

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: All Rules Submitted

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On all Submission for Permanent Rule forms:

In Box 1, the rulemaking agency is the State Human Resources Commission. This is the authority that you published under, so please correct the form.

In Box 2, please include both the citation and the name of each Rule.

In Box 9A, please check "Agency" G.S. 150B-21.3A did not require the agency to readopt the rules; the agency chose to designate these Rules as necessary with substantive public interest, such that they were readopted.

On every Rule:

Please include an effective date for each Rule. If the rules are approved at the March meeting, the date will be April 1, 2018. So, at the bottom of each History Note, add:

Readopted Eff. April 1, 2018.

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: February 23, 2018

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1302

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, is it "the" policy or "an" Employee Grievance Policy?

In (d)(5), line 16, I believe the phrase "30-day" should be hyphenated

In (d)(6), line 18, I believe the phrase "90-day" should be hyphenated

In (d)(8), line 24, why is "Hearing" capitalized?

On line 26, is the language "a reviewer(s) outside the grievant's chain of command," necessary in light of the requirement for a hearing officer or panel?

On line 28, should "final agency decision" be capitalized to match the term as used on lines 32 and 34?

Doesn't (d)(10) just repeat (d)(6)? Why do you need it? Especially when the 90-day timeframe is required by G.S. 126-34.01.

In (d)(12), line 36, since you only need a hearing officer or a panel (as stated in (d)(8), line 27), shouldn't it read "hearing officer or hearing panel and chair,"?

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: February 23, 2018

1 25 NCAC 01J .1302 is readopted as published in 32:10 NCR 993 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 Rule.

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

7 (c) A grievant who has an unexcused failure to attend the Step 1 - Mediation or Step 2 - Hearing as scheduled forfeits
8 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 Hearings
13 after the conclusion of the grievance process in accordance with G.S. 126-34.02;
- 14 (4) an informal process for attempting to resolve a grievable issue prior to the employee's filing a formal
15 grievance;
- 16 (5) a 30 day timeframe in which grievable issues must be raised in both the informal and formal
17 grievance process, except for grievances covered by Rule .0603 of this Subchapter;
- 18 (6) a 90 day timeframe in which the agency or university must complete the entire informal process and
19 the process shall describe each 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 state that a mediation agreement is legally
22 binding and that if impasse occurs, the agency shall inform the grievant of the Step 2 grievance
23 process and timeframe for filing;
- 24 (8) a Hearing shall serve as Step 2 of the formal grievance process. A description of the hearing process
25 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 command,
27 meaning a hearing officer or hearing panel. The hearing officer or hearing panel 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 State
30 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, respondent,
36 hearing officer, hearing panel and chair, agency and university Human Resource Office, Equal

1 Employment Officer, Affirmative Action Officer, Agency Head and designee, and the Director of
2 the Office of State Human Resources and designees; and
3 (13) the manner in which changes in the grievance policies shall 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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1306

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please confirm that this Rule was approved by the Governor, as required by G.S. 126-4.

On line 4, do you need to retain the language "filed on or after August 21, 2013"? At this time, isn't this vestigial language?

In Item (1), line 5, what law? Does your regulated public know?

In Item (3), line 10, consider stating "if the unemployment..."

In Item (4), line 12, do you mean any state or NC? If you mean NC, please capitalize the term.

In Item (9), lines 25 and 27, I believe "across-the-board" should be hyphenated.

In Item (11), line 34, what is "appropriate"? Do you even need that term?

In Sub-Item (11)(d), Page 2, line 3, I take it this is the employee's social security number?

In Item (12), line 13, what is "suitable"? Who determines this?

On line 13, if by "state" you mean NC (and I think you do), please capitalize the term.

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: February 23, 2018

1 25 NCAC 01J .1306 is readopted as published in 32:10 NCR 993 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 shall not be 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 that was approved secondary employment prior to dismissal shall not be set off against
9 gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted
10 from the gross back pay amount due if unemployment insurance benefits were not taxed when
11 received by the employee.
- 12 (4) All applicable state and federal withholding taxes, including social security taxes, shall be paid from
13 the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim
14 earnings and unemployment insurance benefits received.
- 15 (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross
16 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 pay
19 award.
- 20 (7) Shift pay shall be a part of a back pay award if the grievant would have been entitled to the pay in
21 the absence of the interruption in employment. This benefit shall not be applicable in cases
22 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 to
24 them in the absence of the interruption in employment, including merit increments.
- 25 (9) Back pay shall include any across the board compensation that would have been included in the
26 grievant's regular salary except for the interruption in employment. This includes one time
27 "bonuses," and across the board legislative pay increases.
- 28 (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment,
29 back pay shall include the difference between the prorated longevity payment made at dismissal and
30 the amount of longevity pay that would have been payable had employment not been interrupted.
31 If the grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall
32 be made in the back pay award. The prorated longevity payment made at the time of dismissal shall
33 be deducted from the full amount otherwise payable on the next longevity eligibility date.
- 34 (11) Back pay shall be applied for on the appropriate Office of State Human Resources form, available
35 on the Office of State Human Resources website, www.oshr.nc.gov. The back pay application form
36 requires the following information:
- 37 (a) agency or university name;

