

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: All rules

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Consider adding G.S. 126-26 to each history note

Verify that the history notes correctly track all changes, including the change in punctuation after the last action and the newest action added.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01B .0350

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 through 5, rewrite "NCGS 126-16, 36, 36.1" as "G.S. 126-16, G.S. 126-36, and G.S. 126.36.1"

Line 5, replace "must" with "shall"

Line 10, place all authority in numerical order. Please check the publication.

Line 13, insert a line to reflect the periodic review process

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01B .0350 is amended as published in 29:11 NCR 1363 as follows:

2
3
4
5
6
7
8
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
36
37

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 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; 126-38; G.S. 126-34.01; 126-34.02.
Eff. ~~February 1, 1985~~. February 1, 1985;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01B .0413

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, please clarify why this date is January 1, 2012.

Lines 4 and 5, what are "all relevant factors and circumstances"? Please clarify.

Line 12, insert a line to reflect the periodic review process

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01B .0413 is amended as published in 29:11 NCR 1363 as follows:

2
3
4
5
6
7
8
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
36
37

25 NCAC 01B .0413 EXERCISE OF COMMISSION DISCRETION

For cases arising before January 1, 2012, the ~~The~~ State Human Resources Commission ~~will~~ shall weigh all relevant factors and circumstances in employee contested cases, 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.~~ May 1, 1989;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01C .0311

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please correct the name of the rule on the submission form

Line 3, add a "0" before "1C"

Line 15 references an "internal agency grievance procedure" Where is this document located and how does a complaining party find the document?

Line 21, please verify the authority as existing in the Administrative Code and what was published in the Register.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

RRC STAFF OPINION

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

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01C .0311

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

This Rule is based upon the following statute:

§ 126-25. Remedies of employee objecting to material in file.

(a) An employee, former employee, or applicant for employment who objects to material in the employee's file may place in his or her file a written statement relating to the material the employee considers to be inaccurate or misleading.

(b) An employee, former employee, or applicant for employment who objects to material in the employee's file because he or she considers it inaccurate or misleading may seek the removal of such material from the file in accordance with a grievance procedure approved by the State Human Resources Commission. If the agency determines that material in the employee's file is inaccurate or misleading, the agency shall remove or amend the inaccurate material to ensure that the file is accurate. Nothing in this subsection shall be construed to permit an employee to appeal the contents of a performance appraisal or written disciplinary action. (1975, c. 257, s. 1; c. 667, s. 2; 1977, c. 866, s. 11; 1985, c. 638; 2013-382, s. 7.4; 2014-115, s. 55.3(c).)

This Rule states the following:

**25 NCAC 1C .0311 ~~REMEDIES OF EMPLOYEES OBJECTING~~ EMPLOYEE OBJECTION
TO MATERIAL IN FILE**

Abigail M. Hammond
Commission Counsel

...

An employee, former employee, or applicant objecting to material in his or her personnel file may follow the internal agency grievance procedure in order to bring the existence of inaccurate or misleading information to the attention of the agency, so long as that information is not a written disciplinary action or a performance appraisal. If, during the agency grievance procedure, the agency agrees that the information should be removed or amended from the file, the agency shall remove or amend the information. However, the employee may not appeal the agency's decision to the Office of Administrative Hearings.

This chart helps to illustrate the similarities between the statute and the rule:

Statute	Rule
An employee, former employee, or applicant for employment who objects to material in the employee's file because he or she considers it inaccurate or misleading may seek the removal of such material from the file in accordance with a grievance procedure approved by the State Human Resources Commission.	An employee, <u>former employee, or applicant</u> objecting to material in his or her personnel file may follow the internal agency grievance procedure in order to bring the existence of inaccurate or misleading information to the attention of the agency,
If the agency determines that material in the employee's file is inaccurate or misleading, the agency shall remove or amend the inaccurate material to ensure that the file is accurate	If, during the agency grievance procedure, the agency agrees that the information should be removed <u>or amended</u> from the file, the agency shall remove <u>or amend</u> the information.
Nothing in this subsection shall be construed to permit an employee to appeal the contents of a performance appraisal or written disciplinary action.	so long as that information is not a written disciplinary action or a performance appraisal.
	However, the employee may not appeal the agency's decision to the Office of Administrative Hearings.

Summary:

It is staff's recommendation to object to this Rule for being unnecessary by being duplicative of the authorizing statute.

1 25 NCAC 01C.0311 is amended as published in 29:11 NCR 1363 as follows:

2
3
4
5
6
7
8
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
36
37

**25 NCAC 1C .0311 ~~REMEDIES OF EMPLOYEES OBJECTING~~ EMPLOYEE OBJECTION TO
MATERIAL IN FILE**

~~(a) An employee, former employee, or applicant for employment who objects to material in the employee's file may place in his or her file a written statement relating to the material he or she considers to be inaccurate or misleading.~~

~~(b) An employee, former employee, or applicant for employment who objects to material in his or her personnel file must seek the removal on the basis that the information is inaccurate or misleading by filing a grievance through the agency grievance procedure.~~

~~(c) If the agency determines that the material in the employee's personnel file is inaccurate or misleading, the agency shall remove or amend the inaccurate material so that the material objected to is accurate.~~

~~(d) The employee does not have the right to appeal the contents of a performance appraisal or written warning.~~

~~(e) No appeal involving objection to material in the file shall be filed with the Office of Administrative Hearings.~~

An employee, former employee, or applicant objecting to material in his or her personnel file may follow the internal agency grievance procedure in order to bring the existence of inaccurate or misleading information to the attention of the agency, so long as that information is not a written disciplinary action or a performance appraisal. If, during the agency grievance procedure, the agency agrees that the information should be removed or amended from the file, the agency shall remove or amend the information. However, the employee may not appeal the agency's decision to the Office of Administrative Hearings.

*History Note: Authority G.S. 126-34.01; 126-34.02; G.S. 126-25;
 Temporary Amendment Eff. May 23, 2014;
 Amended Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01C .0402

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 and 5, is the term "permanent established position" defined somewhere that could be cross-referenced?

Line 15, is the term "time-limited position" defined somewhere that could be cross-referenced?

Line 24, insert a line to reflect the periodic review process.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01C .0402 is amended as published in 29:11 NCR 1364 as follows:

2
3 **25 NCAC 01C .0402 PERMANENT AND TIME-LIMITED APPOINTMENT**

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

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

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

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

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

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

21
22 *History Note: Authority G.S. 126-4;*
23 *Eff. February 1, 1976;*
24 *Amended Eff. April 1, 2015; October 1, 2004, August 1, 1995; January 1, 1989; June 1, 1983;*
25 *July 1, 1979.*
26
27
28
29
30
31
32
33
34
35
36
37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01C .1004

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, add a comma after "position"

Line 7, add a comma after "workforce"

Lines 7 through 8, replace "However, neither" with "No"

Line 8, add a comma after "probationary"

Line 8, replace "nor" with "or"

Line 9, replace "must" with "shall"

Line 11, make "guidelines" singular to match "a written"

Line 11, replace "which" with "what"

Line 12, what is meant by "assurances"? Such as what? Please clarify.

Line 13, where is the "reduction-in-force policy" located? Please clarify.

Line 14, consider replacing "The guidelines of each agency" with "Each agency's guidelines"

Line 23, please clarify what is meant by "other benefits available."

Line 31, where is the "State Employee Grievance Policy" located? Please clarify.

Line 32, replace "must" with "shall"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

Lines 33 and 34, what is the document being referenced? Please incorporate in accordance with [G.S. 150B-21.6](#).

Line 36, specify the rule 25 NCAC 01D .2701.

Page 2, line 11, insert a line to reflect the periodic review process.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01C.1004 is amended as published in 29:11 NCR 1364 as follows:

2
3 **25 NCAC 01C .1004 REDUCTION IN FORCE**

4 (a) A State government agency may separate an employee whenever it is necessary due to shortage of funds or
5 work, abolishment of a position or other material change in duties or organization. Retention of employees in
6 classes affected shall be based on systematic consideration of all the following factors: type of appointment, relative
7 efficiency, actual or potential adverse impact on the diversity of the workforce and length of service. However,
8 neither temporary, probationary nor trainee employees in their initial ~~six~~ 24 months of training shall be retained
9 where an employee with a permanent appointment must be separated in the same or related class.

