



STATE OF NORTH CAROLINA  
OFFICE OF STATE HUMAN RESOURCES  
1331 MAIL SERVICE CENTER • RALEIGH, NC 27699-1331

PAT MCCRORY  
GOVERNOR

C. NEAL ALEXANDER, JR.  
STATE HUMAN RESOURCES DIRECTOR

March 17, 2015

**MEMORANDUM**

TO: Rules Review Commission  
Office of Administrative Hearings

FROM: Shari G. Howard, Rules Coordinator  
Office of State Human Resources

RE: Official Notice of Withdrawal of Filed Permanent Rules

The purpose of this memorandum is to notify you the Office of State Human Resources has decided to withdraw the following rules that were filed as permanent rules in February 2015:

25 NCAC 01D.2701  
25 NCAC 01J.0618

Please contact me at 919-807-4881 if you have any questions.

25 NCAC 01B .0350 is amended with changes as published in 29:11 NCR 1363 as follows:

**25 NCAC 01B .0350      TIME FRAME FOR RAISING ALLEGATION OF DISCRIMINATION**

For cases arising before ~~January 1, 2012,~~ August 21, 2013, allegations ~~Allegations~~ of discrimination based on **NCGS 126-16, 36, 36.1 must** G.S. 126-16, G.S. 126-36, and G.S. 126-36.1 shall be raised within 30 days, either in a direct appeal to the ~~State Human Resources Commission~~ Office of Administrative Hearings or within the departmental grievance procedure, of the date of the action that is alleged to be discriminatory. Failure to raise such an allegation within 30 days shall be cause to have such allegation dismissed.

*History Note:*      Authority G.S. 126-4; 126-34.01; 126-34.02. 126-38;  
Eff. February 1, 1985;  
Temporary Amendment Eff. May 23, 2014;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. ~~October 28, 2014.~~ October 28, 2014;  
Amended Eff. April 1, 2015

25 NCAC 01B .0413 is amended with changes as published in 29:11 NCR 1363 as follows:

**25 NCAC 01B .0413      EXERCISE OF COMMISSION DISCRETION**

~~[For cases arising before January 1, 2012, the]~~ The State Human Resources Commission ~~will~~ shall weigh the facts  
all relevant factors and circumstances in employee each contested cases, case, including factors of mitigation and  
justification, in making a decision in a contested case of whether disciplinary action was imposed for just cause.

*History Note:      Authority G.S. 126-4(9); ~~126-37~~;*  
*Eff. August 1, 1980;*  
*Amended Eff. May 1, 1989;*  
*Temporary Amendment Eff. May 23, 2014;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. ~~October~~*  
*~~28, 2014.~~ October 28, 2014;*  
*Amended Eff. April 1, 2015*

25 NCAC 01C .0402 is amended as published in 29:11 NCR 1364 as follows:

**25 NCAC 01C .0402 PERMANENT AND TIME-LIMITED APPOINTMENT**

(a) ~~Permanent~~— A permanent appointment is a an permanent full-time appointment to a permanent ~~full-time~~ established position. A permanent appointment shall be given ~~when:~~ when the following conditions have been met:

- (1) the requirements of the probationary period have been satisfied,
- (2) an employee in a trainee appointment has completed all training and experience requirements and completed 24 months of continuous employment in a position subject to the State Human Resources Act, or
- (3) a time-limited appointment extends beyond three ~~years.~~ years of continuous employment.

(b) ~~Time-limited Permanent~~— A time-limited ~~permanent~~ appointment is an appointment that has a limited duration to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less,
- (2) a time-limited ~~permanent~~ position. If an employee is retained in a time-limited ~~permanent~~ position beyond three years, the employee shall be designated as having a permanent appointment.

~~(c) Employees with a permanent appointment earn leave, and receive total state service credit, retirement and health benefits, and when applicable, severance pay and priority reemployment consideration.~~

~~(d) Employees with a time limited permanent appointment earn leave, and receive total state service credit, retirement and health benefits. They are not eligible for severance pay and priority reemployment.~~

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

*Eff. February 1, 1976;*

*Amended Eff. October 1, 2004, August 1, 1995; January 1, 1989; June 1, 1983; July 1, 1979;*

*Pursuant to G.s. 150B-21.3A, rule is necessary without substantive public interest Eff. ~~October 28,~~ 2014. October 28, 2014;*

*Amended Eff. April 1, 2015*

25 NCAC 01C.1004 is amended with changes as published in 29:11 NCR 1364 as follows:

### **25 NCAC 01C .1004      REDUCTION IN FORCE**

(a) A State government agency may separate an employee whenever it is necessary due to shortage of funds or work, abolishment of a ~~position~~ position, or other material change in duties or organization. Retention of employees in classes affected shall be based on systematic consideration of all the following factors: type of appointment, relative efficiency, actual or potential adverse impact on the diversity of the ~~workforce~~ workforce, and length of service. ~~However, neither~~ No temporary, ~~probationary~~ probationary, ~~nor or~~ trainee employees in their initial ~~six~~ 24 months of training shall be retained where an employee with a permanent appointment ~~must~~ shall be separated in the same or related class.

#### **(b) Agency Responsibilities:**

- (1) Each agency shall develop a written ~~policy~~ [guidelines] guideline for reduction in force ~~which that~~ meets its particular needs ~~and provides assurance to employees that~~ with potential reductions ~~shall~~ be being considered on a fair and systematic basis in accordance with factors defined in the reduction-in-force ~~policy~~ policy located in Section 11 of the State Human Resources Manual on the Office of State Human Resources website at <http://www.oshr.nc.gov/Guide/Policies/policies.htm>. ~~The policy~~ Each agency's guidelines of each agency shall be filed with the Office of State Personnel as a public record; and
- (2) ~~Each agency shall inform the employee of separation as soon as possible and inform the employee of the priority reemployment consideration available. The agency shall provide employees with a minimum of 30 calendar days written notification of separation prior to the effective date of the reduction in force. The employing agency shall notify the employee in writing of separation as soon as possible and in any case not less than 30 calendar days prior to the effective date of separation. The written notification shall include the reasons for the reduction in force, expected date of separation, the employee's eligibility for priority reemployment consideration, applicable appeal rights, and other benefits available.~~

(c) Appeals: ~~An employee may appeal the separation if it is alleged that the separation is in retaliation for the employee's opposition to alleged discrimination against the employee on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or disabling condition as defined by Chapter 168A of the General Statutes. An employee may appeal the separation if it is alleged that the separation is a denial of the veterans' preference granted in connection with a reduction in force for an eligible veteran as provided in Chapter 126, Article 13. The appeal may be made either through the agency internal grievance procedure or may be filed directly with the Office of Administrative Hearings, at the choice of the employee. reduction in force separation only on the grounds listed in the State Employee Grievance~~ [Policy:] policy, located in Section seven of the State Human Resources Manual on the Office of State Human Resources website at <http://www.oshr.nc.gov/Guide/Policies/policies.htm>.

1 (d) The agency ~~must~~shall analyze any application of its reduction-in-force policy to determine its impact on equal  
2 employment opportunity in accordance with the Equal Employment Opportunities Commission's (EEOC) Uniform  
3 Guidelines on Employee Selection ~~Procedures.~~ Procedures in the code of federal regulations at 29 CFR part 1607,  
4 section 6A, which is hereby incorporated by reference including any subsequent amendments and editions. These  
5 guidelines are available for free on the EEOC website at <http://www.eeoc.gov/laws/regulations/index.cfm>.

6 (e) Severance Salary Continuation: Severance salary continuation shall be administered in accordance with ~~the~~  
7 ~~rules contained in 25 NCAC 01D .2700.~~ 25 NCAC 01D .2701. Pursuant to G.S. 126-8.5, the Office of State Budget  
8 and Management is responsible for determining whether severance continuation is applicable. Prior approval shall  
9 be received from the Office of State Budget and Management before severance salary continuation is paid.

10  
11 *History Note: Authority G.S. 126-4(2);*  
12 *Eff. February 1, 1976;*  
13 *Amended Eff. May1, 1980; January 1, 2980;*  
14 *Emergency Amendment (a) Eff. March 16, 1981 for a Period of 77 Days to Expire on June 1,*  
15 *1981;*  
16 *Emergency Amendment (a) Made Permanent with Change Eff. April 8, 1981;*  
17 *Amended Eff. December 1, 1995; March 1, 1994; November 1, 1990; March 1, 1987;*  
18 *Recodified from 25 NCAC 01D .0504 Eff. December 29, 2003;*  
19 *Amended Eff. October 1, 2009; March 1, 2005;*  
20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. ~~October~~*  
21 *~~28, 2014.~~ October 28, 2014;*  
22 *Amended Eff. April 1, 2015*  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

25 NCAC 01C.1007 is amended with changes as published in 29:11 NCR 1365 as follows:

### **25 NCAC 01C .1007        UNAVAILABILITY WHEN LEAVE IS EXHAUSTED**

(a) An employee may be separated on the basis of unavailability when the employee ~~becomes or~~ remains unavailable for work after all applicable leave credits and leave benefits have been exhausted and agency management does not grant a leave without pay.

(b) Prior to separation, the employing agency shall notify the employee, in writing, of the proposed separation, the efforts undertaken to avoid ~~separation-separation~~, and why the efforts were unsuccessful.

