

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .1001

DEADLINE FOR RECEIPT: Thursday, July 9, 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:

In Paragraph (b), how does someone claim this priority? You state that they have it, but how do they go about using it? Is it simply applied to the first eligible job they apply for, or do they have to mark it on the application?

Further, are you relying upon the final sentences of 126-5(e)(1) and (e)(3) for authority for this Rule to establish the one-time priority?

(e) **(Repealed for State employees hired on or after August 21, 2013)** An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except as follows:

- (1) When an employee who has the minimum service requirements described in G.S. 126-1.1 but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Human Resources Commission.
- (2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his or her most recent subject position.
- (3) When a career State employee as defined by G.S. 126-1.1 who has more than two but less than 10 years or more of cumulative service in a subject position moves from one exempt position covered by this subsection to another position covered by this subsection without a break in service and that employee is later removed from the last exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is

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Date submitted to agency: June 24, 2015

qualified, according to the rules regulating and defining priority as adopted by the State Human Resources Commission.

- (4) When a career State employee as defined by G.S. 126-1.1 who has 10 years or more of cumulative service moves from one exempt position covered by this subsection to another position covered by this subsection without a break in service and that employee is later removed from the last exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary, within another department or agency. The employee shall be paid at the same grade and salary as the employee's most recent subject position, including all across-the-board legislative increases awarded since the employee's placement in the position that was designated as exempt.

The final sentence in Paragraph (b) is very long. On lines 18-21, I think this would be easier to read if it were broken down into a list and suggest doing so. It would read:

"...unless an offer has been made to, and accepted by:

- 1) a person qualified...*
- 2) an employee...; or*
- 3) a current...*

Please note a similar suggestion for the language for Paragraph (c), lines 11-13 on Page 2.

Also, do you need to retain "has been made to?" Couldn't it just read, "unless and offer has been accepted by...?"

In Paragraph (c), on Page 2, lines 3 through 5 recite 126-5(e)(3). Do you need to keep this language, or can you reference the statute instead?

If you need to retain it:

- On line 3, state "more than 2 but less than 10 years..." (See Rule 26 NCAC 02C .0108(9)(C))*
- There is language missing on line 4. Should it read, "subject position who moves..."*
- On line 5, delete "later"*
- I think Paragraph (b) is easier to read than this language and recommend tracking that language.*

In Paragraph (d), line 14, place the parenthesis after "(b)"

On line 15, what does it mean to "refuse an interview"? To refuse to interview at all or to decline to interview during a specific timeframe when the applicant would be unavailable?

On line 16, please add a comma after "applied"

On line 17, a position with the State, or any job?

Also on line 17, couldn't you end the sentence after "position.?" Do you need to retain that the employee applied for it?

In Paragraph (e), line 18, state "described in Rule .0630(b) of this Subchapter..."

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Also, this is just a thought for future rulemaking, but wouldn't this Paragraph be better placed in Rule 01H .0630?

On line 19, replace "remains" with "shall remain"

Also on line 19, I know you use "working" in other Rules and it is in the statute, so you do not need to change it; however, you may wish to state "business" rather than "working."

So that I understand – in the first sentence in Paragraph (e), you are saying that the employee is subject to the Act until he or she receives the notice mandated by Rule 01H .0630 and 126-5(g). In the second sentence, you are saying that if the employee isn't yet exempt because he or she has not received the notice, then if the individual is removed from the position, then he or she will receive priority that is equal to the position when it was still subject? Is this what you intend to say in the Rule?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 24, 2015

1 25 NCAC 01H.1001 is amended as published in 29:15 NCR 1745 as follows:

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

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

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

10 (b) A career State employee as defined in G.S. 126-1.1 with less than 10 years cumulative service in subject
11 positions prior to placement in an exempt policymaking or exempt managerial position, who is removed from an
12 exempt policymaking or exempt managerial position for reasons other than just cause, shall receive a one-time
13 reemployment priority. This reemployment priority shall be exercised by the employee within one year following
14 the date of the employee's separation. ~~Upon notice to the agency that priority is being requested, the~~ The employee
15 shall be offered any available ~~non-exempt~~ subject position for which the employee has applied and is qualified as set
16 forth in the job vacancy announcement when the position applied for is equal to or below the salary grade (or salary
17 grade equivalency) of the most recent subject position held prior to placement in the exempt policymaking or
18 exempt managerial position unless an offer has been made to, and accepted by, a person qualified for mandated
19 reassignment under ~~25 NCAC 01H .1005~~ G.S. 126-5(e)(2) or G.S. 126-5(e)(4) or an employee notified of or
20 separated by a reduction in force, or a current State employee with greater cumulative State service subject to the
21 State Human Resources Act.