10 (b) Agency Responsibilities:

11 (1) Each agency shall develop a written ~~policy~~ guidelines for reduction in force which meets its
12 particular needs and provides assurance to employees that potential reductions shall be considered
13 on a fair and systematic basis in accordance with factors defined in the reduction-in-force policy.
14 The ~~policy~~ guidelines of each agency shall be filed with the Office of State Personnel as a public
15 record; and

16 (2) ~~Each agency shall inform the employee of separation as soon as possible and inform the employee~~
17 ~~of the priority reemployment consideration available. The agency shall provide employees with a~~
18 ~~minimum of 30 calendar days written notification of separation prior to the effective date of the~~
19 ~~reduction in force. The employing agency shall notify the employee in writing of separation as~~
20 ~~soon as possible and in any case not less than 30 calendar days prior to the effective date of~~
21 ~~separation. The written notification shall include the reasons for the reduction in force, expected~~
22 ~~date of separation, the employee's eligibility for priority reemployment consideration, applicable~~
23 ~~appeal rights, and other benefits available.~~

24 (c) Appeals: An employee may appeal the ~~separation if it is alleged that the separation is in retaliation for the~~
25 ~~employee's opposition to alleged discrimination against the employee on account of the employee's age, sex, race,~~
26 ~~color, national origin, religion, creed, political affiliation, or disabling condition as defined by Chapter 168A of the~~
27 ~~General Statutes. An employee may appeal the separation if it is alleged that the separation is a denial of the~~
28 ~~veterans' preference granted in connection with a reduction in force for an eligible veteran as provided in Chapter~~
29 ~~126, Article 13. The appeal may be made either through the agency internal grievance procedure or may be filed~~
30 ~~directly with the Office of Administrative Hearings, at the choice of the employee. reduction in force separation only~~
31 ~~on the grounds listed in the State Employee Grievance Policy.~~

32 (d) The agency must analyze any application of its reduction-in-force policy to determine its impact on equal
33 employment opportunity in accordance with the Equal Employment Opportunities Commission's Uniform
34 Guidelines on Employee Selection Procedures.

35 (e) Severance Salary Continuation: Severance salary continuation shall be administered in accordance with the
36 rules contained in 25 NCAC 01D .2700. Pursuant to G.S. 126-8.5, the Office of State Budget and Management is

1 responsible for determining whether severance continuation is applicable. Prior approval shall be received from the
2 Office of State Budget and Management before severance salary continuation is paid.

3
4 *History Note: Authority G.S. 126-4(2);*
5 *Eff. February 1, 1976;*
6 *Amended Eff. May1, 1980; January 1, 2980;*
7 *Emergency Amendment (a) Eff. March 16, 1981 for a Period of 77 Days to Expire on June 1,*
8 *1981;*
9 *Emergency Amendment (a) Made Permanent with Change Eff. April 8, 1981;*
10 *Amended Eff. December 1, 1995; March 1, 1994; November 1, 1990; March 1, 1987;*
11 *Recodified from 25 NCAC 01D .0504 Eff. December 29, 2003;*
12 *Amended Eff. April 1, 2015; October 1, 2009; March 1, 2005.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01C .1007

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, add a comma after "separation"

Line 9, add "At separation" before "The Employee" and uncapitalize "The"

Line 9, replace "also must" with "shall"

Line 14, replace "is" with "shall be"

Line 15, define or delete "reasonable"

Line 15, replace "the reason" with "why"

Lines 18 and 30, since the terms "unavailability" and "applicable leave credits and benefits" are defining something, please place the terms in quotation marks.

Lines 24 and 27, replace "cannot" with "are unable to"

Line 27, add a "to" between "due other"

Line 31, is "family medical" a type of leave available in Beacon? Should it be listed in the Rule?

Line 31, add "that" between "leave the"

Line 37, add the periodic review process and move the newest rulemaking action to a separate line

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01C.1007 is amended as published in 29:11 NCR 1365 as follows:

2

3 **25 NCAC 01C .1007 UNAVAILABILITY WHEN LEAVE IS EXHAUSTED**

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

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

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

17 (d) Definitions:

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

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

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

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

33

34 *History Note: Authority G.S. 126-4(7a); 126-35;*
35 *Eff. November 1, 1989;*
36 *Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003;*
37 *Amended Eff. April 1, 2015; January 1, 2007; October 1, 2004.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01D .0201

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 9 through 10, replace "are intended to" with "shall"

Line 10, delete "are used"

Line 10, define or delete "acceptable"

Lines 16 through 17, how is this information known? Is there a rule that could be cross-referenced?

Lines 21 through 24, consider the following rewrite:

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.

Line 30, is a "trainee appointment" not a "State employee"? Please clarify.

Lines 32, if the "trainee appointment" is not a "State employee", please consider rewriting this clause as follows:

"the agency and Office of Administrative Hearings grievance process as set forth in G.S. 126-34.01 or G.S. 126-34.02"

Line 34, include full statutory citations in the authority line

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01D.0201 is amended as published in 29:11 NCR 1365 as follows:

2

3 **25 NCAC 01D .0201 INITIAL EMPLOYMENT**

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

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

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

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

33

34 *History Note: Authority G.S. 126-4; G.S. 126-1.1, -34.01, -34.02;*

35 *Eff. February 1, 1976;*

36 *Amended Eff. August 1, 1995; December 1, 1988; January 1, 1979; December 1, 1978;*

37 *Temporary Amendment Eff. May 23, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01D .2701

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, add "as set forth in G.S. 126-8.5" before "means"

Line 8, consider the following rewrite:

"The following provisions provide for..."

In Item (a), uncapitalize the beginning of all sub-items (a) through (k). In Item (b), uncapitalize the beginning of sub-items (a) through (f)

Lines 19 and 20, replace "is not" with "shall not be"

Line 26, add a comma after "disability"

Line 34, replace "is" with "shall be"

Page 2, line 8, delete the "and"

Page 2, lines 9 and 19, what is the purpose of "eligible"? It is not within the other sub-items.

Page 2, lines 15 and 16, if the term "lower level" is being used as a defined term, please place in quotation marks.

Page 2, line 16, add a comma after "classification"

Page 2, line 18, replace the period after "notification" with a semicolon and add an "or" at the end of the clause.

Page 2, line 22, consider the following rewrite:

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

"notification shall no longer be eligible..."

Page 2, line 24, consider the following rewrite:

"career banded position at the same or..."

Page 2, line 24, if the term "same or higher" is being used as a defined term, please place in quotation marks.

Page 2, lines 24 and 25, are the terms "same or higher level" and "same or higher competency level" the same? Is so, please use consistent terms.

Page 3, line 15, replace "is not" with "shall not be"

Page 3, line 22, replace "will" with "shall"

Page3, line 22, please clarify the "pay" referenced by "such pay"

Page 3, lines 28 through 29, is this language necessary for this Rule? Is there a statutory mandate for this funding that makes this sub-item unnecessary?

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01D.2701 is amended as published in 29:11 NCR 1366 as follows:

2

3 **25 NCAC 01D .2701 SEVERANCE SALARY CONTINUATION**

4 ~~G.S. 143-27.2~~ G.S. 126-8.5 provides for severance salary continuation or a discontinued service retirement
5 allowance when the Director of the Budget determines that the closing of a State institution or a reduction-in-force
6 will accomplish economies in the State Budget, provided reemployment is not available. "Economies in the State
7 Budget" means economies resulting from elimination of a job and its responsibilities or from a lack of funds to
8 support the job. The provisions outlined below provide for uniform application of severance salary continuation for
9 eligible employees:

10 (1) Eligible Employees:

- 11 (a) A full-time or part-time (20 hours or over) employee with a permanent appointment who
12 does not obtain another permanent or time-limited ~~permanent job position~~ permanent job position in State
13 government or any other permanent position that is funded in part or in whole by the
14 State by the effective date of the separation shall be eligible for severance salary
15 continuation. Also eligible are employees with trainee appointments who have
16 completed ~~six~~ 24 months of service, and employees who had a permanent appointment
17 without a break in service prior to entering a trainee appointment;
- 18 (b) An employee with a ~~probationary, probationary or temporary or intermittent~~ probationary appointment
19 is not eligible for severance salary continuation;
- 20 (c) An employee separated from a time-limited ~~permanent~~ time-limited appointment is not eligible for
21 severance salary continuation. If the time-limited appointment extends beyond three
22 years, the appointment is made permanent and the employee becomes eligible for
23 severance salary continuation;
- 24 (d) An employee who is separated or ~~scheduled~~ received written notification to be separated
25 due to reduction in force and who applies for or begins receiving retirement benefits
26 based on early retirement, service retirement, long term disability or a discontinued
27 service retirement as provided by G.S. 143-27.2 shall not be eligible for severance salary
28 continuation. An employee who is eligible for early or service retirement may elect to
29 delay retirement and receive severance salary continuation;
- 30 (e) An employee who is reemployed from any retired status with the State and who is
31 subsequently terminated as a result of reduction in force shall be eligible for severance
32 salary continuation;
- 33 (f) An employee who is receiving workers' compensation or short-term disability payments
34 is eligible for severance salary continuation;
- 35 (g) ~~An~~ A permanent employee on leave with pay or leave without pay shall be separated on
36 the effective date of the reduction-in-force, the same as other employees, and shall be
37 eligible to receive severance salary continuation;