- 1 (b) division or department or school;
- 2 (c) employee name;
- 3 (d) 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, suitable employment following separation from state government. The burden
14 of proof that an employee mitigated his or her lost wages by seeking employment following
15 separation shall be on the employee.

16
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
21

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1307

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, do you need to retain the language "filed on or after August 21, 2013"? Isn't this vestigial language?

In Item (1), line 5, what law? Does your regulated public know?

In Item (3), line 10, what is "immediately"? Don't you mean "at the time of the order"?

In Item (6), lines 18 and 20, do you mean any state or NC? If you mean NC, please capitalize the term.

In the History Note, should you cite to G.S. 125-34.01, as you did in Rule 01J .1306?

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: February 23, 2018

1 25 NCAC 01J .1307 is readopted as published in 32:10 NCR 993 as follows:

2

3 **25 NCAC 01J .1307 FRONT PAY**

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

5 (1) Front pay may be awarded in all cases in which front pay is warranted by law.

6 (2) "Front pay" is the payment to an employee above his or her regular salary, the excess amount
7 representing the difference between the employee's salary in his or her current position and a higher
8 salary determined to be appropriate due to a finding of discrimination.

9 (3) Front pay may also result from an order of reinstatement to a position of a particular level that the
10 agency is unable to accommodate immediately. Front pay shall be paid for such period as the agency
11 is unable to hire, promote, or reinstate the employee to a position at the appropriate level and as
12 warranted by law.

13 (4) Front pay shall terminate upon acceptance or rejection of a position to which the employee has been
14 determined to be entitled.

15 (5) Front pay shall be available as a remedy in cases involving hiring, promotion, demotion, or
16 dismissal.

17 (6) Front pay shall be payable under the same conditions as back pay except that the only deductions
18 from front pay shall be for usual and regular deductions for state and federal withholding taxes and
19 the employee's retirement contribution. There may also be a deduction for other employment
20 earnings, whether paid by the state or another employer, so as to avoid unjust enrichment of the
21 grievant.

22 (7) Shift pay and holiday premium pay shall not be available on front pay.

23

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

27

28

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1308

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (c), line 9, this is entirely up to the agency? Will this be via agency policy or just on a case-by-case basis?

In (d), lines 10-11, is the language "in addition to the ... dismissal." necessary, in light of (b)?

In the History Note, shouldn't you cite to G.S. 125-34.01, as you are referring entirely to agency discretion in (c)?

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: February 23, 2018

1 25 NCAC 01J .1308 is readopted as published in 32:10 NCR 993 as follows:

2

3 **25 NCAC 01J .1308 LEAVE**

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

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

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

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

12

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

14 *Temporary Adoption Eff. February 28, 2014;*

15 *Temporary Adoption Expired December 12, 2014;*

16 *Eff. April 1, 2015.*

17

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1309

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On lines 4-5, should "state health insurance plan" be "State Health Plan"?

In the History Note, why aren't you citing to G.S. 126-34.01?

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: February 23, 2018

1 25 NCAC 01J .1309 is readopted as published in 32:10 NCR 993 as follows:

2

3 **25 NCAC 01J .1309 HEALTH INSURANCE**

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

12

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

17

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1310

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, please capitalize "State"

In the History Note, why are you not citing to G.S. 126-34.01 and 34.02?

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: February 23, 2018

1 25 NCAC 01J .1310 is readopted as published in 32:10 NCR 993 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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1311

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 5, what is a "similar" position?

On line 5, this will be entirely up to the management? Do you mean of the agency?

On line 10, to conform with G.S. 150B-21.6, please state that it is available for free. You may consider stating "website and may be viewed for free at" or "website for free at"

*Also on line 10, this url no longer works. I suggest you use this one:
<https://www.osbm.nc.gov/state-budget-manual>*

In the History Note, why aren't you citing to G.S. 126-34.01?

