submitted to the agency or university, the department, agency or university shall have 60 days within
22 which to consider the complaint and take any remedial action, unless the department, agency or university has
23 waived the 60 day period, and the employee has acknowledged such waiver. The waiver and acknowledgement
24 shall be in writing. Any current or former state employee who feels that he or she has been subjected to unlawful
25 workplace harassment or retaliation may appeal directly to the Office of Administrative Hearings (such appeal
26 consisting of a contested case hearing under G.S. 150B and a decision by the Office of Administrative Hearings)
27 only after submitting a written complaint through the agency grievance and waiting 60 days or receiving notification
28 of remedial action, if any, by the department, agency or university whichever shall occur first.~~

29 ~~(f) Agency or University Plans. Each agency head or university chancellor shall include as a supplement to the
30 Affirmative Action Plan or Equal Employment Opportunity Plan a plan setting forth the steps to be taken to prevent
31 and correct unlawful workplace harassment and retaliation. Each department, agency or university shall submit such
32 a plan to the Office of State Personnel for review, technical assistance, and approval by the Director of the Office of
33 State Personnel. Each plan on unlawful workplace harassment and retaliation shall include:~~

34 ~~(1) publication and dissemination of a policy statement establishing that unlawful workplace
35 harassment and retaliation of employees and applicants is prohibited;~~

36 ~~(2) establishment of internal procedure to handle complaints of unlawful workplace harassment and
37 retaliation. This procedure shall provide investigation and resolution of complaints within the~~

- 1 department or university and shall offer the employee recourse other than through the immediate
2 supervisor;
- 3 ~~(3) utilization of training and other methods to prevent unlawful workplace harassment and
4 retaliation;~~
- 5 ~~(4) statement that the department will, in allegations of unlawful workplace harassment or retaliation,
6 review the entire record and the totality of the circumstances, to determine whether the alleged
7 conduct constitutes unlawful workplace harassment or retaliation;~~
- 8 ~~(5) development of disciplinary actions for conduct determined to constitute unlawful workplace
9 harassment or retaliation, to be implemented on a case by case basis on the facts of each
10 complaint;~~
- 11 ~~(6) prohibition of internal interference, coercion, restraint or reprisal against any person complaining
12 of alleged unlawful workplace harassment or retaliation; and~~
- 13 ~~(7) notification to all employees that a complaint or allegation of unlawful workplace harassment or
14 retaliation must be filed within the department, agency or university and that the department,
15 agency or university has 60 days (or fewer, if waived by the department, agency or university and
16 acknowledged by employee) to take action, if any, in response to the complaint prior to the filing
17 of a complaint of unlawful workplace harassment or retaliation with the Office of Administrative
18 Hearings.~~

19
20 *History Note: Authority G.S. 126-4; 126-16; 126-17; 126-34.01; 126-34.02; 126-36; 126-36.1;*
21 *Eff. December 1, 1980;*
22 *Amended Eff. November 1, 1988; April 1, 1983;*
23 *Temporary Amendment Eff. February 18, 1999;*
24 *Amended Eff. July 18, 2002;*
25 *Recodified from 25 NCAC 01C .0214 Eff December 29, 2003;*
26 *Amended Eff. ~~June 1, 2012.~~ June 1, 2012;*
27 *Temporary Amendment Eff. May 26, 2014.*
28

REQUEST FOR TECHNICAL CHANGE

May 5, 2014

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

RULE CITATION: 25 NCAC 01J .1302

**DEADLINE FOR RECEIPT: UPON RECEIPT OR AS SOON THEREAFTER AS
PRACTICABLE**

The Rules Review Commission staff has completed its opinion review of this rule or set of rules your agency filed with the RRC for review by the RRC at its next meeting. The Commission has not yet met and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that one or more technical changes need to be made. Approval of any rule is contingent on making this technical change as set out in G.S. 150B-21.10.

In (d)(8) line 24 delete or define "detailed."

In (d)(12) line 36 it appears that "include;" should be struck through.

Please retype or otherwise correct the rule(s) or submission form(s) as necessary and deliver it to our office at 1711 New Hope Church Rd, Raleigh, North Carolina 27609.

If you have any questions or problems concerning this request, please contact me.

Joseph J DeLuca,
Commission Counsel

1 25 NCAC 01J .1302 is adopted under temporary procedures, as originally published on the OAH website on October
2 28, 2013, **with changes** as follows:

3 **25 NCAC 01J .1302 GENERAL AGENCY GRIEVANCE PROCEDURE REQUIREMENTS**

4 (a) All agencies and universities shall adopt the Employee Grievance Policy, which shall be approved by the Office
5 of State Human ~~Resources.~~Resources, based on the standards in Paragraph (d) of this section.