- (h) An employee with a permanent appointment separated by reduction-in-force, may not accept a temporary State position and remain eligible to receive severance salary continuation in accordance with this Section;
- (i) An employee may continue to receive severance salary continuation if reemployed under a contractual arrangement in a State university or community college in accordance with ~~G.S. 143-27.2~~ G.S. 126-8.5. However, an employee receiving salary continuation may not be reemployed in any other State agency until 12 months have elapsed since the separation; and
- (j) An eligible employee who applies for a permanent or time-limited ~~with a permanent appointment scheduled to be separated through reduction in force~~ may decline a lower level position with regard to salary grade (or salary grade equivalency), ~~salary rate or appointment type~~ and is offered a lower salary rate than that held at the time of notification may decline the employment offer and retain eligibility for severance salary continuation. For an employee separated from a career banded position and applying for another career banded position, lower level is defined as a lower competency level in the same banded classification or if applying to a different banded classification, lower level is defined as a banded position with a lower journey market rate than held at the time of notification.
- (k) An eligible employee who is offered and declines to accept, either prior to or following separation, a permanent or time-limited position at the same or higher salary grade (or salary grade equivalency) or at the same of higher salary rate than that held at the time of notification is no longer eligible to receive or to continue to receive severance salary continuation. For an employee separated from a career banded position and offered another career banded position, same or higher level is defined as the same or higher competency level in the same banded classification or if offered a different banded classification, same or higher level is defined as a banded position with the same or higher journey market rate than held at the time of notification.

(2) Amount and Method of Payment:

- (a) Severance salary continuation shall be based on total State service and supplemented by an age adjustment factor as follows:
 - (i) Amount of Salary Continuation:

<u>Years of Service</u>	<u>Payment</u>
Less than 1 year	2 weeks
1 but less than 5 years	1 month
5 but less than 10 years	2 months
10 but less than 20 years	3 months

1
2
3
4
5
6
7
8
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
36
37

20 or more years

4 months

(ii) Age Adjustment Factor:

An employee qualifies for the age adjustment factor at 40 years of age. To compute the amount of the adjustment, 2.5 percent of the annual base salary shall be added for each full year over 39 years of age; however, the total age adjustment factor payment shall be limited by the service payment and cannot exceed the total service payments;

(b) When calculating severance, the employee's annual salary at the time of separation shall be used except when the employee has received a promotion to a higher salary grade (or salary grade equivalency) and salary rate within the previous 12 months. If an employee has been promoted within the last 12 months, the salary used to calculate severance is the employee's salary rate prior to the promotion, including any across-the-board legislative salary increases since the promotion;

(c) Severance salary continuation shall be paid on a pay period basis and is not subject to employee or employer retirement contributions, and as a result, shall not be included in computing average final compensation for retirement purposes;

(d) Any period covered by severance salary continuation shall not be credited as a period of state service;

(e) An employee who is reemployed in any permanent or time-limited position with the State or any other permanent position that is paid in part or in whole by the State while receiving severance salary continuation will no longer be eligible for such pay effective on the date of reemployment;

(f) If an employee dies while receiving severance salary continuation, the balance of such payment shall be made to the deceased employee's death benefit beneficiary as designated with the Teachers' and State Employees' Retirement System in a lump sum payment; and

(g) Funds for severance salary continuation shall be provided as directed by the Office of State Budget and Management.

~~(3) For each employee who receives severance salary continuation, agencies shall show on the separate form, Form PD-105, the calculation and amount of such payment.~~

*History Note: Authority G.S. 126-4(10); 143-27.2;
Eff. October 1, 1985;
Amended Eff. October 1, 1995; September 1, 1991; November 1, 1990; November 1, 1988;
Recodified from 25 NCAC 01D .0509 Eff. December 29, 2003;
Amended Eff. April 1, 2015; March 1, 2009.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .0204

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, add a comma after "probationary"

Line 6, consider the following rewrite:

"In an employee appointed in pay status or on authorized..."

Lines 7 through 9, is this sentence necessary? It appears redundant of the prior sentence, with the only additional language referencing holidays. Is holiday pay part of the "entire pay period" referenced on line 7?

Line 10, delete "also"

Line 11, replace "which" with "that"

Line 14 appears to be referencing specific rules and not a policy. Please replace "policies" with "rules"

Line 20, how is the information known? Are employees notified as a condition of their respective employment?

Line 23, replace the period after "funds" with a semicolon. Add a conjunctive clause "or"

Line 24, consider adding a comma after "Assembly" and remove the parentheses before "except"

Line 25, consider adding a comma after "Program" and remove the parentheses after "pages"

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01E.0204 is amended as published in 29:11 NCR 1368 as follows:

2
3
4
5
6
7
8
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
36
37

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 or time-limited appointment, whether subject to or exempt from the State Human Resources Act. If an employee so appointed 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 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 (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; ~~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.
- ~~(6)~~ employment with the General Assembly (except for legislators, participants in the Legislative Intern Program and 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .0901

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, replace "are" with "shall be"

*Line 9 references "New Year's Day." What happens if January 1st is a weekend?
Consider the following rewrite:*

New Year's Day or the last business day before New Year's Day

Line 15, update the history note to reflect the temporary rulemaking action

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01E .0901 is amended as published in 29:11 NCR 1368 as follows:

2
3
4
5
6
7
8
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 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 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;~~ Authority G.S. 126-4(5);
Eff. February 1, 1976;
Amended Eff. April 1, 2015; January 1, 2004; February 1, 1995; December 1, 1988;
October 1, 1977.

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1601

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

The name of the rule is different on the submission form and the text of the rule. Please clarify the correct title.

Lines 5 through 6, what term from 25 NCAC 01E .1602 is being used in this sentence? Is it the relationship of the "child" or the type of "school"? Please clarify.

Lines 6 and 8, end the clauses with semicolons

Line 8, add an "or" after the clause

Line 10, add a comma after "College"

Line 17, what term from 25 NCAC 01E .1602 is being used in this sentence? Please clarify.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01E.1601 is amended as published in 29:11 NCR 1368 as follows:

2
3
4
5
6
7
8
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
36

25 NCAC 01E.1601 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.
- (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;
- ~~(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 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1602

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Consider, and this may be noted for future rulemaking, to provide definition lists in alphabetical order.

Lines 5 through 19, please place the defined term within quotation marks.

Line 14, replace "which" with "that"

Line 19, define or delete "willingly"

Line 19, add a comma after "charitable"

Line 24, underline the new rulemaking action

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01E.1602 is amended as published in 29:11 NCR 1369 as follows:

2
3
4
5
6
7
8
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
36
37

25 NCAC 01E .1602 DEFINITIONS

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

- (1) 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 - A constituent institution of the University of North Carolina.
- (3) Community College - An educational institution that is a member of the North Carolina Community College System.
- (4) State Agency - A State government agency that is authorized to operate under the laws of the State of North Carolina.
- (5) 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 Service Organization - A non-profit, non-partisan community organization which 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 – The act of supporting citizens of North Carolina through volunteer service.
- (8) Volunteer – A person who willingly chooses to perform hours of service for civic, 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1603

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, add a comma after "trainee"

Line 5, replace "may" with "shall"

Line 5, should "paid" be used before "community"?

Line 17, consider replacing "paid-leave" with "paid community service leave" to be consistent.

Lines 17 through 18, consider the following rewrite:

...choose one of the tutoring and mentoring or literacy program options.

Line 18, clarify the type of "leave" credited upon employment

Line 18, define or delete "immediately"

Line 23, add a comma after "trainee"

Line 24, should the "may" be a "shall"? Is it optional to award community service leave to part-time employees?

Line 25, consider the following rewrite:

...Leave to the volunteering for the tutoring and mentoring or literacy programs, during the calendar...

Line 27, delete "that may be granted is the maximum"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

Line 27, delete "chosen minus"

Line 28, please clarify what is "the amount already used."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

RRC STAFF OPINION

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

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1603

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

This Rule is based upon the following statute:

§ 126-4. Powers and duties of State Human Resources Commission.

Subject to the approval of the Governor, the State Human Resources Commission shall establish policies and rules governing each of the following:

- ...
- (5b) A leave program that allows employees to volunteer in a literacy program in a public school for up to five hours each month.
- ...