(c) ~~The employing agency [also] must give the employee a~~ The letter of separation stating to the employee shall state the specific reasons for the separation and setting set forth the employee's right of appeal. ~~Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-34.02 or G.S. 126-35, and may be grieved or appealed. Such a separation is not a disciplinary dismissal as described in G.S. 126-34.02 or G.S. 126-35. It is an involuntary separation and may be grieved or appealed. The burden of proof on the agency in the event of a grievance is not to demonstrate just cause as that term exists in G.S. 126-34.02 or G.S. 126-35. Rather, the agency's burden is shall be to prove that the employee was unavailable, that reasonable efforts were undertaken to avoid separation, and the reason why the efforts were unsuccessful.~~

(d) Definitions:

(1) ~~Unavailability~~ "Unavailability" is defined as: as the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis; or the employee and the agency cannot reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition; and

(A) the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and the agency [cannot] are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition; or

(B) the employee's inability to return to all of the position's essential duties and work schedule due to other extenuating circumstances, and the employee and the agency [cannot] are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's situation.

(2) ~~Applicable~~ "Applicable leave credits and [benefits] benefits" is defined as the sick, ~~vacation and vacation, bonus bonus, [family medical,] and compensatory leave that the employee chose to exhaust prior to going on leave without pay- pay, but does not include short-term or long-term disability.~~

*History Note: Authority G.S. 126-4(7a); 126-35;  
Eff. November 1, 1989;*

1                   *Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003;*  
2                   *Amended Eff. January 1, 2007; October 1, 2004.*  
3                   *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. ~~October~~*  
4                   *~~28, 2014.~~ October 28, 2014;*  
5                   *Amended Eff. April 1, 2015*



25 NCAC 01D.0201 is amended with changes as published in 29:11 NCR 1365 as follows:

### **25 NCAC 01D .0201 INITIAL EMPLOYMENT**

(a) A new appointment is the initial employment of an individual to a position ~~or the re-employment of individuals who are either not eligible for reinstatement or, at the agency's option, are not offered reinstatement.~~ in State government.

(b) An employee entering into state service in a permanent or time-limited ~~permanent~~ position shall be given a probationary or trainee ~~appointment~~ appointment, ~~unless the employee is eligible for and the agency chooses to make reinstatement with a permanent appointment.~~ The probationary and trainee appointment periods are intended to shall serve as an extension of the selection process and are used to determine whether the person meets acceptable satisfactory performance standards for the work for which employed. The employee shall earn all the benefits of an employee with a permanent appointment during this time.

(c) The duration of a probationary appointment shall be ~~not less than three nor more than nine~~ 24 months of either full-time or part-time employment. ~~The determination of the appropriate length shall depend on the complexity of the position and the rate of progress of the employee.~~ (This probationary period is not the same as the probationary period prescribed for criminal justice officers in 12 NCAC 05 .0401.) The duration of the trainee appointment is established for each regular classification to which a trainee appointment is made.

(d) The conditions of the probationary and trainee appointments shall be ~~clearly~~ conveyed to the applicant prior to appointment. During the probationary or trainee period, the supervisor shall work ~~closely~~ with the employee in counseling and assisting the employee to achieve a satisfactory performance level; progress of the employee shall be reviewed during discussions between the employee and the supervisor. Following the probationary period when the supervisor in consultation with other appropriate administrators determines that the employee's performance indicated capability to become a satisfactory performer and merits retention in the position, the employee shall be given a permanent appointment to the class. Following the probationary period, the employee shall be given a permanent appointment to the class when the supervisor, in consultation with other appropriate administrators, determines the employee's performance indicated capability to become a satisfactory performer and merits retention in the position. If the determination is that the employee's performance indicates that the employee is not suited for the position and ~~cannot be expected to~~ does not meet acceptable performance standards, the employee shall be separated from that position. Employees may ~~also~~ be separated during a probationary appointment for causes related to performance of duties or unacceptable personal conduct. Employees in ~~or~~ trainee ~~appointment~~ appointments who are not career State employees may also be separated for causes related to performance of duties or unacceptable personal conduct. Except in cases of alleged discrimination, harassment, or retaliation, a ~~dismissal~~ separation ~~under these conditions~~ of an employee in a trainee appointment who is not a career State employee ~~is not subject to the right of appeal to the State Personnel Commission.~~ may not be appealed through the agency grievance [procedure] process as set forth in G.S. 126-34.01 and [then on to] the Office of Administrative [Hearings.] Hearings contested case process as set forth in G.S. 126-34.02.

1    *History Note:*    *Authority G.S. 126-1.1; 126-4; 126-34.01; 126.34.02*  
2                            *Eff. February 1, 1976;*  
3                            *Amended Eff. August 1, 1995; December 1, 1988; January 1, 1979; December 1, 1978;*  
4                            *Temporary Amendment Eff. ~~May 23, 2014.~~ May 23, 2014;*  
5                            *Amended Eff. April 1, 2015*

25 NCAC 01E.0204 is amended with changes as published in 29:11 NCR 1368 as follows:

**25 NCAC 01E .0204 TOTAL STATE SERVICE DEFINED**

(a) Total state service is the time of full-time or part-time (half-time or over) employment of an employee with a permanent, trainee, ~~probationary~~ probationary, or time-limited appointment, whether subject to or exempt from the State Human Resources Act. If an employee ~~so~~ appointed by this rule is in pay status or ~~is~~ on authorized military leave for one-half of the regularly scheduled workdays and holidays in a pay period, credit shall be given for the entire pay period. ~~The employee shall receive full credit for each pay period the employee is in pay status for one-half of the employee's scheduled workdays and holidays.~~

(b) Credit toward total state service shall ~~also~~ be given for:

(1) employment with other governmental units ~~which that~~ which that are now state agencies ~~(for example: county highway maintenance forces, War Manpower Commission, the judicial system);~~

(2) authorized military leave from any of the governmental units for which service credit is granted, provided the employee returns within the time limits outlined in the state military leave policies rules (see 25 NCAC 1E, Section .0800, Rules .0801 - .0819);

(3) employment with the county ~~agricultural~~ cooperative extension service, community college system and the public school system of North Carolina, with the provision that a school year is equivalent to one full year;

(4) employment with a local mental health, public health, or social services department if such employment is subject to the provisions of the State Human Resources ~~[Act;]-Act under G.S. 126-5(a)(2); services or emergency management agency in North Carolina;~~

(5) employment with a local emergency management agency in North Carolina that receives federal grant-in-aid ~~[funds;-] funds; or~~

~~(5)(6)~~ employment with the General Assembly Assembly, ~~(except except~~ for legislators, participants in the Legislative Intern Program-Program, and ~~pages)- pages.~~

*History Note: Authority G.S. 126-4; 126-8;*

*Eff. February 1, 1976;*

*Amended Eff. April 1, 2015; July 1, 1995; January 1, 1989; January 1, 1983; March 1, 1978.*

25 NCAC 01E .0901 is amended with changes as published in 29:11 NCR 1368 as follows:

**25 NCAC 01E .0901      APPROVED HOLIDAYS**

~~G.S. 126-4(5) specifies the number of holidays to be observed and mandates the observance of Martin Luther King, Jr.'s Birthday and Veterans' Day. The State Personnel Commission shall designate the remaining holidays to be observed. The following additional holidays are adopted by the State Personnel Commission and approved by the Governor: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving (2 days), and Christmas (2 or 3 days). In addition to Martin Luther King, Jr.'s Birthday and Veteran's Day, the following~~ **are** ~~shall~~ **be** designated as holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after, and December 25 (Christmas) and the last business day before Christmas and the first business day after Christmas.

*History Note:      Authority G.S. 126-4(5); 126-4(5a);*

*Eff. February 1, 1976;*

*Amended Eff. January 1, 2004; February 1, 1995; December 1, 1988;*

*October 1, 1977;*

*Temporary Amendment Eff. ~~May 23, 2014~~ May 23, 2014;*

*Amended Eff. April 1, 2015*

25 NCAC 01E.1601 is amended with changes as published in 29:11 NCR 1368 as follows:

**25 NCAC 01E.1601      COMMUNITY SERVICE LEAVE PURPOSE**

(a) A supervisor may approve Community Service Leave for employees as follows:

- (1) for parents for ~~child~~ involvement with their child in the schools as defined in ~~21 NCAC 01E .1602~~  
in Rule .1602 in this ~~[Subchapter.] Subchapter;~~
- (2) for any employee to volunteer in the schools or in a Community Service Organization as defined  
in ~~21 NCAC 01E .1602;~~ in Rule .1602 in this Subchapter; or
- ~~(3) for any employee to tutor or mentor in the schools as defined in 21 NCAC 01E .1602; or~~
- ~~(4)~~(3) for any employee to volunteer in a Public University, Community College College, or State  
agency as defined in ~~21 NCAC 01E .1602~~ Rule .1602 of this Subchapter provided that the service  
is outside of the employee's normal scope of duties and responsibilities and that the employee is  
not receiving any form of compensation for the services rendered.

(b) A supervisor may approve special provisions for volunteer work as follows:

- (1) tutoring and mentoring in public or non-public school as defined in Rule .1602 in this Subchapter;  
or
- (2) volunteering in a literacy program in a public school as defined in Rule .1602 in this Subchapter.