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

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

1 ~~notified of or separated by a reduction in force, or a current State employee with greater cumulative State service~~
2 ~~subject to the State Human Resources Act.~~

3 (c) A career State employee as defined in G.S. 126-1.1 who had more than two but less than 10 years of cumulative
4 service in a subject position moves from one exempt policymaking or exempt managerial position to another exempt
5 policymaking or exempt managerial position without a break in service, who is later removed from the last exempt
6 position for reasons other than just cause, shall receive a one-time reemployment priority. This reemployment
7 priority shall be exercised by the employee within one year following the date of the employee's separation. The
8 employee shall be offered any available subject position for which the employee has applied and is qualified as set
9 forth in the job vacancy announcement, when the position applied for is equal to or below the salary grade (or salary
10 grade equivalency) of the most recent subject position held prior to placement in the exempt managerial position
11 unless an offer has been made to, and accepted by, a person qualified for mandated reassignment under G.S. 126-
12 5(e)(2) or G.S. 126-5(e)(4) or an employee notified of or separated by a reduction in force, or a current State
13 employee with greater cumulative State service subject to the State Human Resources Act.

14 ~~(e) (d) The reemployment priority considerations described in Paragraph Paragraphs (a), (b) and (c) of~~
15 ~~this Rule shall expire when a formal an employee refuses an interview or offer is extended for employment in the~~
16 ~~position for a position for which the employee has applied regardless of the position's salary grade (or salary grade~~
17 ~~equivalency)-equivalency), or when an employee accepts a position for which he or she has applied.~~

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

23
24 *History Note: Authority G.S. 126-1.1; 126-5; S.L. 2013-382, s. 4.3, 4.4, 4.6, 7.6;*
25 *Eff. March 1, 1987;*
26 *Amended Eff. June 1, 1994; June 1, 1992; November 1, 1988;*
27 *Recodified from 25 NCAC 01D .0512 Eff. December 29, 2003;*
28 *Amended Eff. February 1, 2007;*
29 *Temporary Amendment Eff. ~~May 23, 2014.~~ May 23, 2014;*
30 *Amended Eff. August 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .1003

DEADLINE FOR RECEIPT: Thursday, July 9, 2015

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:

I assume you mean on line 5, "afforded by Rule .1001 of this Section no later than..."?

And will the contents of the writing only include the specifics of Paragraphs (b) and (c) of the Rule, or will it include the rest of the Rule contents?

In the History Note, you are citing to G.S. 126-4 as your authority. The cited portions of that statute state:

§ 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:

- (4) Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.
- (10) Programs of employee assistance, productivity incentives, equal opportunity, safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.

Please confirm that the amendment of this Rule amendment was approved by the Governor.

Why are you citing to G.S. 126-4(10) in the History Note? Is this part of an efficient administration of the personnel system?

Why aren't you citing to G.S. 126-5 in this Rule? It seems to be an appropriate authority..

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: June 24, 2015

1 25 NCAC 01H.1003 is amended as published in 29:15 NCR 1746 as follows:

2

3 **25 NCAC 01H .1003 AGENCY RESPONSIBILITIES**

4 ~~(a) The employing agency shall inform the employee in writing of the priority reemployment consideration to be~~
5 ~~afforded. afforded no later than the time of separation.~~

6 ~~(b) The Agency shall notify the Office of State Human Resources when:~~

7 ~~(1) an employee is officially notified of reduction in force;~~

8 ~~(2) an eligible employee accepts a position that satisfies the priority consideration;~~

9 ~~(3) an employee with priority status due to reduction in force is offered a lateral transfer or promotion~~
10 ~~and refuses, unless the position offered is more than 35 miles from the employee's original~~
11 ~~workstation; or~~

12 ~~(4) other conditions that would satisfy or terminate an eligible employee's priority consideration are~~
13 ~~discovered.~~

14 *History Note: Authority G.S. 126-4(6),(10); S.L. 2013-382;*

15 *Eff. February 1, 2007;*

16 *Amended Eff. August 1, 2015; November 1, 2011.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01H .1004 and .1005

DEADLINE FOR RECEIPT: Thursday, July 9, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made:

In combining the History Notes for the repeals, you must include all statutory authority from both Rules. Thus, the History Note should read:

*History Note: Authority G.S. 126-1.1; 126-4(6),(10); 126-5;
Eff. February 1, 2007;
Amended Eff. November 1, 2011;
Repealed Eff. August 1, 2015.*

Also, since it refers to G.S. 126-4 in the History Note, please confirm that the repeal of Rule 01H .1004 was approved by the Governor.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 24, 2015

1 25 NCAC 01H .1004 - .1005 are repealed as published in 29:15 NCR 1747 as follows:

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3 **25 NCAC 01H .1004 OFFICE OF STATE HUMAN RESOURCES RESPONSIBILITIES**

4 **25 NCAC 01H .1005 MANDATORY RIGHT TO A POSITION**

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

7 *Eff. February 1, 2007;*

8 *Amended Eff. ~~November 1, 2011~~ November 1, 2011;*

9 *Repealed Eff. August 1, 2015*