The policies and rules of the Commission shall not limit the power of any elected or appointed department head, in the department head's discretion and upon the department head's determination that it is in the best interest of the Department, to transfer, demote, or separate a State employee who is not a career State employee as defined by this Chapter. (1965, c. 640, s. 2; 1971, c. 1244, s. 14; 1975, c. 667, ss. 6, 7; 1977, c. 288, s. 1; c. 866, ss. 1, 17, 20; 1985, c. 617, ss. 2, 3; c. 791, s. 50(b); 1985 (Reg. Sess., 1986), c. 1028, s. 6; 1987, c. 25, s. 2; c. 320, ss. 1-3; 1991, c. 65, s. 1; c. 354, s. 2; c. 750, s. 1; 1991 (Reg. Sess., 1992), c. 994, s. 2; 1993, c. 388, s. 2; c. 522, s. 10; 1995, c. 141, s. 4; 1997-349, s. 3; 1998-135, s. 1; 2013-360, s. 9.1; 2013-382, ss. 1.3, 9.1(c).)

This Rule states the following:

Abigail M. Hammond
Commission Counsel

25 NCAC 01E .1603 COVERED EMPLOYEES AND LEAVE CREDITS

(a) ~~An~~ A full-time employee with a permanent, probationary, trainee or time-limited appointment (pro-rated for part-time employees) whose service is satisfactory may be granted: granted 24 hours of community service leave each calendar year, or in lieu of the 24 hours award, with the approval of the supervisor, an employee may be eligible to choose one of the following leave options:

- (1) ~~24 hours of community service leave each calendar year, or Tutoring and Mentoring - up to one hour per week, not to exceed 36 hours in a calendar year;~~
or
- (2) ~~In lieu of the 24 hour award as noted above, an employee may elect to receive one hour of community service leave for each week that schools are in session as documented by the elected board of the local education agency or the governing authority of any non-public school. This leave award shall be used exclusively for tutoring or mentoring a student in accordance with established standards rules and guidelines for such arrangements as determined and documented by joint agreement with the employee's agency or university and the school.~~ Literacy Program – up to five hours per month, not to exceed 45 hours a calendar year.

Summary:

It is staff's recommendation to object to this Rule for lack of statutory authority, as this Rule limits the hours for a literacy program to 45 hours per calendar year. However, the authorizing statute has no limit per calendar year, but allows five hours per month. This is a total allowable 60 hours per a calendar year for a literacy program.

1 25 NCAC 01E.1603 is amended as published in 29:11 NCR 1369 as follows:

2
3
4
5
6
7
8
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
36
37

25 NCAC 01E .1603 COVERED EMPLOYEES AND LEAVE CREDITS

(a) ~~An~~ A full-time employee with a permanent, probationary, trainee or time-limited appointment (pro-rated for part-time employees) whose service is satisfactory may be granted: 24 hours of community service leave each calendar year, or in lieu of the 24 hours award, with the approval of the supervisor, an employee may be eligible to choose one of the following leave options:

- (1) ~~24 hours of community service leave each calendar year, or~~ Tutoring and Mentoring - up to one hour per week, not to exceed 36 hours in a calendar year; or
- (2) ~~In lieu of the 24 hour award as noted above, an employee may elect to receive one hour of community service leave for each week that schools are in session as documented by the elected board of the local education agency or the governing authority of any non public school. This leave award shall be used exclusively for tutoring or mentoring a student in accordance with established standards rules and guidelines for such arrangements as determined and documented by joint agreement with the employee's agency or university and the school. Literacy Program – up to five hours per month, not to exceed 45 hours a calendar year.~~

(b) The 24 hours of paid-leave shall be credited to employees on January 1 of each year, unless they choose the tutoring/mentoring option. New employees shall be credited with leave immediately upon their employment, prorated at two hours per month for the remainder of the calendar year. Separated employees who are reemployed within the same calendar year shall be credited leave the same as a newly hired employee; however, the combination of reemployment credit and total hours used prior to separation in the same calendar year shall not exceed the annual 24 hour maximum leave benefit.

(c) Part-time (half time or more) employees with a permanent, probationary, trainee or time-limited appointment may be granted leave prorated proportionately to the percentage awarded to full-time employees.

(d) If an employee chooses to change leave options from regular Community Service Leave to the special leave provisions for volunteering for the tutoring or mentoring program or the literacy program or vice versa, during the calendar year, the maximum hours that may be granted is the maximum allowed under the new option chosen minus the amount already used.

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1605

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, add "community service" between "the leave"

Line 6, replace "this" with "community service"

Line 8, add "community service" between "that leave"

Line 19, replace "tutoring/mentoring" with "tutoring and mentoring"

Line 20, replace "should" with "shall"

Line 28, define or delete "timely"

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01E.1605 is amended as published in 29:11 NCR 1369 as follows:

2
3 **25 NCAC 01E .1605 AGENCY POLICY COMMUNITY SERVICE LEAVE ADMINISTRATION**

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

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

30
31 *History Note: Authority G.S. 126-4;*
32 *Eff. July 18, 2002;*
33 *Amended Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1606

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, add the original effective date and reflect the updates.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01E.1606 is repealed as published in 29:11 NCR 1370 as follows:

2

3 **25 NCAC 01E.1606 ADDITIONAL TIME FOR COMMUNITY SERVICE ACTIVITIES**

4

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

6 *Repealed Eff. April 1, 2015*

7

8

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

36

37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .0633

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, add "the following applicants" between "to:"

Lines 6 through 13, indent the items. Uncapitalize the first term of each clause.

Line 6, should this be clarified that it applies to current employees? Consider adding "current" before "employees"

Lines 8, 9, and 13, what is the purpose of the term "eligible"? Please consider defining or deleting.

Line 8, is this time limited by G.S. 126-5(e)(2)?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01H .0633 is amended as published in 29:11 NCR 1370 as follows:

2
3
4
5
6
7
8
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
36
37

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

(a) Priority consideration shall be given to:

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

~~(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*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .0634

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6 through 8, is this sentence a mere restatement of the prior sentence? Please consider deleting.

Line 17, if the term "Selective criteria" is being defined, please place the term in quotation marks.

Line 19, define or delete "substantially"

Line 26, add 126-14.2 to the authority.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01H .0634 is amended as published in 29:11 NCR 1370 as follows:

2
3
4
5
6
7
8
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
36
37

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.~~

(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 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. The individual selected for the position shall be from among the most qualified applicants.

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

~~(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); G.S. 126-14.3
Eff. February 1, 2007;
Amended Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .0636

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, is the date from 1986 still necessary? If yes, please consider deletion in future rulemaking efforts.

Line 8, replace "must" with "shall"

Lines 9 through 10, incorporate the document in accordance with G.S. 150B-21.6.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01H .0636 is amended as published in 29:11 NCR 1371 as follows:

2
3
4
5
6
7
8
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

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 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).

*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;
 Amended Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .0641

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, replace "such" with "the"

Line 4, replace "will result" with "results"

Lines 6 and 11, replace "which" with "that"

Lines 6 and 12, add a comma after "administration"

Line 7, add a comma after "temporary"

Line 8, if the term "immediate family" is being defined, please place the term in quotation marks.

Lines 8 through 12, consider providing this information in a list format.

Line 10, replace "Paragraph" with "Rule"

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01H .0641 is adopted as published in 29:11 NCR 1371 as follows:

2
3
4
5
6
7
8
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
36
37

25 NCAC 01H .0641 EMPLOYMENT OF RELATIVES

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)
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .0901

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9, what law is being referenced? Please clarify.

Lines 8 through 11, is this sentence referencing the process in G.S. 126-34.01 or G.S. 126-34.02? It discusses the agency level, but is referencing the appeal level at the Office of Administrative Hearings. Please clarify.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01H.0901 is amended with changes as published in 29:11 NCR 1371 as follows:

2
3
4
5
6
7
8
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
36
37

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 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 on the grounds permitted by law.

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.~~ February 1, 2007;
Temporary Amendment Eff. May 23, 2014;
Amended Eff. April 1, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .0902

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 3, the title of this Rule is different on the submission form. The submission form is missing the term "Priority." Please clarify.

Line 15, replace "which" with "that"

Line 27, replace "has" with "shall have"

Page 2, line 9 through 10, the relocation parameters has been deleted completely. Are there no constraints? Please clarify.

Page 2, line 24, replace "such" with "the priority"

Page 2, line 27 and line 33, are the positions being addressed distinguishable? Line 27 references "a position" and line 33 references "a permanent or time-limited position." Please clarify.

Page 2, line 37; and page 3, lines 2 and 4, delete the "or"

Page 3, line 5, add an "or"

Page 3, line 7, replace "consideration" with "status" Please be consistent with use of terms.