*History Note:      Authority G.S. 126-4;  
                             Eff. April 1, 2001;  
                             Amended Eff. April 1, 2015; August 1, 2010; October 1, 2004.*

25 NCAC 01E.1602 is amended with changes as published in 29:11 NCR 1369 as follows:

### **25 NCAC 01E .1602      DEFINITIONS**

When used in this Section, these terms have the following meaning:

- (1) ~~School~~ **"School"** - An elementary school, a middle school, a high school, or a child care program that is authorized to operate under the laws of the State of North Carolina.
- (2) ~~Public University~~ **"Public University"** - A constituent institution of the University of North Carolina.
- (3) ~~Community College~~ **"Community College"** - An educational institution that is a member of the North Carolina Community College System.
- (4) ~~State Agency~~ **"State Agency"** - A State government agency that is authorized to operate under the laws of the State of North Carolina.
- (5) ~~Child~~ **"Child"** - A son or daughter who is a biological child, an adopted child, a foster child, a step-child, a legal ward, or a child of an employee standing in loco parentis.
- (6) ~~Community~~ **"Community Service Organization Organization"** - A non-profit, non-partisan community organization ~~which that~~ is designated as an IRS Code 501(c)(3) agency, or a human service organization licensed or accredited by the State of North Carolina to serve citizens with special needs including children, youth, and the elderly.
- (7) ~~[Community Service]~~ **"Community Service"** – The act of supporting citizens of North Carolina through volunteer service.
- (8) ~~[Volunteer]~~ **"Volunteer"** – A person who willingly chooses to perform hours of service for civic, ~~[charitable]~~ charitable, or humanitarian reasons without promise or expectation of compensation for services provided.

*History Note:      Authority G.S. 126-4;  
                                 Eff. April 1, 2001;  
                                 Amended Eff. April 1, 2015; August 1, 2010.*

25 NCAC 01E.1605 is amended with changes as published in 29:11 NCR 1369 as follows:

**25 NCAC 01E .1605      ~~AGENCY POLICY~~ COMMUNITY SERVICE LEAVE ADMINISTRATION**

Each agency ~~shall set forth a policy and procedure that shall be administered consistently and shall include~~ shall administer the community service leave program as follows:

- (1) Employees must receive approval from their supervisor to use this community service leave. The agency may require that the leave be taken at a time other than the one requested, based on the needs of the agency. The agency may require proof ~~to the supervisor~~ that community service leave taken is being utilized within the purpose of this ~~policy~~. Subchapter.
- (2) Leave shall only be requested and approved for community service that occurs during the employee's regularly scheduled hours of work. Agencies with shift employees regularly scheduled to work evening or night shift with a shift schedule in excess of eight hours may allow the use of community service leave in situations where the employee's participation in community service outside of the normal work schedule significantly impacts the employee's normal sleep period.
- (3) Reasonable travel time may be included in approved time for community service, but only for the time that intersects the employee's regular work schedule.
- (4) If an employee transfers to another State agency, any balance of the community service leave not used shall be transferred to the new agency. Under the ~~[tutoring/mentoring]~~ tutoring and mentoring or literacy leave option, the employee ~~[should]~~ shall secure approval from the new supervisor to continue with that option prior to the transfer.
- (5) Leave not taken in a calendar year is forfeited; it shall not be carried over into the next calendar year.
- (6) Employees shall not be paid for this leave upon separation from State government.
- (7) ~~Supervisors who approve community service leave shall maintain records indicating the number of employees involved and the number of hours used.~~ The use of community service leave shall be reported separately from all other paid leave. Employees and supervisors are responsible for ~~[the timely and]~~ accurate reporting of the use of community service leave on the employee's time record.

*History Note: Authority G.S. 126-4;  
Eff. ~~July 18, 2002~~. July 18, 2002;  
Amended Eff. April 1, 2015*

25 NCAC 01E.1606 is repealed as published in 29:11 NCR 1370 as follows:

**25 NCAC 01E.1606        ADDITIONAL TIME FOR COMMUNITY SERVICE ACTIVITIES**

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

*Eff. ~~July 18, 2002~~ July 18, 2002;*

*Repealed Eff. April 1, 2015*



25 NCAC 01H .0633 is amended with changes as published in 29:11 NCR 1370 as follows:

**25 NCAC 01H .0633 SPECIAL APPLICANT CONSIDERATIONS ~~AND EMPLOYMENT OF~~  
RELATIVES RELATED TO PRIORITY**

~~(a)~~ Priority consideration shall be given ~~to:~~ to the following applicants:

- (1) ~~Employees~~ employees with career status who have received written notification of imminent separation due to reduction in force;
- (2) ~~Eligible employees~~ employees eligible pursuant to G.S. 126-5(e) who have been removed from exempt positions, for reasons other than cause;
- (3) ~~Eligible employees~~ employees eligible pursuant to G.S. 126-5(e) who have been removed from an exempt managerial position for a violation of G.S. 126-14.2;
- (4) ~~Employees~~ employees returning from workers' compensation leave;
- (5) ~~Career~~ career State employees seeking promotions; and
- (6) ~~Eligible veterans.~~ eligible veterans as defined in G.S. 128-15(b)(3).

~~(b) Members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of the employee's immediate family, or if one member will occupy a position which 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 the step , half and in law relationships based on the listing in this Paragraph. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration or other related management or personnel considerations.~~

*History Note: Authority G.S. 126-4(4); 128-15;  
Eff. February 1, 2007;  
Amended Eff. April 1, 2015*

25 NCAC 01H .0634 is amended with changes as published in 29:11 NCR 1370 as follows:

### **25 NCAC 01H .0634      SELECTION OF APPLICANTS**

(a) All 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. For purposes of this rule, "political influence" occurs when political affiliation impacts the decision to hire or not to hire and the selection decision was not based on fair and valid selection criteria.

~~(b) Each agency shall develop and maintain a written Recruitment and Selection Plan according to guidelines provided by the Office of State Human Resources. The Recruitment and Selection Plan shall provide assurances to employees and applicants that the recruitment and selection process shall be based on fair and valid selection criteria. Agency plans shall be reviewed by the Office of State Human Resources and approved by the State Human Resources Commission consistent with G.S. 126-14.3 and the rules in this Section. Any changes to agency plans shall also be submitted to the Office of State Human Resources for review and approval according to these Rules.~~

~~(c)~~ (b) Using fair and valid selection criteria, the agency shall review the credentials of each applicant in order to determine who possesses the minimum qualifications as defined in 25 NCAC 01H .0635 including selective criteria. [Selective criteria] "Selective criteria" are defined as additional minimum qualifications identified by the agency. From those applicants who meet the minimum qualifications, a pool of the most qualified candidates shall be identified. The pool of most qualified candidates shall be those individuals determined to be substantially more qualified than other [ applicants.] applicants pursuant to G.S. 126-14.2. The individual selected for the position shall be from among the most qualified applicants.

~~(d)~~ (c) Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled.

~~(e)~~ (d) The agency shall provide timely written notice of non-selection to all unsuccessful candidates in the most qualified pool.

*History Note:      Authority G.S. 126-4(4); 126-14.2; ~~G.S. 126-14.3~~*

*Eff. February 1, 2007;*

*Amended Eff. April 1, 2015*

25 NCAC 01H .0636 is amended with changes as published in 29:11 NCR 1371 as follows:

**25 NCAC 01H .0636      ~~EMPLOYMENT OF ALIENS~~ EMPLOYMENT: E-VERIFY**

(a) The Immigration Reform and Control Act (IRCA) ~~of 1986~~ requires that all U.S. employees be either United States citizens or aliens with proper work authorization from the Bureau of U.S. Citizenship and Immigration Services.

(b) All State agencies shall, no later than the third working day after the hire, verify the employment eligibility of all employees hired after November 6, 1986. Verification ~~must~~ shall establish both identity and employment authorization and shall follow the requirements of the ~~IRCA~~. IRCA, using the E-verify program [(Title IV, Subtitle A, of the Illegal Immigration Reform and Control Action of 1996 (IIRIRA), Pub. L. 104 208, 110 Stat. 3009);] that is administered by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Verification Division, which is hereby incorporated by reference including any subsequent amendments and editions. Information on the E-verify program may be found on the U.S. Department of Homeland Security website at <http://www.uscis.gov/e-verify>.

*History Note:      Authority P.L. 101-649; G.S. 126-4(4); 8 C.F.R. Parts 109 and 274a, 1987;  
Eff. ~~February 1, 2007.~~ February 1, 2007;  
Amended Eff. April 1, 2015*

25 NCAC 01H .0641 is adopted with changes as published in 29:11 NCR 1371 as follows:

**25 NCAC 01H .0641      EMPLOYMENT OF RELATIVES**

Members of an immediate family shall not be employed within the same agency if ~~[such] the~~ employment ~~[will result] results~~ in one member supervising another member of the employee's immediate family, or if one member will occupy a position ~~[which] that~~ has influence over another member's employment, promotion, salary ~~[administration] administration~~, or other related management or personnel considerations. This includes employment on a permanent, ~~[temporary] temporary~~, or contractual basis. The term ~~[immediate family]~~ "immediate family" includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step-, half- and in-law relationships based on the listing in this ~~[Paragraph.] 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 ~~[which] that~~ requires influence over the other's employment, promotion, salary ~~[administration] administration~~, or other related management or personnel considerations.

*History Note:      Authority G.S. 126-4(4)*  
*Eff. April 1, 2015*

25 NCAC 01H.0901 is amended with changes as published in 29:11 NCR 1371 as follows:

**25 NCAC 01H .0901      ~~POLICY AND SCOPE~~ REDUCTION IN FORCE APPLICATION AND APPEAL**

(a) The rules in this Section apply to employees notified of or separated due to a reduction in force.

