

Hammond, Abigail M

From: Howard, Shari
Sent: Wednesday, April 08, 2015 3:07 PM
To: Rules, Oah
Cc: Hammond, Abigail M
Subject: Follow-Up Response to Objection of Rules for April 16 RRC Meeting
Attachments: 25 NCAC 01C 0311 04082015.docx; 25 NCAC 01E 1603 04082015.docx; 25 NCAC 01H 1103 04082015.docx; 25 NCAC 01J 1304 04082015.docx

The State Human Resources Commission met on April 2, 2015 and provided the following response to the RRC objection to the following rules:

25 NCAC 01C .0311 EMPLOYEE OBJECTION TO MATERIAL IN FILE – The SHRC agrees that the rule is unnecessary by being duplicative of G.S. 126-25; therefore, the SHRC has approved to repeal the rule.

25 NCAC 01E .1603 COVERED EMPLOYEES AND LEAVE CREDITS – The SHRC approved an amendment of the rule to reflect a monthly limit of five hours per month as stated in G.S. 126-4(5b) with no annual limit.

25 NCAC 01H .1103 DENIAL OF VETERANS' PREFERENCE – The SHRC agrees that the rule is unnecessary by being duplicative of G.S. 126-34.02; therefore, the SHRC has approved to repeal the rule.

25 NCAC 01J .1304 SETTLEMENTS/CONSENT AGREEMENTS IN GRIEVANCES, CONTESTED CASES – The SHRC approved amendments of the rule to remove reference to “order” and clarify it is an agency’s responsibility to ensure all agreements comply with the rules in the Subchapter or get OSHR approval for an exception prior to entering into the settlement/agreement

I have attached the rules with the recommended actions of the SHRC.

Please contact me if you have any questions or concerns.

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25 NCAC 01C.0311 originally proposed to be amended in 29:11 NCR 1363 is repealed as follows:

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, 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 from the file, the agency shall remove 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;
Repealed Eff. May 1, 2015

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

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.] month.

(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.] shall be reduced by the amount already used in the prior leave option.

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

Eff. April 1, 2001;

Amended Eff. [April 1, 2015] May 1, 2015

25 NCAC 01H.1103 originally proposed to be amended in 29:11 NCR 1373 is repealed as follows:

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.~~

*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;
Repealed Eff. May 1, 2015*

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

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

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

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

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

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

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

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

(g) Any No agency shall agree to any mediation agreement, settlement agreement, or consent agreement or order issued entered under Chapter 126 of the General Statutes shall that does not comply with the rules in this Subchapter. However, no rules in this Subchapter shall constrain the authority of any agency to request an

exception from these rules; nor shall any provision of these rules restrict the discretion and authority of any decision maker applying these rules to apply the rules consistent with the decision maker's discretion and authority.

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

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

Eff. ~~April 1, 2015~~ May 1, 2015.