Page 3, line 7, replace "does" with "shall"

Page 3, lines 14 and 15, leave the citation as it was. The proposed change is not recommended.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01H.0902 is amended with changes as published in 29:11 NCR 1371 as follows:

2
3 **25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION IN FORCE PRIORITY**
4 **CONSIDERATION**

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

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

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

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

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

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

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

(13) When an employee with priority status 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 ~~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;
Amended Eff. April 1, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .0904

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 13, what are the "other conditions" considered? Please clarify.

Line 22, add the new effective date.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01H.0904 is amended as published in 29:11 NCR 1373 as follows:

2
3
4
5
6
7
8
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
36
37

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;~~ 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 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .0905

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, replace "will" with "shall"

Line 5, consider replacing "applying" with "determining"

Line 5, add "for" between "consideration reemployment"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01H.0905 is amended as published in 29:11 NCR 1373 as follows:

2
3
4
5
6
7
8
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
36
37

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 serve as a reference for agencies in applying priority consideration 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;
Amended Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .1103

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please review the history note in prior versions of the Rule. Deleted citations may have existed in the prior permanent rule, but please verify.

Line 13, please replace the session law citations with the general statute citations.

Line 18, add a line to reflect that the temporary rule expired.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

RRC STAFF OPINION

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

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .1103

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
- Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

This Rule is based upon the following statute:

§ 126-34.02. Grievance appeal process; grounds.

...
(b) The following issues may be heard as contested cases after completion of the agency grievance procedure and the Office of State Human Resources review:

...
(4) Veteran's preference. - An applicant for State employment or a State employee may allege that he or she was denied veteran's preference in violation of the law.

...
(c) Any issue for which an appeal to the Office of Administrative Hearings has not been specifically authorized by this section shall not be grounds for a contested case hearing.

(d) In contested cases conducted pursuant to this section, the burden of showing that a career State employee was discharged, demoted, or suspended for just cause rests with the employer. In all other contested cases, the burden of proof rests on the employee.

(e) The Office of Administrative Hearings may award attorneys' fees to an employee where reinstatement or back pay is ordered or where an employee prevails in a whistleblower grievance. The remedies provided in this subsection in a whistleblower appeal shall be the same as those provided in G.S. 126-87.

(f) The Office of Administrative Hearings shall report to the Office of State Human Resources and the Joint Legislative Administrative Procedure Oversight Committee on the number of cases filed under

this section and on the number of days between filing and closing of each case. The report shall be filed on a semiannual basis. (2013-382, ss. 6.1, 9.1(c); 2014-115, s. 55.3(d).)

This Rule states the following:

25 NCAC 01H .1103 ALLEGATION OF DENIAL OF VETERANS' PREFERENCE

Any claim or allegation that veterans' preference has not been accorded to an eligible veteran shall be filed with the State Human Resources Commission through the contested case procedures of the Office of Administrative Hearings. Such claims shall be filed in a manner consistent with the requirements of G.S. 150B-23 and G.S. 126-38. Such claims shall be heard as contested cases pursuant to G.S. 150B, Article 3. The State Human Resources Commission may, upon a finding that veterans' preference was denied in violation of these Rules, order the employment, subsequent employment, promotion, reassignment or horizontal transfer of any affected person, as well as any other remedy necessary to correct the violation. first follow the agency grievance procedure.

This chart helps to illustrate the similarities between the statute and the rule:

Statute	Rule
<p>The following issues may be heard as contested cases after completion of the agency grievance procedure and the Office of State Human Resources review:</p> <p>(4) Veteran's preference. - An applicant for State employment or a State employee may allege that he or she was denied veteran's preference in violation of the law.</p>	<p>Any claim or allegation that veterans' preference has not been accorded to an eligible veteran shall <u>first follow the agency grievance procedure.</u></p>

Summary:

It is staff's recommendation to object to this Rule for being unnecessary by being duplicative of the authorizing statute.

1 25 NCAC 01H.1103 is amended as published in 29:11 NCR 1373 as follows:

2
3
4
5
6
7
8
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
36
37

25 NCAC 01H .1103 ALLEGATION OF DENIAL OF VETERANS' PREFERENCE

Any claim or allegation that veterans' preference has not been accorded to an eligible veteran shall be filed with the State Human Resources Commission through the contested case procedures of the Office of Administrative Hearings. Such claims shall be filed in a manner consistent with the requirements of G.S. 150B-23 and G.S. 126-38. Such claims shall be heard as contested cases pursuant to G.S. 150B, Article 3. The State Human Resources Commission may, upon a finding that veterans' preference was denied in violation of these Rules, order the employment, subsequent employment, promotion, reassignment or horizontal transfer of any affected person, as well as any other remedy necessary to correct the violation. first follow the agency grievance procedure.

History Note: Authority G.S. 126-4(10); 126-4(11); 128-15; ~~126-34.1(b)(4)~~; ~~126-37~~; ~~126-38~~; ~~150B-2(2)~~; 150B, Article 3; [~~S.L. 2013-382~~;] S.L. 2013-382, sec. 6.1; Eff. September 1, 1987; Recodified from 25 NCAC 01H .0613 Eff. October 5, 2004; Amended Eff. June 1, 2008; February 1, 2007; February 17, 2014; ; Temporary Amendment Eff. February 28, 2014; Amended Eff. April 1, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .0603

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, add a comma after "suspended"

Line 30, replace "must also" with "shall"

Page 2, line 5, replace "must also" with "shall"

Page 2, lines 5 through line 9, what is the purpose this Paragraph (d)? It is a mere restatement of G.S. 126-34.02(b).

Page 2, line 11, provide the authority in numerical order. Please reflect the deletion of 126-36.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.0603 is amended as published in 29:11 NCR 1373 as follows:

2

3 **25 NCAC 01J .0603 APPEALS**

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

10 (b) If an employee appeals his or her dismissal through the agency grievance procedure, then the initial dismissal
11 letter shall not constitute the final agency decision, but the final agency decision shall be the decision made at the
12 conclusion of the employee's appeal through the agency grievance procedure. ~~Grievances which do not allege~~
13 ~~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~~
14 ~~employment or promotion in violation of G.S. 126 14.2 must follow the department or university grievance~~
15 ~~procedure. An appeal to the State Human Resources Commission of a final departmental or university decision must~~
16 ~~be filed with the Office of Administrative Hearings in accordance with G.S. 150B 23 within 30 calendar days of~~
17 ~~receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in~~
18 ~~writing to the agency or department, within 30 calendar days of the alleged harassing action, and the agency or~~
19 ~~department must be given 60 calendar days in which to take remedial action, if any, unless the department or agency~~
20 ~~has waived the 60 day period, and the employee has acknowledged such waiver. The acknowledgement and waiver~~
21 ~~shall be in writing. An appeal to the State Human Resources Commission of unlawful workplace harassment must~~
22 ~~be filed with the Office of Administrative Hearings in accordance with G.S. 150B 23 and within 30 calendar days of~~
23 ~~notification of the remedial action, if any, taken by the agency.~~

24 ~~(b)(c)~~ Grievances which that allege discrimination not including unlawful workplace harassment may, at the
25 election of the employee, proceed through the department or university procedure or proceed directly to the State
26 Human Resources Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision
27 by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a decision
28 by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in
29 accordance with G.S. 150B 23 and must be filed within 30 calendar days of receipt of notice of the alleged
30 discriminatory act discrimination, harassment, or retaliation, retaliation must also follow the agency grievance
31 process. Employees with grievances alleging discrimination, harassment, or retaliation who do not follow the
32 agency grievance process shall have no right to file a contested case with the Office of Administrative Hearings.

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

1 ~~(d) Grievances filed on an untimely basis (see G.S. 126-14.4, 126-35, 126-36 and 126-38) must be dismissed.~~
2 ~~Allegations of discrimination raised more than 30 calendar days after receipt of notice of the occurrence of the~~
3 ~~alleged discriminatory act must be dismissed. Grievances alleging unlawful workplace harassment raised more than~~
4 ~~30 calendar days after notification of the remedial action, if any, taken by the agency must be dismissed.~~

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

10
11 *History Note: Authority G.S. 126-1A; 126-35; 150B, Article 3; 150B-23; G.S. 126-34.01, -34.02;*
12 *Eff. February 1, 1976;*
13 *Amended Eff. March 1, 1994; April 1, 1989; December 1, 1984; October 1, 1984;*
14 *Temporary Amendment Eff. February 18, 1999;*
15 *Amended Eff. February 1, 2011; July 18, 2002-;*
16 *Temporary Amendment Eff. May 23, 2014*
17 *Amended Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .0610

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 9, 10, 14, and 21, replace "must" with "shall"

Lines 9 through 10, define or delete "grossly inefficient." Is the term located in a statute or other rule that could be cross-referenced?