(b) Priority consideration shall be provided to career State employees who have received written notification of imminent separation due to reduction in force. An employee who is separated from a time-limited ~~appointment~~ position is not eligible for priority consideration unless the time-limited appointment extends beyond three years.

(c) A career State employee, as defined in G.S. 126-1.1, with priority consideration who has reason to believe priority consideration was denied in violation of [law] G.S. 126, in a selection ~~decision~~ decision, and who chooses to appeal ~~may shall~~ appeal ~~directly to the State Human Resources Commission through the established contested hearing process in accordance with G.S. 126-34.1(a)(5); agency grievance~~ procedure in accordance with G.S. 126-34.02 ~~process as set forth in G.S. 126-34.01 [on the grounds permitted by law.]~~ and the Office of Administrative Hearings contested case process as set forth in G.S. 126-34.02.

*History Note:      Authority G.S. 126-1A; 126-5(c)(2); 126-5(d)(1); 126-7.1;  
Eff. March 1, 1987;  
Amended Eff. December 1, 1995; March 1, 1994; June 1, 1992; March 1, 1991;  
Recodified from 25 NCAC 01D .0510 Eff. December 29, 2003;  
Amended Eff. February 1, 2007;  
Temporary Amendment Eff. ~~May 23, 2014.~~ May 23, 2014;  
Amended Eff. April 1, 2015*

25 NCAC 01H.0902 is amended with changes as published in 29:11 NCR 1371 as follows:

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

Upon written notification of imminent separation through reduction in force (RIF), ~~an employee~~ a career state employee shall receive priority consideration for positions at an equal or lower salary grade (or salary grade 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 satisfied in accordance with this section. The following conditions apply:

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

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

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

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

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

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

- (c) an employee accepts a career banded position at the same or higher competency level in the same banded classification as held at the time of notification, ~~or~~
- (d) an employee accepts a career banded position in a different banded classification with the same or higher journey market rate than that held at the time of notification; ~~or~~
- ~~(e)~~(e) an employee has received 12 months priority consideration; ~~or~~
- (f) an employee applies for retirement or retires from State employment
- (12) Priority consideration for employees notified of or separated through reduction in force ~~does~~ shall not include priority to any exempt positions;
- (13) When an employee with priority status consideration accepts a position at a lower salary rate or lower employee's salary grade (or salary grade equivalency) ~~grade (or salary grade equivalency) or salary rate~~ and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; and
- (14) An employee with priority status consideration ~~may be [is] required to~~ shall serve a new probationary period ~~only when: when there is a break in service, service, as defined in 25 NCAC 01D .0114. [Rule 01D .0114 of this Title.]~~
- (a) ~~the essential duties and responsibilities of the position into which the employee is being reemployed are significantly different from those of the position held at the time of reduction in force notification;~~
- (b) ~~the prior, documented performance history of the employee indicates performance failings; or~~
- (c) ~~the prior, documented unacceptable personal conduct of the employee would make a probationary period a prudent protection of agency interests.~~
- ~~A decision by an agency to require a new probationary period shall not, however, nullify the employee's right to a future period of priority reemployment status should that employee receive reduction in force notification again while serving in probationary status.~~

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

*Eff. March 1, 1987;*

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

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

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

*Temporary Amendment Eff. ~~May 23, 2014~~ May 23, 2014;*

*Amended Eff. April 1, 2015*



25 NCAC 01H.0904 is amended with changes as published in 29:11 NCR 1373 as follows:

**25 NCAC 01H .0904      AGENCY AND EMPLOYEE RESPONSIBILITIES**

(a) The employing agency shall notify the employee of ~~impending imminent~~ separation in accordance with ~~G.S. 126-7.1(a1)~~, G.S. 126-7.1(b) and inform the employee of the priority consideration to be afforded.

(b) The agency shall notify the Office of State Human Resources when:

- (1) an employee is officially notified of reduction in force;
- (2) an eligible employee accepts a position that satisfies the priority consideration;
- (3) ~~an employee with priority status due to reduction in force is offered a lateral transfer or promotion and refuses, unless the position offered is more than 35 miles from the employee's original workstation; or an eligible employee refuses an interview or an offer that would satisfy the priority consideration; or~~
- (4) other conditions that would satisfy or terminate an eligible employee's priority consideration under 25 NCAC 01H .0902 are discovered.

*History Note: Authority G.S. 126-4(6),(10); 126-7.1;  
Eff. March 1, 1987;  
Amended Eff. December 1, 1995, June 1, 1992; June 1, 1992, November 1, 1988;  
Recodified from 25 NCAC 01D .0515 Eff. December 29, 2003;  
Amended Eff. November 1, 2011; ~~February 1, 2007~~; February 1, 2007;  
Temporary Amendment Eff. ~~May 23, 2014~~; May 23, 2014;  
Amended Eff. April 1, 2015*

25 NCAC 01H.0905 is amended with changes as published in 29:11 NCR 1373 as follows:

**25 NCAC 01H .0905      OFFICE OF STATE HUMAN RESOURCES RESPONSIBILITIES**

(a) The Office of State Human Resources shall maintain a list of employees notified of reduction in force that ~~will~~ **shall** serve as a reference for agencies in ~~applying determining~~ priority consideration **for** reemployment.

~~(b) The Office of State Human Resources shall also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance includes resumé preparation, personal marketing, and interview skills, along with Division of Employment Security Commission coordination for placement referral.~~

*History Note:      Authority G.S. 126-4(6),(10); ~~S.L. 2013-382~~;  
                             Eff. March 1, 1987;  
                             Recodified from 25 NCAC 01D .0516 Eff. December 29, 2003;  
                             Amended Eff. November 1, 2011; ~~February 1, 2007.~~ February 1, 2007;  
                             Temporary Amendment Eff. ~~May 23, 2014.~~ May 23, 2014;  
                             Amended Eff. April 1, 2015*

25 NCAC 0J.0603 is amended with changes as published in 29:11 NCR 1373 as follows:

### **25 NCAC 01J .0603        APPEALS**

(a) A career employee who has been demoted, ~~suspended~~ **suspended**, 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 department/university grievance procedure. If an employee does not appeal his or her dismissal through the agency grievance procedure within 15 days, ~~the initial letter of dismissal setting forth the specific acts or omissions that are the basis of the dismissal shall become the agency's final agency decision. then the employee shall have no right to file a contested case with the Office of Administrative Hearings under G.S. 126-34.02.~~

(b) If an employee appeals his or her dismissal through the agency grievance procedure, then the initial dismissal letter 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. ~~Grievances which do not allege discrimination, a violation of G.S. 126 7.1(a) or (c), a violation of G.S. 126 82, or that do not allege a denial of employment or promotion in violation of G.S. 126 14.2 must follow the department or university grievance procedure. An appeal to the State Human Resources Commission of a final departmental or university 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 the agency or department, within 30 calendar days of the alleged harassing action, and the agency or department must be given 60 calendar days in which to take remedial action, if any, unless the department or agency has waived the 60 day period, and the employee has acknowledged such waiver. The acknowledgement and waiver shall be in writing. 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 notification of the remedial action, if any, taken by the agency.~~

~~(b)(c)~~ Grievances ~~which that~~ allege discrimination not including unlawful workplace harassment may, at the election of the employee, proceed through the department or university procedure or proceed directly to the State Human Resources Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (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 discrimination, harassment, or retaliation, retaliation **[must also] shall** follow the agency grievance process. Employees with grievances alleging discrimination, harassment, or retaliation who do not follow the agency grievance process shall have no right to file a contested case with the Office of Administrative Hearings.

(c) ~~Grievances which allege a violation of G.S. 126 14.2 must be filed with the Civil Rights Division of the OAH within 30 calendar days after the employee or applicant receives written notice that the position in question has been filled. The employee or applicant must file a petition for a contested case hearing pursuant to G.S. 126 34.1 and Article 3 of Chapter 150B within 15 days of the initial determination by the OAH Civil Rights Division that there has been a violation of G.S. 126 14.2.~~

(d) Grievances filed on an untimely basis (see G.S. 126-14.4, 126-35, 126-36 and 126-38) must be dismissed. Allegations of discrimination raised more than 30 calendar days after receipt of notice of the occurrence of the alleged discriminatory act must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after notification of the remedial action, if any, taken by the agency must be dismissed.