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: February 23, 2018

1 25 NCAC 01J .1311 is readopted as published in 32:10 NCR 993 as follows:

2

3 **25 NCAC 01J .1311 REINSTATEMENT**

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

12

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

17

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1312

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 4, can't you delete "For grievances filed on or after August 21, 2013," and begin the sentence "Reinstatement from..."?

On line 5, what is your authority to state that "just cause" requires a substantive versus procedural element? G.S. 126-35 states that no career state employee may be discharged, suspended or demoted without just cause, and that this is appealable to OAH. Is the Rule intended to state that while the dismissal is illegal, the employee can't be reinstated as part of the remedy?

Also on line 5, please state "just cause as set forth in Rule .0604 of this Subchapter;"

On line 8, what do you mean by "matters"? What part of the Rule are you referring to?

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: February 23, 2018

1 25 NCAC 01J .1312 is readopted as published in 32:10 NCR 993 as follows:

2

3 **25 NCAC 01J .1312 CAUSES FOR REINSTATEMENT**

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

11

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

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

14 *Eff. April 1, 2015.*

15

16

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1314

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 4, can't you delete "For grievances filed on or after August 21, 2013," and begin the sentence "Back pay..."?

In the History Note, why are you citing to G.S. 126-16? If it's because you reference it on line 6, then why aren't you citing to it in Rule 01J .1312?

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: February 23, 2018

1 25 NCAC 01J .1314 is readopted as published in 32:10 NCR 993 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, may be ordered where discrimination, harassment, or retaliation in violation of G.S.
6 126-16 or G.S. 126-34.02 is found.

7

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

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

10 *Eff. April 1, 2015.*

11

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1315

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 6, shouldn't it be "Voluntary" rather than "Volunteer" to be consistent with the term elsewhere in the Rule?

On line 7, consider replacing "is" with "shall be"

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: February 23, 2018

1 25 NCAC 01J .1315 is readopted as published in 32:10 NCR 993 as follows:

2

3 **25 NCAC 01J .1315 VOLUNTARY PROGRAMS OR BENEFITS**

4 Voluntary programs and benefits are the choice of the employee and the employee's financial responsibility.

5 Voluntary benefits and programs include 401K programs, voluntary health and life insurance programs, or deferred
6 compensation. Volunteer programs and benefits shall not be addressed by any remedy under these Rules or G.S. 126.

7 To the extent that retroactive coverage or membership is available, the grievant is responsible for initiating any
8 necessary action against any third party to obtain such benefits.

9

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

13

14

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1316

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Who is granting these remedies? Is this guidance solely to the ALJ or the SHRC as well?

On line 9, replace "such a" with "this" to be consistent with the rest of the Rule.

Line 10, what do you mean "as is appropriate under the law"? What law?

So that I am clear, are you stating that Paragraph (b) creates substantial prejudice pursuant to G.S. 150B-33(b)(11)?

In (c), line 11, I suggest striking "Further" and just stating "The remedy.."

On lines 12-13, what do you mean by "determined appropriate"?

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: February 23, 2018

1 25 NCAC 01J .1316 is readopted as published in 32:10 NCR 993 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 both
10 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 this
12 violation shall require that the employee be granted back pay from the date of the dismissal until a date determined
13 appropriate in light of the purpose of pre-dismissal conferences, which is to provide notice to the employee and an
14 opportunity to be heard. Reinstatement shall not be a remedy for lack of a pre-dismissal conference.

15

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

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

18 *Eff. April 1, 2015.*

19

20

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1318

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

So that I'm clear – in Item (1), what do you mean by compensatory damages if you don't mean the ones set forth on line 9?

On line 9, what are these cases?

And isn't the intent of line 9 to address that the only available relief is that provided for by these Rules and G.S. 126?

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: February 23, 2018

1 25 NCAC 01J .1318 is readopted as published in 32:10 NCR 993 as follows:

2

3 **25 NCAC 01J .1318 CERTAIN REMEDIES NOT AVAILABLE**

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

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

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

10

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

14

15

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1319

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 4, can't you delete "For grievances filed on or after August 21, 2013," and begin the sentence "Attorney's fees...?"

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: February 23, 2018

1 25 NCAC 01J .1319 is readopted as published in 32:10 NCR 993 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

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01J .1320

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, shouldn't "providing" be "provided"?

Also on line 4, I take it your regulated public knows what "explicitly" means in this context?

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: February 23, 2018

1 25 NCAC 01J .1320 is readopted as published in 32:10 NCR 993 as follows:

2

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

4 Attorney's fees may be paid as the result of a settlement in the grievance procedure, providing such fees are explicitly
5 incorporated as a part of a settlement agreement signed by both parties.

6

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

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

9 *Eff. April 1, 2015.*

10

11