Lines 16 and 20, replace the "/" with an "or"

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.0610 is amended as published in 29:11 NCR 1374 as follows:

2
3
4
5
6
7
8
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
36
37

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 receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning must:

- (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 be made to address these specific issues;
- (4) ~~Tell~~ tell the employee the time frame allowed for making the required improvements/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;

(b) A written warning must 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~~;
September 1, 1988;
Temporary Amendment Eff. May 23, 201;
Amended Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .0615

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, replace "is" with "shall be"

Line 5, replace "does" with "shall"

Lines 6 and 21, replace "must" with "shall"

Line 8, please restore the period after "placement"

Line 13, 17, and 19, uncapitalize the letter beginning each clause

Line 16, delete the "or" at the end of the clause.

Lines 17 and 19, define "temporarily" Is there a statutory or rule citation that could be cross-referenced to help clarify?

Line 25, replace "It is not permissible" with "An agency shall not"

Line 28, replace "It is permissible to" with "An agency may"

Lines 30 through 37, uncapitalize the letter beginning each clause

Lines 32 and 33, delete the "or" at the end of the clauses.

Line 34, is the term "fitness for duty/risk evaluation" defined by a statute or rule that could be cross-referenced to help clarify?

Line 35, replace "and/or" with either "and" or "or"

Line 37, please clarify what are "other good cause shown"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

Page 3, line 3, add 126-34.02. Reflect deletion of 126-25. Replace the session law with citations within the general statutes.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.0615 is amended as published in 29:11 NCR 1374 as follows:

2

3 **25 NCAC 01J .0615 INVESTIGATORY LEAVE**

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

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

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

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

- 30 (1) To investigate allegations of performance or conduct deficiencies that would constitute just cause
31 for disciplinary action;
32 (2) To provide time within which to schedule and conduct a pre-disciplinary conference; or
33 (3) To avoid disruption of the work place and to protect the safety of persons or ~~property~~ property; or
34 (4) To facilitate a management directed referral or fitness for duty/risk evaluation to ensure the
35 employee's safety and the safety of others and/or to obtain medical information regarding the
36 employee's fitness to perform his or her essential job functions; or
37 (5) For other good cause shown, only as approved by the State Human Resources Director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2

3 *History Note: Authority G.S. 126-4; 126-35; S.L. 2013-382;*

4 *Eff. October 1, 1995;*

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

6

7

8

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

36

37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .0616

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, what is meant by "state service"?

Line 5, add a comma after "registered"

Line 5, please clarify what is "relevant law, rule, or provision."

Line 5, delete "such"

Line 9, define or delete "legally"

Paragraph (b), there is no opportunity to remedy the issue?

Line 10, define or delete "grossly ineffective" Is the term located in a statute or other rule that could be cross-referenced?

Line 17, add a comma after "licensure"

Line 18, replace "must" with "shall"

Lines 23 and 24 appear to be a different thought than lines 16 through 22. Should the text be shifted left?

Line 26, replace the session law with citations within the general statutes.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.0616 is adopted as published in 29:11 NCR 1376 as follows:

2
3
4
5
6
7
8
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
36
37

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 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 shall obtain and maintain current, valid credentials as required by law.

(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 or certification information that was a requirement for the position, the employee must 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) 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; S.L. 2013-382; Eff. April 1, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .0617

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, add a comma after "disability"

Line 10, replace the session law with citations within the general statutes. Consider G.S. 126-16; 126-17; 126-34.02. Please note that the second sentence is a very close restatement of G.S. 126-17.

Line 12, add a line to reflect that the temporary rule expired.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.0617 is adopted as published in 29:11 NCR 1376 as follows:

2
3
4
5
6
7
8
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
36
37

25 NCAC 01J .0617 DISCRIMINATION AND RETALIATION

Neither race, religion, color, national origin, sex, age, political affiliation, 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 ~~Session Law 2013-382~~; S.L. 2013-382, sec. 7.1;
Temporary Adoption Eff. February 28, 2014;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .0618

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, specify the law

Line 8, replace the session law with citations within the general statutes. Consider G.S. 126-32.01; 126-32.02. Is this rule necessary, as it seems repetitive of the statute and another rule?

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.0618 is adopted as published in 29:11 NCR 1376 as follows:

2
3
4
5
6
7
8
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
36
37

25 NCAC 01J .0618 APPEAL OF DENIAL OF VETERAN’S PREFERENCE

An appeal by an applicant, employee, or former employee that he or she was denied a veteran’s preference in initial employment, subsequent hiring, promotion, reassignment, horizontal transfer, or other employment event in violation of the law shall first be made through the agency grievance procedure.

*History Note: Authority -S.L. 2013-382, s. 6.1;
Temporary Adoption Eff. February 28, 2014;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1101

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Remove italics from text of this Rule.

Line 8, please clarify how the "to ensure" is accomplished?

Line 11, why are these classes not in the same order as set forth in G.S. 126-34.02(b)(1)?

Line 11; page 2, lines 1 and 6, add "political affiliation" to the list.

Line 25, what is the edit being reflected between "harassment" and "means"? Please clarify.

Line 30, replace the period after "individual "with a semicolon and add an "and" at the end of the clause.

Line 31, replace "such" with "the"

Line 33, what is the edit being reflected after "environment." Please clarify.

Lines 34 through 35, consider the following rewrite:

"discrimination charge; testifying; or..."

Page 2, line 1, add a comma after "disability"

Page 2, line 1, add a semicolon between "information or"

Page 2, line 36, add a comma between "time-limited or"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

Page 3, line 13, add "workplace harassment" before "prevention" to be consistent with line 20.

Page 3, line 14, should "sexual harassment, or retaliation" be after "workplace harassment"?

Page 3, line 14, replace "at the minimum should" with "shall"

Page 3, line 17, add "or retaliating" between "harassing actions"

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01J .1101 is amended as published in 29:11 NCR 1376 as follows:

2
3 **25 NCAC 01J .1101 UNLAWFUL WORKPLACE HARASSMENT AND RETALIATION**

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

9 (b) As used in this Rule:

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

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

19 ~~(3) “quid pro quo” harassment means 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~~
22 ~~an 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 ~~(3)(2) “sexual Harassment” means unwelcome sexual advances, requests for sexual favors, or other~~
26 ~~verbal or physical conduct when:~~

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

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

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

34 ~~(4)(3) “retaliation” means~~ adverse action taken against an individual for filing a discrimination charge,
35 testifying, or participating in any way in an investigation, proceeding, or lawsuit related to
36 discriminatory employment practices based on race, religion, color, national origin, sex, age,

1 disability or genetic information or because of opposition to *employment practices in violation of*
2 *the unlawful workplace harassment-harassment policy.*

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

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

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

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

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

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

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

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

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

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

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

33 (e) Coverage of the Rule includes:

34 (1) applicants,

35 (2) former employees, and

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

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

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

15 ~~(1) a commitment by the agency to the prohibition of unlawful workplace harassment, sexual~~
16 ~~harassment or retaliation;~~

17 ~~(2) training and other methods to prevent harassing actions; and~~

18 ~~(3) a process for disseminating information prohibiting unlawful workplace harassment and~~
19 ~~retaliation to all agency employees.~~

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

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

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

29 ~~(2) establishment of internal procedure to handle complaints of unlawful workplace harassment and~~
30 ~~retaliation. This procedure shall provide investigation and resolution of complaints within the~~
31 ~~department or university and shall offer the employee recourse other than through the immediate~~
32 ~~supervisor;~~

33 ~~(3) utilization of training and other methods to prevent unlawful workplace harassment and~~
34 ~~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;~~

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

12
13 *History Note: Authority G.S. 126-4; 126-16; 126-17; 126-34.01; 126-34.02; 126-36; 126-36.1;*
14 *Eff. December 1, 1980;*
15 *Amended Eff. November 1, 1988; April 1, 1983;*
16 *Temporary Amendment Eff. February 18, 1999;*
17 *Amended Eff. July 18, 2002;*
18 *Recodified from 25 NCAC 01C .0214 Eff. December 29, 2003;*
19 *Amended Eff. ~~June 1, 2012.~~ June 1, 2012;*
20 *Temporary Amendment Eff. May 23, 2014;*
21 *Amended Eff. April 1, 2015*
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1201-.1208

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

History note should track and reflect the changes since the last permanent rulemaking effort.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

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

2
3
4
5
6
7
8
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
36
37

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); 126-35; 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;
Repealed April 1, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1301

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

History note should track and reflect the changes since the last permanent rulemaking effort.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01J .1301 is repealed as published in 29:11 NCR 1379 as follows:

2

3 **25 NCAC 01J .1301 MINIMUM PROCEDURAL REQUIREMENTS**

4

5 *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;*
6 *126-35; 126-36; 126-37; 126-38; 150B-23; S.L. 2013-382;*
7 *Eff. March 1, 2005;*
8 *Temporary Repeal Eff. May 23, 2014;*
9 *Repealed Eff. April 1, 2015*

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

36

37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1302

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, should "the" be replaced with "an"

Line 6, define or delete "untimely"

Line 6, replace "must" with "shall"

In Paragraph (c), Subparagraphs (1) through (13) appear to be clauses that identify information that must be in the grievance policy. Please begin the clauses with lowercase letters.