~~[(d) The following grievances must also follow the agency grievance procedure before being filed in the Office of Administrative Hearings: denial of veteran's preference provided for in Chapter 128 of the General Statutes; denial of hiring or promotion because of an unlawful failure to post a position; denial of hiring or promotion due to failure to receive career State employee priority consideration; denial of hiring or promotion due to failure to receive reduction in force priority consideration; and a whistleblower grievance as provided in Article 14 of Chapter 126.]~~

*History Note: Authority G.S. 126-1A; 126-34.01, 126-34.02; 126-35; 150B, Article 3; 150B-23;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1994; April 1, 1989; December 1, 1984; October 1, 1984;  
Temporary Amendment Eff. February 18, 1999;  
Amended Eff. February 1, 2011; July 18, 2002;  
Temporary Amendment Eff. ~~May 23, 2014~~ May 23, 2014;  
Amended Eff. April 1, 2015*

25 NCAC 0J.0610 is amended with changes as published in 29:11 NCR 1374 as follows:

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

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and 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 ~~and~~ 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~~ inform the employee that this is a written warning, and not some other non-disciplinary process such as counseling;
- (2) ~~Inform~~ inform the employee of the specific issues that are the basis for the warning;
- (3) ~~Tell~~ tell the employee what specific ~~improvements if applicable~~ improvements, if applicable, ~~must~~ shall be made to address these specific issues;
- (4) ~~Tell~~ tell the employee the time frame allowed for making the required ~~improvements/corrections.~~ improvements or corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct; and
- (5) ~~Tell~~ tell the employee the consequences of failing to make the required ~~improvements/corrections;~~ improvements or corrections:

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

*History Note: Authority G.S. 126-4; G.S. 126-34.02;*

*Eff. February 1, 1976;*

*Amended Eff. October 1, 1995; November 1, 1990; January 1, 1989; September 1, 1988;*

*Temporary Amendment Eff. ~~May 23, 2014.~~ May 23, 2014;*

*Amended Eff. April 1, 2015*

25 NCAC 0J.0615 is amended with changes as published in 29:11 NCR 1374 as follows:

### **25 NCAC 01J .0615 INVESTIGATORY LEAVE**

(a) ~~PLACEMENT ON INVESTIGATION~~ ~~Investigation status~~ Investigatory leave with pay ~~is shall be~~ used to temporarily remove an employee from work status. Placement on ~~investigation~~ investigatory leave with pay ~~does~~ shall not constitute a disciplinary action as defined in this ~~Section~~ Section, G.S. 126-34.02, or in G.S. 126-35. Management ~~must shall~~ must shall notify an employee in writing of the reasons for ~~investigatory~~ placement on investigatory leave not later than the second scheduled work day after the beginning of the placement. ~~An investigatory placement~~ Investigatory leave with pay may last no longer than 30 calendar days without written approval of extension by the agency head and the State Human Resources Director. The State Human Resources Director shall approve an extension of the period of investigatory ~~status~~ leave with pay, for no more than an additional 30 calendar days, for one or more of the following reasons:

- (1) ~~The the~~ The matter is being investigated by law enforcement personnel, ~~and~~ the investigation is not ~~complete; complete, and the agency is unable to complete its own independent investigation~~ without facts contained in the law enforcement investigation, and the agency is unable to conduct its own investigation; [or]
- (2) ~~A a~~ A management individual who is necessary for resolution of the matter is ~~temporarily~~ temporarily unavailable; or
- (3) ~~A a~~ A person or persons whose information is necessary for resolution of the matter is/are ~~temporarily~~ temporarily unavailable.

(b) When an extension beyond the 30-day period is required, the agency ~~must shall~~ must shall advise the employee in writing of the extension, the length of the extension, and the reasons for the extension. If no action has been taken by an agency by the end of the 30-day period and no further extension has been granted, the agency shall either take appropriate disciplinary action on the basis of the findings ~~upon made during the~~ made during the investigation or return the employee to active work status. ~~It is not permissible to~~ An agency shall not use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

(c) ~~It is permissible to~~ An agency may place an employee ~~in investigation status with pay~~ on investigatory leave only under the following circumstances:

- (1) ~~To to~~ To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- (2) ~~To to~~ To provide time within which to schedule and conduct a pre-disciplinary conference; ~~or~~
- (3) ~~To to~~ To avoid disruption of the work place and to protect the safety of persons or ~~property; property;~~ property; or
- (4) ~~[To] to~~ [To] to facilitate a management directed referral or fitness for duty/risk evaluation to ensure the employee's safety and the safety of others ~~[and/or] and~~ [and/or] to obtain medical information regarding the employee's fitness to perform his or her essential job ~~functions; or functions.~~ functions.

1 ~~[(5) — For other good cause shown, only as approved by the State Human Resources Director.]~~

2 ~~(d) CREDENTIALS—Some duties assigned to positions in the state service may be performed only by persons who~~  
3 ~~are licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and~~  
4 ~~restrictions shall be specified in the statement of essential qualifications or recruitment standards for classifications~~  
5 ~~established by the State Human Resources Commission. Employees in such classifications shall obtain and~~  
6 ~~maintain current, valid credentials as required by law. Failure to obtain or maintain the legally required credentials~~  
7 ~~constitutes a basis for dismissal without prior warning, consistent with dismissal for unacceptable personal conduct~~  
8 ~~or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials~~  
9 ~~shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or~~  
10 ~~grossly inefficient job performance. Falsification of employment credentials or other documentation in connection~~  
11 ~~with securing employment constitutes just cause for disciplinary action. When credential or work history~~  
12 ~~falsification is discovered after employment with a state agency, disciplinary action shall be administered as follows:~~

13 (1) ~~If an employee was determined to be qualified and was selected for a position based upon falsified~~  
14 ~~work experience, education, registration, licensure or certification information that was a~~  
15 ~~requirement for the position, the employee must be dismissed in accordance with 25 NCAC 01J~~  
16 ~~.0608.~~

17 (2) ~~In all other cases of post hiring discovery of false or misleading information, disciplinary action~~  
18 ~~shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency~~  
19 ~~head.~~

20 (3) ~~When credential or work history falsification is discovered before employment with a state~~  
21 ~~agency, the applicant shall be disqualified from consideration for the position in question.~~

22 ~~(e) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.~~

23 ~~(f) Warnings and placement on investigation with pay are not grievable unless an agency specifically provides for~~  
24 ~~such a grievance in its agency grievance procedure. Absent an allegation of a violation of G.S. 126-25, warnings~~  
25 ~~shall not be appealable to the State Human Resources Commission.~~

26 ~~(g) An agency shall furnish to an employee as an attachment to the written documentation of any grievable~~  
27 ~~disciplinary action, a copy of the agency grievance procedure.~~

28 ~~(h) Each state agency shall adopt and submit to the State Human Resources Commission an internal grievance~~  
29 ~~procedure that includes as an attachment an agency employee relations policy which:~~

30 (1) ~~Sets out the manner and mechanism with which employees are notified of changes in agency~~  
31 ~~policy and State Human Resources Commission rules;~~

32 (2) ~~Sets out the policy on the use of disciplinary suspension and the procedure for the issuance of~~  
33 ~~warnings;~~

34 (3) ~~Sets out the policy on the retention of warnings and other disciplinary actions in employee~~  
35 ~~personnel files; and~~

36 (4) ~~—Sets out the policy on how an employee may access the employee's personnel file.~~

1 ~~(i) Each state agency shall maintain records and provide the OSP information and statistics on the discipline and~~  
2 ~~dismissal process commencing in January 1996 and every year thereafter.~~

3 ~~(j) Each state agency shall insure that designated personnel are trained in the administration of this Section.~~

4  
5 *History Note: Authority G.S. 126-4; 126-25; 126-34.02; 126-35;*

6 *Eff. October 1, 1995;*

7 *Amended Eff. April 1, 2015; January 1, 2011; April 1, 2005.*



25 NCAC 0J.0616 is adopted with changes as published in 29:11 NCR 1376 as follows:

**25 NCAC 01J .0616 CREDENTIALS**

(a) ~~Some duties assigned to positions in the state service may be performed only by persons who are licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions]~~  
Classifications or positions required to be licensed, registered, or certified in accordance with North Carolina General Statutes shall be specified in the statement of essential qualifications or recruitment standards for classifications approved by the State Human Resources Commission. Employees in such classifications or positions shall obtain and maintain current, valid ~~credentials as required by law.~~ credentials.

(b) Failure to obtain or maintain the ~~legally~~ required credentials constitutes a basis for dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.

(c) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency, disciplinary action shall be administered as follows:

(1) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, ~~licensure licensure~~, or certification information that was a requirement for the position, the employee ~~must~~ shall be dismissed in accordance with 25 NCAC 01J .0608.

(2) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.

~~(3)~~(d) When credential or work history falsification is discovered before employment with a state agency, the applicant shall be disqualified from consideration for the position in question.

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

*Eff. April 1, 2015*

25 NCAC 0J.0617 is adopted with changes as published in 29:11 NCR 1376 as follows:

**25 NCAC 01J .0617        DISCRIMINATION AND RETALIATION**

Neither race, religion, color, national origin, sex, age, political affiliation, [disability] disability, or genetic information shall be considered in making any decisions about any term or condition of employment for any employees or applicants. Nor shall the fact that an employee or applicant has complained about discrimination or participated in a hearing, proceeding, or investigation of discrimination be considered when making any decisions about any term or condition of employment.

*History Note:     Authority ~~S.L. 2013-382, see, 7.1; G.S. 126-16; 126-17; 126-13.02;~~  
Temporary Adoption Eff. February 28, 2014;  
Temporary Adoption Expired ~~December 12, 2014.~~ December 12, 2014;  
Eff. April 1, 2015*

25 NCAC 01J .1101 is amended with changes as published in 29:11 NCR 1376 as follows:

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

(a) Purpose. The purpose of this Rule is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment, including sexual harassment or retaliation based on opposition to unlawful workplace harassment of state employees or ~~applicants and~~ applicants. ~~to require that every~~ Every agency and university with employees subject to the State Human-Resources Act ~~shall establish policies and programs~~ develop strategies to ensure that work sites are free of unlawful workplace harassment, sexual harassment discrimination and retaliation.

(b) As used in this Rule:

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

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

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

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

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

~~(3)(2)~~ “sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:

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

(B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such [individual.] individual; and

(C) [such] the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

~~(4)(3)~~ “retaliation” means adverse action taken against an individual for filing a discrimination [charge,] charge; [testifying,] testifying; or participating in any way in an investigation, proceeding, or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, age, [disability] disability, political affiliation or genetic [information] information; or because of

1 opposition to employment practices in violation of the unlawful workplace harassment-harassment  
2 policy.

