

25 NCAC 01J .1302 is readopted as published in 32:10 NCR 993 as follows:

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

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

(b) Grievances filed that are not in accordance with Subparagraph (d)(5) of this Rule shall be dismissed.

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

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

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

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

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

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

(5) a ~~30-day~~30-day timeframe in which grievable issues must be raised in both the informal and formal grievance process, except for grievances covered by Rule .0603 of this Subchapter;

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

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

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

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

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

~~(11)~~(10) information about any applicable appeal rights to the Office of Administrative Hearings shall be included in the Final Agency Decision;

~~(12)~~(11) the responsibilities of all parties involved in the grievance process to include: grievant, respondent, hearing ~~officer, officer or~~ hearing panel and chair, agency and university Human Resource Office,

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

3 ~~(13)~~(12) the manner in which changes in the grievance policies shall be communicated to employees.  
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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 *Readopted Eff. April 1, 2018.*  
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25 NCAC 01J .1306 is readopted as published in 32:10 NCR 993 as follows:

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

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

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

- 1 (b) division or department or school;  
2 (c) employee name;  
3 (d) employee social security number;  
4 (e) position classification;  
5 (f) position number; and  
6 (g) a notarized sworn statement verifying the following information for a total earnings  
7 calculation:  
8 (i) gross earnings for back pay;  
9 (ii) interim income, not including secondary employment approved prior to adverse  
10 action; and  
11 (iii) unemployment compensation (untaxed).

- 12 (12) One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts  
13 to obtain available available, suitable employment following separation from state State  
14 government. The burden of proof that an employee mitigated his or her lost wages by seeking  
15 employment following separation shall be on the employee.  
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17 *History Note: Authority G.S. 126-4(9); 126-34.01; 126 -34.02;*  
18 *Temporary Adoption Eff. May 23, 2014;*  
19 *Eff. April 1, 2015;*  
20 *Readopted Eff. April 1, 2018.*  
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25 NCAC 01J .1307 is readopted as published in 32:10 NCR 993 as follows:

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

In ~~grievances: 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, the excess amount representing the difference between the employee's salary in his or her current position and a higher salary determined to be appropriate due to a finding of discrimination.
- (3) Front pay may also result from an order of reinstatement to a position of a particular level that the agency is unable to accommodate at the time of the order, ~~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 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 State or another employer, so as to avoid unjust enrichment of the grievant.
- (7) Shift pay and holiday premium pay shall not be available on front pay.

*History Note: Authority G.S. 126-4(9); 126-34.01; 126-34.02;  
Temporary Adoption Eff. May 23, 2014;  
Eff. April 1, 2015;  
Readopted Eff. April 1, 2018.*

25 NCAC 01J .1308 is readopted as published in 32:10 NCR 993 as follows:

**25 NCAC 01J .1308 LEAVE**

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

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

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

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

*History Note:* Authority G.S. 126-4(9); 126-34.01; 126-34.02;  
Temporary Adoption Eff. February 28, 2014;  
Temporary Adoption Expired December 12, 2014;  
Eff. April 1, 2015;  
Readopted Eff. April 1, 2018.

25 NCAC 01J .1309 is readopted as published in 32:10 NCR 993 as follows:

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

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the ~~state health insurance plan~~ State Health 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 G.S. 126-4(9); 126-34.01; 126-34.02;  
Temporary Adoption Eff. February 28, 2014;  
Temporary Adoption Expired December 12, 2014;  
Eff. April 1, 2015;  
Readopted Eff. April 1, 2018.*

25 NCAC 01J .1310 is readopted as published in 32:10 NCR 993 as follows:

**25 NCAC 01J .1310 INTEREST**

The ~~state~~ State shall not pay interest on any back pay award.

*History Note: Authority G.S. 126-4(9); 126-34.01; 126-34.02;  
Temporary Adoption Eff. May 23, 2014;  
Eff. April 1, 2015;  
Readopted Eff. April 1, 2018.*



25 NCAC 01J .1311 is readopted as published in 32:10 NCR 993 as follows:

**25 NCAC 01J .1311 REINSTATEMENT**

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

*History Note: Authority G.S. 126-4(9); 126-34.01; 126-34.02;  
Temporary Adoption Eff. February 28, 2014;  
Temporary Adoption Expired December 12, 2014;  
Eff. April 1, 2015;  
Readopted Eff. April 1, 2018.*

25 NCAC 01J .1312 is readopted as published in 32:10 NCR 993 as follows:

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

~~For grievances filed on or after August 21, 2013, reinstatement~~ Reinstatement from dismissal, suspension, or demotion may be ordered only upon a finding of lack of ~~substantive~~ just cause as set forth in Rule .0604 of this Subchapter; ~~(Rule .0604 of this Subchapter)~~; discrimination, harassment, or retaliation prohibited by G.S. 126-16 and G.S. 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 constitute a lack of ~~substantive~~ just cause.

*History Note: Authority G.S. 126-4(9); 126-16; 126-34.02; 126-35;*  
*Temporary Adoption Eff. May 23, 2014;*  
*Eff. April 1, 2015;*  
*Readopted Eff. April 1, 2018.*

25 NCAC 01J .1314 is readopted as published in 32:10 NCR 993 as follows:

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

~~For grievances filed on or after August 21, 2013, back~~ **Back** pay, transfer, promotion, or other appropriate remedies, including corrective remedies, may be ordered where discrimination, harassment, or retaliation in violation of G.S. 126-16 or G.S. 126-34.02 is found.

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

*Temporary Adoption Eff. May 23, 2014;*

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25 NCAC 01J .1315 is readopted as published in 32:10 NCR 993 as follows:

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

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. ~~Volunteer~~ Voluntary programs and benefits shall not be addressed by any remedy under these Rules or G.S. 126. To the extent that retroactive coverage or membership ~~is~~ shall be available, the grievant is responsible for initiating any necessary action against any third party to obtain such benefits.

*History Note: Authority G.S. 126-4(9); 126-34.02;  
Temporary Adoption Eff. May 23, 2014;  
Eff. April 1, 2015;  
Readopted Eff. April 1, 2018.*

25 NCAC 01J .1316 is readopted as published in 32:10 NCR 993 as follows:

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

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

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

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

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

*Temporary Adoption Eff. May 23, 2014;*

*Eff. April 1, 2015;*

*Readopted Eff. April 1, 2018.*

25 NCAC 01J .1318 is readopted as published in 32:10 NCR 993 as follows:

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

The following remedies shall not be awarded in appeals under G.S. 126:

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

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

*History Note:* Authority G.S. 126-4(9); 126-34.02;  
Temporary Adoption Eff. May 23, 2014;  
Eff. April 1, 2015;  
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25 NCAC 01J .1319 is readopted as published in 32:10 NCR 993 as follows:

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

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

- (1) the grievant is reinstated;
- (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated; or
- (3) the grievant prevails in a whistleblower grievance.

*History Note: Authority G.S. 126-4(11); 126-34.02;  
Temporary Adoption Eff. May 23, 2014;  
Eff. April 1, 2015;  
Readopted Eff. April 1, 2018.*

25 NCAC 01J .1320 is readopted as published in 32:10 NCR 993 as follows:

**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~~ provided such fees are explicitly incorporated as a part of a settlement agreement signed by both parties.

*History Note:* Authority G.S. 126-4(11); 126-34.01; 126-34.02;

*Temporary Adoption Eff. May 23, 2014;*

*Eff. April 1, 2015;*

*Adopted Eff. April 1, 2018.*