Lines 12 through 13, add a citation or reference to G.S. 126-34.02.

Lines 16 and 18, what are the "timeframes"? Specify if known.

Line 21, replace "be provided to include" with "state"

Line 27, replace "e.g." with "meaning a"

Line 27, add "panel" between "hearing chair"

Page 2, line 3, replace "will" with "shall"

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1302 is adopted as published in 29:11 NCR 1380 as follows:

2

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

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

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

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

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

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

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

12 (3) A list of grounds for which contested cases may be brought to the Office of Administrative
13 Hearings after the conclusion of the grievance process;

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

16 (5) The timeframes in which grievable issues must be raised in both the informal and formal ~~internal~~
17 grievance process;

18 (6) The timeframes in which the agency or university must complete the informal process and each
19 step of the formal grievance process;

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

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

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

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

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

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

1 Office, Equal Employment Officer, Affirmative Action Officer, Agency Head and designee, and
2 the Director of the Office of State Human Resources and designees; and
3 (13) The manner in which changes in the grievance policies will be communicated to employees.
4

5 *History Note: Authority G.S. 126-34.01; 126-34.02;*
6 *Temporary Adoption Eff. May 23, 2014;*
7 *Eff. April 1, 2015*
8
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
36
37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1303

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9, replace "HR/Payroll" with "HR or Payroll"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1303 is adopted as published in 29:11 NCR 1380 as follows:

2
3
4
5
6
7
8
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
36
37

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 system or other applicable human resources information system.

*History Note: Authority: G.S. 126-4(6), (9).
Temporary Adoption Eff. May 23, 2014
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1304

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 7, 12, 22, and 27, replace "must" with "shall"

Line 11, replace "is required to" with "shall"

Lines 16 through 17, define or delete "or by other means acceptable to the Office of the State Human Resources Director." Please clarify the "other means" if the language remains.

Line 22, change the citation to "25 NCAC 01A .0104"

Line 34, add a comma after "agreement"

Page 2, line 4, the period after the authority should be a semicolon

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1304 is adopted as published in 29:11 NCR 1380 as follows:

2

3 **25 NCAC 01J .1304 SETTLEMENTS/CONSENT AGREEMENTS IN GRIEVANCES, CONTESTED**
4 **CASES**

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

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

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

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

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

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

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

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

3
4
5
6
7
8
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
36
37

*History Note: Authority-126-4; 126-34.01,
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1305

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6 through 8, appear to be clauses. Please begin the clauses with lowercase letters. Please indent the list.

Line 6, replace "agency/university" with "agency or university"

Lines 6, 7, and 9, this appears to be the only rule using "FAD." Consider deleting the acronym and using the full term.

Line 9, clarify what is the "criteria established by..." Please include a cross-reference to a statute or rule containing this information.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1305 is adopted as published in 29:11 NCR 1381 as follows:

2
3
4
5
6
7
8
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
36
37

**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 review every agency/university final agency decision (FAD).

(2) Shall establish criteria and standards for the content of a FAD.

(3) 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.

*History Note: Authority G.S. 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1306

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, replace "is not" with "shall not be"

Line 8, replace "which" with "that"

Line 9 through 11, is this sentence necessary? Appears redundant of the term defined in lines 13 through 14.

Line 20, define "shift premium pay" or replace it with the statutory term in G.S. 126-8.5(a), "shift pay"

Line 21, replace "such" with "the"

Lines 24 through 25, consider the following rewrite:

..interruption in employment, including merit increments.

Any additional items may be added, but the "holiday premium pay" is redundant of lines 18 and 19.

Lines 27 through 28, consider the following rewrite:

..one time "bonuses" and across the board legislative pay increases.

Line 36, replace "must" with "shall"

Line 36, what information is requested on the form? Is this information contained in another rule that could be cross-referenced?

Page 2, line 6, delete the extra period after "126-4(9)"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1306 is adopted as published in 29:11 NCR 1381 as follows:

2
3 **25 NCAC 01J .1306 BACK PAY**

4 In grievances filed on or after August 21, 2013:

- 5 (1) Back pay may be awarded in all cases in which back pay is warranted by law.
- 6 (2) Full or partial back pay is not dependent upon whether reinstatement is ordered.
- 7 (3) Gross back pay shall always be reduced by any interim earnings, except that interim earnings from
8 employment which was approved secondary employment prior to dismissal shall not be set off
9 against gross back pay. Any unemployment insurance benefits paid to the employee shall also be
10 deducted from the gross back pay amount due if unemployment insurance benefits were not taxed
11 when received by the employee.
- 12 (4) All applicable state and federal withholding taxes, including social security taxes, shall be paid
13 from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus
14 interim earnings and unemployment insurance benefits received.
- 15 (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of
16 gross back pay due.
- 17 (6) Back pay shall include payment for all holidays that the grievant would have been paid for except
18 for the interruption in employment status. Holiday premium pay shall not be a part of any back
19 pay award.
- 20 (7) Shift premium pay shall be a part of a back pay award if the grievant would have been entitled to
21 such pay in the absence of the interruption in employment. This benefit shall not be applicable in
22 cases involving a failure to hire or a failure to promote.
- 23 (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded
24 to them in the absence of the interruption in employment (for example, merit increments, holiday
25 premium pay).
- 26 (9) Back pay shall include any across the board compensation that would have been included in the
27 grievant's regular salary except for the interruption in employment. This includes one time
28 "bonuses," across the board legislative increments or across the board legislative pay increases.
- 29 (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment,
30 back pay shall include the difference between the prorated longevity payment made at dismissal
31 and the amount of longevity pay that would have been payable had employment not been
32 interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for
33 longevity pay shall be made in the back pay award. The prorated longevity payment made at the
34 time of dismissal shall be deducted from the full amount otherwise payable on the next longevity
35 eligibility date.
- 36 (11) Back pay must be applied for on the appropriate Office of State Human Resources form, available
37 on the Office of State Human Resources website, www.oshr.nc.gov.

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

5
6 *History Note: Authority G.S. 126-4(9); 126-34.01;126 -34.02;*
7 *Temporary Adoption Eff. 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
36
37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1307

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, replace "such" with "the"

*Lines 19 through 21, is approved secondary employment subject to this deduction?
Please clarify.*

Line 22, define "shift premium pay" or replace it with the statutory term in G.S. 126-8.5(a), "shift pay"

Line 24, delete the "S.L."

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1307 is adopted as published in 29:11 NCR 1382 as follows:

2
3
4
5
6
7
8
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
36
37

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 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); S.L. 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1308

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4, 6, and 11, replace "which" with "that"

Line 13, replace the session law with citations within the general statutes.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1308 is adopted as published in 29:11 NCR 1382 as follows:

2
3
4
5
6
7
8
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
36
37

25 NCAC 01J .1308 LEAVE

- (a) An employee shall be credited on reinstatement with all vacation leave which would have been earned except for the interruption in employment.
- (b) An employee shall be credited on reinstatement with all sick leave which 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 would have been earned except for the dismissal.

*History Note: Authority S.L. 2013-382, sec. 6.1;
Temporary Adoption Eff. February 28, 2014;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1309

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, add a comma after "reimbursement"

Line 9, for the retroactive coverage, are dependents and spouses then covered?

Line 11, add a period after "employment"

Line 13, replace the session law with citations within the general statutes.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1309 is adopted as published in 29:11 NCR 1382 as follows:

2
3
4
5
6
7
8
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
36
37

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 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

*History Note: Authority S.L. 2013-382, sec. 6.1;
Temporary Adoption Eff. February 28, 2014;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1310

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, please verify the statutory authority and clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1310 is adopted as published in 29:11 NCR 1382 as follows:

2

3 **25 NCAC 01J .1310 INTEREST**

4 The state shall not pay interest on any back pay award.

5

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

7 *Temporary Adoption Eff. 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

36

37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1311

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, replace "which" with "that"

Line 6, replace "enjoyed" with "was employed"

Line 8, please clarify when the agency "may choose" to pay the identified expenses.