6 (b) Grievances filed on an untimely basis must be dismissed.

7 (c) A grievant who has an unexcused failure to attend the Step 1 - Mediation or Step 2 - Hearing as scheduled
8 forfeits the right to proceed with the ~~internal~~ grievance process.

9 (d) An agency or university grievance process shall include the following:

- 10 (1) A list of who may file a grievance;
- 11 (2) A list of grounds for filing a grievance under the internal grievance process;
- 12 (3) A list of grounds for which contested cases may be brought to the Office of Administrative
13 Hearings after the conclusion of the ~~internal~~ grievance process;
- 14 (4) An informal process for attempting to resolve a grievable issue prior to the ~~employee~~ employee's
15 filing a formal ~~internal~~ grievance;
- 16 (5) The timeframes in which grievable issues must be raised in both the informal and formal ~~internal~~
17 grievance process;
- 18 (6) The timeframes in which the agency or university must complete the informal process and each
19 step of the formal ~~internal~~ grievance process;
- 20 (7) Mediation shall serve as Step 1 of the formal ~~internal~~ grievance process. A ~~detailed~~ description of
21 the mediation process and timeframe to be followed in Step 1 shall be provided to include that a
22 mediation agreement is legally binding and that if impasse ~~occurs;~~ occurs, the agency shall inform
23 the grievant of the Step 2 grievance process and timeframe for filing;
- 24 (8) A Hearing shall serve as Step 2 of the formal ~~internal~~ grievance process. A **detailed** description of
25 the hearing process and timeframe to be followed in Step 2 shall be provided, including that a
26 grievant has the opportunity to present the grievance orally to a reviewer(s) outside the grievant's
27 chain of command, ~~eg., e.g. Hearing Officer~~ hearing officer or ~~Hearing Panel.~~ hearing panel. The
28 ~~Hearing Officer~~ hearing officer or ~~Hearing Chair~~ hearing chair shall draft a proposed
29 recommendation with findings of fact for a ~~Final Agency Decision;~~ final agency decision;
- 30 (9) The process and timeframe for the proposed recommendation to be submitted to the Office of
31 State Human Resources for review and approval;
- 32 (10) The process and timeframe for issuance of a Final Agency Decision shall not exceed 90 calendar
33 days of the initial filing of the grievance in the formal ~~internal~~ grievance process;
- 34 (11) Information about any applicable appeal rights to the Office of Administrative Hearings shall be
35 included in the Final Agency Decision;
- 36 (12) The responsibilities of all parties involved in the grievance process to include: grievant,
37 respondent, hearing officer, hearing panel and chair, agency and university Human Resource

1 Office, Equal Employment Officer, Affirmative Action Officer, Agency Head and designee, and
2 the Director of the Office of State Human Resources and designees; and

3 (13) The manner in which changes in the grievance policies will be communicated to employees.

4

5 *History Note: Authority G.S. 126-34.01; 126-34.02;*

6 *Temporary Adoption Eff. May 23, 2014.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

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

RULE CITATION: 25 NCAC 01J .1321

COMMENT:

The RRC had problems and concerns with an OAH proposed rule last month that contained similar attorney fee provisions as those in your rule pertaining to fees "at a reasonable hourly rate based on the prevailing market rate." In its action extending the period of review for the OAH rule the Commission said:

The Commission noted that the phrase "reasonable hourly rate based upon prevailing market rate" is ambiguous as a standard standing alone without consideration of other factors. Further, the Commission noted that there are well settled criteria for the determination of reasonable attorneys' fees, use of which (by statement or reference) might eliminate the ambiguity and avoid possible concerns with anti-trust issues were attorneys required to argue that there is a prevailing rate to establish their fees. The agency and the Commission noted that the Administrative Law Judge's authority to award reasonable attorneys' fees is clear and that given that fact and the well settled case and statutory law regarding determination of reasonable attorneys' fees, perhaps the rule is not even necessary. The Commission extended the period of review to permit the agency to consider either withdrawing the rule or re-writing the rule to address the ambiguity and possible anti-trust considerations.

It seems to me that your rule stands in a slightly different context. I believe I am correctly stating your position as being that the SHRC / OSHR does not set attorneys' fees but you do have the authority to determine what attorneys' fees should be in any given case and also such positions as whether or not there must be written fee agreements. I agree with your position on this.

You should be aware of the possibility that the Commission may take the same position on your rule as it has on the OAH rule and you may need to adjust your rule accordingly. My recommendation to the RRC is that it take this position and require you to make the same changes to your rule as the OAH does to its rule.