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

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

10 (b) ~~As used in this Rule:~~

11 (1) ~~Unlawful workplace harassment is defined as unsolicited and unwelcome speech or conduct based~~  
12 ~~upon race, sex, creed, religion, national origin, age, color, or disabling condition as defined by G.S.~~  
13 ~~168A-3 that creates a hostile work environment or circumstances involving quid pro quo.~~

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

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

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

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

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

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

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

32 (e) Coverage of the Rule includes:

33 (1) applicants,

34 (2) former employees, and

35 (3) full-time and part-time employees with either a permanent, probationary, trainee, [time limited]  
36 time-limited, or temporary appointment.

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

13 ~~(f) Agency or University Plans~~ Workplace Harassment Prevention Strategies. Each agency head ~~or university~~  
14 ~~chancellor~~ shall develop strategies to prevent unlawful workplace ~~[harassment.] harassment, sexual harassment, or~~  
15 retaliation. These strategies [at the minimum should] shall include:

- 16 (1) a commitment by the agency to the prohibition of unlawful workplace harassment, sexual  
17 harassment or retaliation;
- 18 (2) training and other methods to prevent harassing or retaliating actions; and
- 19 (3) a process for disseminating information prohibiting unlawful workplace harassment and retaliation  
20 to all agency employees.

21 Workplace harassment prevention strategies shall be included as part of the agency Equal Employment Opportunity  
22 (EEO) plan.

23 ~~include as a supplement to the Affirmative Action Plan or Equal Employment Opportunity Plan a plan setting forth~~  
24 ~~the steps to be taken to prevent and correct unlawful workplace harassment and retaliation. Each department, agency~~  
25 ~~or university shall submit such a plan to the Office of State Human Resources for review, technical assistance, and~~  
26 ~~approval by the Director of the Office of State Human Resources. Each plan on unlawful workplace harassment and~~  
27 ~~retaliation shall include:~~

- 28 (1) ~~publication and dissemination of a policy statement establishing that unlawful workplace~~  
29 ~~harassment and retaliation of employees and applicants is prohibited;~~
- 30 (2) ~~establishment of internal procedure to handle complaints of unlawful workplace harassment and~~  
31 ~~retaliation. This procedure shall provide investigation and resolution of complaints within the~~  
32 ~~department or university and shall offer the employee recourse other than through the immediate~~  
33 ~~supervisor;~~
- 34 (3) ~~utilization of training and other methods to prevent unlawful workplace harassment and retaliation;~~
- 35 (4) ~~statement that the department will, in allegations of unlawful workplace harassment or retaliation,~~  
36 ~~review the entire record and the totality of the circumstances, to determine whether the alleged~~  
37 ~~conduct constitutes unlawful workplace harassment or retaliation;~~

- (5) ~~development of disciplinary actions for conduct determined to constitute unlawful workplace harassment or retaliation, to be implemented on a case by case basis on the facts of each complaint;~~
- (6) ~~prohibition of internal interference, coercion, restraint or reprisal against any person complaining of alleged unlawful workplace harassment or retaliation; and~~
- (7) ~~notification to all employees that a complaint or allegation of unlawful workplace harassment or retaliation must be filed within the department, agency or university and that the department, agency or university has 60 days (or fewer, if waived by the department, agency or university and acknowledged by employee) to take action, if any, in response to the complaint prior to the filing of a complaint of unlawful workplace harassment or retaliation with the Office of Administrative Hearings.~~

*History Note: Authority G.S. 126-4; 126-16; 126-17; 126-34.01; 126-34.02; 126-36; ~~126-36.1~~;*  
*Eff. December 1, 1980;*  
*Amended Eff. November 1, 1988; April 1, 1983;*  
*Temporary Amendment Eff. February 18, 1999;*  
*Amended Eff. July 18, 2002;*  
*Recodified from 25 NCAC 01C .0214 Eff. December 29, 2003;*  
*Amended Eff. June 1, 2012;*  
*Temporary Amendment Eff. ~~May 23, 2014~~; May 23, 2014;*  
*Amended Eff. April 1, 2015*

The following rules in Section .1200 are repealed as published in 29:11 NCR 1378 as follows:

**SECTION .1200 – EMPLOYEE GRIEVANCES**

25 NCAC 01J .1201        GENERAL PROVISIONS

25 NCAC 01J .1202        AGENCY RESPONSIBILITIES

25 NCAC 01J .1203        AGENCY GRIEVANCE REPORTS

25 NCAC 01J .1204        DISCRIMINATION AND RETALIATION / SPECIAL PROVISIONS

25 NCAC 01J .1205        UNLAWFUL WORKPLACE HARASSMENT

25 NCAC 01J .1206        TIME LIMITS

25 NCAC 01J .1207        FINAL AGENCY ACTION

25 NCAC 01J .1208        LEAVE IN CONNECTION WITH GRIEVANCES

*History Note:     Authority G.S. 126-1.1; 126-4(9); 126-4(11); 126-4(17); 126-7.2; 126-16; 126-17; 126-25; ~~126-34;~~  
~~126-34.1; 126-34.1(a); 126-34.01; 126-34.02;~~ 126-35; ~~126-36(a); 126-36(b)(1),(2); 126-37; 126-~~  
~~38; 126-39;~~ 150B-23(a); ~~S.L. 2013-382;~~  
Eff. March 1, 2005;  
Temporary Repeal Eff. ~~May 23, 2014;~~ May 23, 2014;  
Repealed April 1, 2015*

25 NCAC 01J .1301 is repealed as published in 29:11 NCR 1379 as follows:

**25 NCAC 01J .1301        MINIMUM PROCEDURAL REQUIREMENTS**

*History Note:     Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; ~~126-34; 126-34.1; 126-34.2; 126-34.01; 126-34.02 ; 126-35; 126-36; 126-37; 126-38; 150B-23; S.L. 2013-382;~~*  
*Eff. March 1, 2005;*  
*Temporary Repeal Eff. ~~May 23, 2014;~~ May 23, 2014;*  
*Repealed Eff. April 1, 2015*



25 NCAC 0J.1302 is adopted with changes as published in 29:11 NCR 1380 as follows:

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

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

(b) Grievances filed [on an untimely basis] that are not in accordance with Subparagraph (d)(5) of this rule [must] shall be dismissed.

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

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

(1) [A] a list of who may file a grievance;

(2) [A] a list of grounds for filing a grievance under the internal grievance process;

(3) [A] a list of grounds for which contested cases may be brought to the Office of Administrative Hearings after the conclusion of the grievance [process;] process in accordance with G.S. 126-34.02;

(4) [An] an informal process for attempting to resolve a grievable issue prior to the employee's filing a formal grievance;

(5) [The timeframes] a 30 day timeframe in which grievable issues must be raised in both the informal and formal grievance [process;] process, except for grievances covered by 25 NCAC 01J .0603;

(6) [The timeframes] a 90 day timeframe in which the agency or university must complete the entire informal process and the process shall describe each step of the formal grievance process;

(7) [Mediation] mediation shall serve as Step 1 of the formal grievance process. A description of the mediation process and timeframe to be followed in Step 1 shall [be provided to include] state that a mediation agreement is legally binding and that if impasse occurs, the agency shall inform the grievant of the Step 2 grievance process and timeframe for filing;

(8) [A] a Hearing shall serve as Step 2 of the formal grievance process. A description of the hearing process and timeframe to be followed in Step 2 shall be provided, including that a grievant has the opportunity to present the grievance orally to a reviewer(s) outside the grievant's chain of command, [e.g.] meaning a hearing officer or hearing panel. The hearing officer or hearing panel chair shall draft a proposed recommendation with findings of fact for a final agency decision;

(9) [The] the process and timeframe for the proposed recommendation to be submitted to the Office of State Human Resources for review and approval;

(10) [The] the process and timeframe for issuance of a Final Agency Decision shall not exceed 90 calendar days of the initial filing of the grievance in the formal grievance process;

(11) [Information] information about any applicable appeal rights to the Office of Administrative Hearings shall be included in the Final Agency Decision;

(12) [The] the responsibilities of all parties involved in the grievance process to include: grievant, respondent, hearing officer, hearing panel and chair, agency and university Human Resource Office,

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

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

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

7 *Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;*

8 *Eff. April 1, 2015*  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

25 NCAC 01J.1303 is adopted with changes as published in 29:11 NCR 1380 as follows:

**25 NCAC 01J .1303      AGENCY AND UNIVERSITY GRIEVANCE REPORTS AND DATA ENTRY**

(a) Every agency and university shall, as requested by the Office of State Human Resources, compile information on employee grievances.

(b) The Office of State Human Resources shall make reports to the State Human Resources Commission as necessary based upon the information supplied in agency reports.

(c) Every agency and university shall maintain all grievance data and enter grievance data by the last business day of the month in the State's ~~[HR/Payroll]~~ HR and Payroll system or other applicable human resources information system.

*History Note:      Authority: G.S. 126-4(6), (9).*

*Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;*

*Eff. April 1, 2015*

25 NCAC 0J.1304 is adopted with changes as published in 29:11 NCR 1380 as follows:

**25 NCAC 01J .1304 SETTLEMENTS/CONSENT AGREEMENTS IN GRIEVANCES, CONTESTED CASES**

(a) Any mediation agreement, settlement agreement, or consent agreement in a grievance or contested case that requires the entering of data into human resources and payroll information system used by agencies with employees subject to Chapter 126, ~~[must]~~ shall be approved by the Office of State Human Resources for compliance with all rules contained in Subchapters 1C (Personnel Administration), 1D (Compensation), 1E (Employee Benefits), 1H (Recruitment and Selection), and 1J (Employee Relations) in Title 25 of the North Carolina Administrative Code before the agency enters the data.