Line 9, please clarify what policies of OSBM and incorporate in accordance with G.S. 150B-21.6.

Lines 11 and 12, reflect the changes in the history note and that the temporary rule expired.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1311 is adopted as published in 29:11 NCR 1383 as follows:

2
3
4
5
6
7
8
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
36
37

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 the employee enjoyed 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 the Office of State Budget and Management.

*History Note: Authority -G.S. 126-4(9); 126-34.02.
Temporary Adoption Eff. February 28, 2014;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1312

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 5 and 10, define or delete "substantive"

Lines 5 and 8 cites the same rule, but the format is different. Please be consistent.

Line 5, add a semicolon after ".0604)" and delete the "or"

Line 6, add a semicolon after "126-34.02"

Line 9, delete "also be considered to"

Does this rule purposefully not address veteran's preference or priority issues as those would not occur in reinstatement situations?

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 01J.1312 is adopted as published in 29:11 NCR 1383 as follows:

2
3
4
5
6
7
8
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
36
37

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 discrimination, harassment, or retaliation prohibited by G.S. 126-16 and 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 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;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1313

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, define or delete "substantive"

For consistency, why do lines 5 through 7 not track lines 5 through 7 of 25 NCAC 01J .1312. Please consider changing with the following additional suggestions:

Line 5, add a semicolon after ".0604)" and delete the "or"

Line 6, add a semicolon after "126-34.02"

Does this rule purposefully not address veteran's preference or priority issues as those would not occur in back pay situations?

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1313 is adopted as published in 29:11 NCR 1383 as follows:

2
3
4
5
6
7
8
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
36
37

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, 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;
Eff. April 1, 2015*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1314

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, please clarify how it is "ensure that the same or similar acts do not recur."

Line 6, add "G.S." before "126-34.02"

Line 8, add 126-34.01 to the authority.'

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1314 is adopted as published in 29:11 NCR 1383 as follows:

2

3 **25 NCAC 01J .1314 DISCRIMINATION, HARASSMENT, OR RETALIATION**

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

7

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

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

10 *Eff. April 1, 2015*

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

36

37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1315

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 through 6, consider the following rewrite:

Voluntary programs and benefits are the choice of the employee and the employee's financial responsibility. Voluntary benefits and programs include 401K programs, voluntary health and life insurance programs, or deferred compensation. Voluntary programs and benefits shall not be addressed by any remedy under these rules or Chapter 126 of the General Statutes.

Line 9, clarify that the grievant will be taking action against the "third-party provider"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1315 is adopted as published in 29:11 NCR 1383 as follows

2
3
4
5
6
7
8
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
36
37

25 NCAC 01J .1315 VOLUNTARY PROGRAMS OR BENEFITS

Because voluntary programs or 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, such voluntary programs or benefits are not addressed by any awards under these rules and Chapter 126. 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 obtain such benefits.

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1316

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 and 8, add a comma after "demotion"

Line 10, please clarify the statute for the statement "under the law"

Line 10, please clarify what are considered for "all the circumstances"

Line 13, please clarify who is making the determination and what are the standards for determining the appropriateness.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1316 is adopted as published in 29:11 NCR 1383 as follows:

2
3 **25 NCAC 01J .1316 REMEDIES FOR PROCEDURAL VIOLATIONS**

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

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

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

16
17 *History Note: Authority G.S. 126-4(9); 126-34.02; 126-35;*

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

19 *Eff. April 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1317

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, why state "department, agency or institution" when other rules state "agency or university"? Please clarify. If the list remains, add a comma after "agency"

Line 5, add a comma after "case"

Line 6, define or delete "specific"

Line 8, replace "must" with "shall"

Line 8, add periods after "et" and "seq"

Line 9, replace "such" with "the"

Line 9, change the citation to "25 NCAC 01A .0104"

Line 11, please replace the session law citations with the general statute citations.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1317 is adopted as published in 29:11 NCR 1383 as follows:

2
3
4
5
6
7
8
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
36

25 NCAC 01J.1317 REMEDIES: SALARY ADJUSTMENTS

(a) No department, agency or institution may use within-grade or within-range salary adjustments as a method of resolving any grievance, contested 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 be in compliance with existing salary administration policies (see 25 NCAC 01D .0100 et seq) or shall have prior approval as an exception to or waiver from such policies in accordance with Rule 01A .0104 of this Title.

*History Note: Authority G.S. 126-4(2); S.L. 2013-382;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1318

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 1, reflect that this Rule has been adopted "with changes"

Line 3, is the use of the term "punitive" correct, as G.S. 126-87 allows an award of triple damages? Please clarify.

Lines 5 through 7, consider the following rewrite:

...Chapter 126 of the General Statutes. The only available relief shall be back pay, front pay, or other lost benefits, along with reinstatement and attorney's fees in certain cases, as set forth in Chapter 126 of the General Statutes.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 25 NCAC 0J.1318 is adopted as published in 29:11 NCR 1383 as follows:

2
3
4
5
6
7
8
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
36
37

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,~~ relief in the nature of back pay, front pay, or other ~~omitted~~ lost benefits, along with reinstatement and attorney’s fees in certain cases, is available as remedies in appeal under Chapter 126 of the North Carolina General Statutes.

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

1 25 NCAC 0J.1319 is adopted as published in 29:11 NCR 1384 as follows:

2

3 **25 NCAC 01J .1319 SITUATIONS IN WHICH ATTORNEY'S FEES MAY BE AWARDED**

4 For grievances filed on or after August 21, 2013, attorney's fees may be awarded only in the following situations:

5 (1) the grievant is reinstated;

6 (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether
7 the grievant has been reinstated; or

8 (3) the grievant prevails in a whistleblower grievance.

9

10 *History Note: Authority G.S. 126-4(11); 126-34.02;*
11 *Temporary Adoption Eff. May 23, 2014;*
12 *Eff. April 1, 2015*

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1320

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please review the two sentences contained within this Rule. The contents and result are redundant. Please clarify if both sentences are necessary.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, February 25, 2015

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

2
3
4
5
6
7
8
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
36
37

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

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

*History Note: Authority 126-4(11); 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015*

1 The following rules in Section .1400 are repealed as published in 29:11 NCR 1384 as follows:

2

3 **Section .1400 – EMPLOYEE MEDIATION AND GRIEVANCE PROCESS**

4 25 NCAC 01J .1401 MINIMUM PROCEDURAL REQUIREMENTS

5 25 NCAC 01J .1402 FLEXIBILITY

6 25 NCAC 01J .1403 INFORMAL MEETING WITH SUPERVISOR

7 25 NCAC 01J .1404 MEDIATION PROCEDURE

8 25 NCAC 01J .1405 CONCLUSION OF MEDIATION

9 25 NCAC 01J .1406 LIMITATIONS ON A MEDIATION AGREEMENT

10 25 NCAC 01J .1407 POST MEDIATION

11

12 *History Note: Authority G.S. 126-4(1); 126-4(6); 126-4(7); 126-4(9); 126-4(10); 126-4(17); 126-16; 126-34;*

13 *126-34.1; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23; S.L. 2013-382;*

14 *Eff. March 1, 2005;*

15 *Temporary Repeal Eff. May 23, 2014;*

16 *Repealed Eff. April 1, 2015*

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1408-.1410

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, please verify the authority. Is 126-4(6) missing? Was 126-34.1(a) published in the Register?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, February 25, 2015

1 The following rules in Section .1400 are repealed 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(9); 126-4(10); 126-34.1(a); S.L. 2013-382;*

9 *Eff. March 1, 2005;*

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

11 *Repealed Eff. April 1, 2015*

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

1 The following rules in Section .1400 repealed as published in 29:11 NCR 1386 as follows:

2
3
4
5
6
7
8
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
36
37

SECTION .1400 – EMPLOYEE MEDIATION AND GRIEVANCE PROCESS

25 NCAC 01J .1411 AGENCY PROCEDURAL REQUIREMENTS FOR EMPLOYEE MEDIATION AND GRIEVANCE POLICY

25 NCAC 01J .1412 OFFICE OF STATE PERSONNEL RESPONSIBILITIES FOR EMPLOYEE MEDIATION AND GRIEVANCE PROCESS

*History Note: Authority G.S. 126-4(9); 126-4(10); 126-34.1(a); S.L. 2013-382;
Eff. March 1, 2005;
Temporary Repeal Eff. May 23, 2014;
Repealed Eff. April 1, 2015*