(b) Data ~~[is required to]~~ shall be entered into the human resources and payroll information system by an agency when it determines that an action ~~[must]~~ shall be taken that affects classification, salary, leave, demotion, reassignment, transfer, or for any other human resources action, except where the only personnel action taken as a result of the settlement is the substitution of a resignation for a dismissal.

(c) Approval by the Office of State Human Resources shall be indicated by the signature of the State Human Resources Director or his or her designee in an appropriate place on the settlement or consent agreement ~~[or by other means acceptable]~~ to the Office of State Human Resources Director. This provision shall not be construed to require Office of State Human Resources' approval of a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the Office of Administrative Hearings.

(d) This provision shall also not be construed to require approval of any settlement the terms of which allow an employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.

(e) The provisions of ~~[Rule 01A .0104]~~ 25 NCAC 01A .0104 of this Title (EXCEPTIONS AND VARIANCES) ~~[must]~~ shall be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from the rules in this Chapter contained in Subchapters 1C (Personnel Administration), 1D (Compensation), 1E (Employee Benefits), 1H (Recruitment and Selection), and 1J (Employee Relations). This compliance shall be in addition to the requirements of this Rule. Any settlement or consent agreement that contains a provision that requires an exception to or variance from existing human resources policy ~~[must]~~ shall be reviewed and approved by the Office of State Human Resources Director prior to the processing of any human resources action forms by the Office of State Human Resources or the university human resources and payroll system.

(f) Requests to enter data into the State's human resources and payroll system that are required by the provisions of any settlement or consent agreement that has not been approved by the Office of State Human Resources as required by this Rule shall not be processed by the human resources and payroll information system used by agencies with employees subject to Chapter 126, and shall be returned to the agency without action.

(g) Any mediation agreement, settlement agreement, consent ~~[agreement]~~ agreement, or order issued under Chapter 126 of the General Statutes shall comply with the rules in this Subchapter. However, no rules in this Subchapter shall constrain the authority of any agency to request an exception from these rules; nor shall any provision of these

1 rules restrict the discretion and authority of any decision maker applying these rules to apply the rules consistent  
2 with the decision maker's discretion and authority.

3  
4 *History Note: Authority. 126-4; 126-34.01;*

5 *Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;*

6 *Eff. April 1, 2015*

25 NCAC 0J.1305 is adopted with changes as published in 29:11 NCR 1381 as follows:

**25 NCAC 01J .1305      OFFICE OF STATE HUMAN RESOURCES REVIEW AND APPROVAL OF  
FINAL AGENCY DECISION (FAD)**

The Director of the Office of State Human Resources or his or her designee:

- (1) ~~[Shall]~~ shall review every ~~[agency/university]~~ agency or university final agency decision ~~[(FAD).]~~ (FAD);
- (2) ~~[Shall]~~ shall establish criteria and standards for the content of a ~~[FAD.]~~ FAD; and
- (3) ~~[May]~~ may approve as written or make recommendations for modifications or reversal to the ~~[agency so that the FAD complies with criteria established by the Office of State Human Resources.]~~ agency.

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

*Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;*

*Eff. April 1, 2015*

25 NCAC 0J.1306 is adopted with changes as published in 29:11 NCR 1381 as follows:

**25 NCAC 01J .1306 BACK PAY**

In grievances filed on or after August 21, 2013:

- (1) Back pay may be awarded in all cases in which back pay is warranted by law.
- (2) Full or partial back pay ~~is not~~ shall not be dependent upon whether reinstatement is ordered.
- (3) Gross back pay shall always be reduced by any interim earnings, except that interim earnings from employment ~~which~~ that was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted from the gross back pay amount due if unemployment insurance benefits were not taxed when received by the employee.
- (4) All applicable state and federal withholding taxes, including social security taxes, shall be paid from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim earnings and unemployment insurance benefits received.
- (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.
- (6) Back pay shall include payment for all holidays that the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall not be a part of any back pay award.
- (7) Shift ~~premium~~ pay shall be a part of a back pay award if the grievant would have been entitled to ~~such~~ the pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.
- (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded to them in the absence of the interruption in ~~employment (for example, merit increments, holiday premium pay).~~ employment, including merit increments.
- (9) Back pay shall include any across the board compensation that would have been included in the grievant's regular salary except for the interruption in employment. This includes one time "bonuses," ~~and across the board legislative increments or~~ across the board legislative pay increases.
- (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the prorated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall be made in the back pay award. The prorated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.

1       (11)   Back pay ~~[must]~~ shall be applied for on the appropriate Office of State Human Resources form,  
2       available on the Office of State Human Resources website, [www.oshr.nc.gov](http://www.oshr.nc.gov). The back pay  
3       application form requires the following information:

4       (a)       agency or university name;

5       (b)       division or department or school;

6       (c)       employee name;

7       (d)       social security numbe;

8       (e)       position classification;

9       (f)       position number; and

10      (g)       a notarized sworn statement verifying the following information for a total earnings  
11              calculation:

12           (i)       gross earnings for back pay;

13           (ii)      interim income, not including secondary employment approved prior to adverse  
14                      action; and

15           (iii)     unemployment compensation (untaxed).

16      (12)   One component of the decision to award back pay shall be evidence, if any, of the grievant's  
17      efforts to obtain available, suitable employment following separation from state government. The  
18      burden of proof that an employee mitigated his or her lost wages by seeking employment  
19      following separation shall be on the employee.

20  
21      History Note:   Authority G.S. 126-4(9); 126-34.01; 126 -34.02;  
22                      Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;  
23                      Eff. April 1, 2015  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37



25 NCAC 0J.1307 is adopted with changes as published in 29:11 NCR 1382 as follows:

**25 NCAC 01J .1307 FRONT PAY**

In grievances filed on or after August 21, 2013:

- (1) Front pay may be awarded in all cases in which front pay is warranted by law.
- (2) "Front pay" is the payment to an employee above his or her regular salary, [such] the excess amount representing the difference between the employee's salary in his or her current position and a higher salary determined to be appropriate due to a finding of discrimination.
- (3) Front pay may also result from an order of reinstatement to a position of a particular level that the agency is unable to accommodate immediately. Front pay shall be paid for such period as the agency is unable to hire, promote, or reinstate the employee to a position at the appropriate level and as warranted by law.
- (4) Front pay shall terminate upon acceptance or rejection of a position to which the employee has been determined to be entitled.
- (5) Front pay shall be available as a remedy in cases involving hiring, promotion, demotion, or dismissal.
- (6) Front pay shall be payable under the same conditions as back pay except that the only deductions from front pay shall be for usual and regular deductions for state and federal withholding taxes and the employee's retirement contribution. There may also be a deduction for other employment earnings, whether paid by the state or another employer, so as to avoid unjust enrichment of the grievant.
- (7) Shift [premium] pay and holiday premium pay shall not be available on front pay.

*History Note: Authority G.S. 126-4(9); 126-34.02;  
Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;  
Eff. April 1, 2015*

25 NCAC 0J.1308 is adopted with changes as published in 29:11 NCR 1382 as follows:

**25 NCAC 01J .1308 LEAVE**

(a) An employee shall be credited on reinstatement with all vacation leave [which] that would have been earned except for the interruption in employment.

(b) An employee shall be credited on reinstatement with all sick leave [which] that would have been earned except for the interruption in employment.

(c) The decision as to whether or not to allow the reinstated employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency. A failure to allow such repurchase is not grievable.

(d) Employees reinstated from dismissal shall have their former balance of sick leave at dismissal reinstated, in addition to the credit for sick leave [which] that would have been earned except for the dismissal.

*History Note: Authority ~~S.L. 2013-382, sec. 6-1~~; G.S. 126—4(9); G.S. 126-34.02  
Temporary Adoption Eff. February 28, 2014;  
Temporary Adoption Expired ~~December 12, 2014~~. December 12, 2014;  
Eff. April 1, 2015*

25 NCAC 0J.1309 is adopted with changes as published in 29:11 NCR 1382 as follows:

**25 NCAC 01J .1309        HEALTH INSURANCE**

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the state health insurance plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two choices, provided that if the employee elects **reimbursement** **reimbursement**, the employee may do so only if the employee had secured alternate health insurance coverage during the period of interruption of employment. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement, but the employee may choose to purchase that retroactive coverage. It is the responsibility of the employee to provide proof of insurance or insured expenses incurred during the period of **unemployment** **unemployment**.

*History Note:     Authority ~~S.L. 2013-382, sec. 6-1;~~ G.S. 126-4(9); 126-34.02  
                            Temporary Adoption Eff. February 28, 2014;  
                            Temporary Adoption Expired ~~December 12, 2014;~~ December 12, 2014;  
                            Eff. April 1, 2015*

25 NCAC 0J.1311 is adopted with changes as published in 29:11 NCR 1383 as follows:

**25 NCAC 01J .1311 REINSTATEMENT**

When an employee who was dismissed or demoted is reinstated, the employee shall return to employment in the same position, or a similar position at management's option, at the same salary grade or salary grade equivalency [which] that the employee [enjoyed] was employed prior to dismissal. The agency may reinstate an employee to a similar position assigned to a duty station that is in a different location than the prior assigned duty station. If the new duty station is 50 miles or more from the prior assigned duty station, then the agency may choose to pay moving and relocation expenses in accordance with [the policies of] Section 6.6 of the State Budget Manual located on the Office of State Budget and [Management.] Management website at [http://www.osbm.state.nc.us/files/pdf\\_files/BudgetManual.pdf](http://www.osbm.state.nc.us/files/pdf_files/BudgetManual.pdf), which is hereby incorporated by reference including any subsequent amendments and editions.

*History Note: Authority -G.S. 126-4(9); 126-34.02.*

*Temporary Adoption Eff. February 28, 2014;*

*Temporary Adoption Expired ~~December 12, 2014~~ December 12, 2014;*

*Eff. April 1, 2015*

25 NCAC 01J.1312 is adopted with changes as published in 29:11 NCR 1383 as follows:

**25 NCAC 01J .1312 CAUSES FOR REINSTATEMENT**

For grievances filed on or after August 21, 2013, reinstatement from dismissal, suspension, or demotion may be ordered only upon a finding of lack of substantive just cause [(25 NCAC 01J .0604) or] (25 NCAC 01J .0604); discrimination, harassment, or retaliation prohibited by G.S. 126-16 and [126-34.02] 126-34.02; or that an employee was dismissed, suspended, or demoted in violation of G.S. 126-34.02 because he or she was a whistleblower. For the purpose of this Rule, and in addition to those matters listed in Rule [-0604] 25 NCAC 01J.0604, [of this Subchapter,] failure to issue the required number and kind of warnings or other disciplinary actions prior to dismissal for unsatisfactory job performance shall [also be considered] to constitute a lack of substantive just cause.

*History Note: Authority G.S. 126-4(9); 126-34.02; 126-35;  
Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;  
Eff. April 1, 2015*

25 NCAC 0J.1313 is adopted with changes as published in 29:11 NCR 1383 as follows:

**25 NCAC 01J .1313       SUSPENSION WITHOUT PAY**

For grievances filed on or after August 21, 2013, back pay shall be ordered in those cases in which it is determined that a suspension without pay lacked substantive just cause or was an act of discrimination, harassment, or retaliation prohibited by G.S. 126-16 or ~~126-34.02;~~ 126-34.02; or violated G.S. 126-34.02 because the employee was found to be whistleblower under Article 14 of Chapter 126 of the General Statutes.

*History Note:     Authority G.S. 126-4(6); 126-16; 126-34.02; 126-35;  
Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;  
Eff. April 1, 2015*

25 NCAC 0J.1314 is adopted with changes as published in 29:11 NCR 1383 as follows:

**25 NCAC 01J .1314        DISCRIMINATION, HARASSMENT, OR RETALIATION**

For grievances filed on or after August 21, 2013, back pay, transfer, promotion, or other appropriate remedies, including corrective ~~remedies to ensure that the same or similar acts do not recur,~~ remedies, may be ordered where discrimination, harassment, or retaliation in violation of G.S. 126-16 or **G.S.** 126-34.02 is found.

*History Note:     Authority G.S. 126-4(9); 126-16; 126.34.01; 126-34.02;*

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

*Eff. April 1, 2015*

25 NCAC 0J.1315 is adopted with changes as published in 29:11 NCR 1383 as follows

**25 NCAC 01J .1315 VOLUNTARY PROGRAMS OR BENEFITS**

~~[Because voluntary]~~ Voluntary programs ~~[or]~~ and benefits ~~[(such as the 401K program, voluntary health and life insurance programs or deferred compensation)]~~ are the choice of the employee and ~~[therefore]~~ the employee's financial ~~[responsibility,]~~ responsibility. ~~[such voluntary programs or benefits are not addressed by any awards under these rules and Chapter 126.]~~ Voluntary benefits and programs include 401K programs, voluntary health and life insurance programs, or deferred compensation. Volunteer programs and benefits shall not be addressed by any remedy under these rules or Chapter 126 of the General Statutes. ~~[Retroactive contributions or membership in any such program shall not be part of any remedy awarded to any employee.]~~ To the extent that retroactive coverage or membership is available, the grievant is responsible for ~~[taking action seeking to]~~ initiating any necessary action against any third party to obtain such benefits.

*History Note: Authority 126-4(9); 126-34.02;*

*Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;*

*Eff. April 1, 2015*



25 NCAC 0J.1316 is adopted with changes as published in 29:11 NCR 1383 as follows:

**25 NCAC 01J .1316      REMEDIES FOR PROCEDURAL VIOLATIONS**

(a) Failure to give written notice of applicable appeal rights in connection with a dismissal, ~~demotion~~, demotion, or suspension without pay shall be deemed a procedural violation. The sole remedy for this violation shall be an extension of the time in which to file an appeal. The extension shall be from the date of the procedural violation to no more than 30 calendar days from the date the employee is given written notice of applicable appeal rights.

(b) Failure to give specific reasons for dismissal, ~~demotion~~, demotion, or suspension without pay shall be deemed a procedural violation. Back pay, attorney's fees, or both may be awarded for such a violation. Back pay or attorney's fees, or both may be awarded for such a period of time as is appropriate under the law, considering all the circumstances.

(c) Failure to conduct a pre-dismissal conference shall be deemed a procedural violation. Further, the remedy for this violation shall require that the employee be granted back pay from the date of the dismissal until a date determined appropriate in light of the purpose of pre-dismissal conferences, which is to provide notice to the employee and an opportunity to be heard. Reinstatement shall not be a remedy for lack of a pre-dismissal conference.

*History Note:*      Authority G.S. 126-4(9); 126-34.02; 126-35;  
Temporary Adoption Eff. ~~May 23, 2014~~. May 23, 2014;  
Eff. April 1, 2015.

25 NCAC 0J.1317 is adopted with changes as published in 29:11 NCR 1383 as follows:

**25 NCAC 01J.1317 REMEDIES: SALARY ADJUSTMENTS**

(a) No department, [agency or institution] agency, or university may use within-grade or within-range salary adjustments as a method of resolving any grievance, contested [ease] case, or lawsuit without advance notice to the Office of State Human Resources and the [specific] written approval of the State Human Resources Director.

(b) Any within-grade or within-range salary adjustment proposed to be approved by the State Human Resources Director [must] shall be in compliance with existing salary administration policies (see 25 NCAC 01D .0100 [et seq.) et. seq.) or ~~shall~~ have prior approval as an exception to or waiver from [such] the policies in accordance with [Rule 01A .0104 of this Title.] 25 NCAC 01A.0104.

*History Note: Authority G.S. 126-4(2); ~~S.L. 2013-382; 126-34.01; 126-34.02~~*

*Temporary Adoption Eff. ~~May 23, 2014.~~ May 23, 2014;*

*Eff. April 1, 2015.*

25 NCAC 0J.1318 is adopted with changes as published in 29:11 NCR 1383 as follows:

**25 NCAC 01J .1318 CERTAIN REMEDIES NOT AVAILABLE**

~~[Compensatory, punitive, exemplary, and other special damages are not available as remedies in appeals brought under Chapter 126 of the North Carolina General Statutes; only solely compensatory relief, in the nature of back pay, front pay, or other omitted benefits, along with attorney's fees in certain cases, is available as remedies in appeal under Chapter 126 of the North Carolina General Statutes. ]~~ The following remedies shall not be awarded in appeals under Chapter 126 of the General Statutes:

- (1) compensatory;
- (2) punitive, except as allowed under G.S. 126-87;
- (3) exemplary; or
- (4) other special damages.

The only available relief is back pay, front pay, or other omitted benefits, along with attorney's fees in certain cases.

*History Note: Authority G.S. 126-4(9); 126-34.02.*

*Temporary adoption Eff. ~~May 23, 2014.~~ May 23, 2014;*

*Eff. April 1, 2015.*

1 25 NCAC 0J.1320 is adopted with changes as published in 29:11 NCR 1384 as follows:

2  
3 **25 NCAC 01J .1320 ATTORNEY'S FEES MAY BE AWARDED AS A RESULT OF A SETTLEMENT**

4 Attorney's fees may be paid as the result of a settlement in the grievance procedure, providing such fees are  
5 explicitly incorporated as a part of a settlement agreement signed by both parties. [Attorney's fees shall not be  
6 awarded as the result of a settlement unless such fees are a specific part of the written settlement agreement.]

7  
8 *History Note: Authority 126-4(11); 126-34.01; 126-34.02;*

9 *Temporary Adoption Eff. ~~May 23, 2014~~. May 23, 2014;*

10 *Eff. April 1, 2015*

1 The following rules in Section .1400 are repealed with changes as published in 29:11 NCR 1385 as follows:

2  
3 **SECTION .1400 – EMPLOYEE MEDIATION AND GRIEVANCE PROCESS**

4 25 NCAC 01J .1408 EMPLOYEE RESPONSIBILITIES FOR MEDIATION

5 25 NCAC 01J .1409 AGENCY RESPONSIBILITIES FOR MEDIATION

6 25 NCAC 01J .1410 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

7  
8 *History Note:* Authority G.S. 126-4(6); 126-4(9); 126-4(10); S.L. 2013-382; 126-34-01; 126-34.02

9 *Eff. March 1, 2005;*

10 *Temporary Repeal Eff. ~~May 23, 2014.~~ May 23, 2014.*

11 *Repealed Eff. April 1, 2015*