

Burgos, Alexander N

Subject: FW: 25 NCAC 01C .0405
Attachments: 2024.07.10 - SHRC Request for Changes and OSHR response.docx; 2024.07.10 - 25 NCAC 01C .0405 Temporary Appointment Response to RRC Review.docx

From: Mazza, Denise H <denise.mazza@nc.gov>
Sent: Wednesday, July 10, 2024 4:56 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: Thomas, Blake <Blake.Thomas@nc.gov>
Subject: RE: 25 NCAC 01C .0405

Bill,

Attached are the SHRC's response to request for changes for the above captioned rule which will be considered at the July RRC meeting.

We look forward to hearing back from you.

Sincerely,

Denise H. Mazza
Paralegal
Desk: 984-236-0823
denise.mazza@nc.gov



North Carolina Office of State Human Resources

116 West Jones Street, Raleigh, NC 27603
1331 Mail Service Center, Raleigh, NC 27699-1331

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Permanent Amendment for Publication in the NCAC

25 NCAC 01C .0405 is adopted **with changes** as published in 38:18 NCR 1204-1205 as follows:

25 NCAC 01C .0405 Temporary Appointment

(a) A temporary appointment is an appointment to fill a workforce need for a limited period of time. Temporary employees ~~may shall~~ not be used to permanently expand the workforce beyond authorized levels **set in the authorized budget as defined in G.S. 143C-1-1(d)(1a)**. Temporary appointments shall not exceed 11 consecutive months, subject to the following exemptions:

- (1) Full-time students, defined as those undergraduate students taking at least 12 credit hours or graduate students taking at least 9 credit hours;
 - (2) Retired employees, defined as those individuals drawing a retirement income or Social Security benefits and ~~having who have~~ signed a statement that they are not available for, nor seeking, permanent employment;
 - (3) Inmates that are on a work-release program;
 - (4) Interns, defined as those students who, regardless of the number of credit hours enrolled, work to gain occupational experience for a period of ~~time not to exceed three months~~ at least one academic semester; **and**
 - (5) Externs, defined as those students who, regardless of the number of credit hours enrolled, are employed as part of a written agreement between the State and an academic institution through which the student is paid and earns course ~~credit; credit.~~ **[and]**
- ~~[(6) — Exceptions that were granted under G.S. 126-6.3(a3)(3).]~~

(b) Employees with a temporary appointment shall not earn or accrue leave or receive total State service credit, retirement credit, severance pay, or priority reemployment consideration.

(c) This Rule applies to all temporary employees employed by the State.

(d) The calculation of consecutive months in subsection (a) of this Rule shall restart only after a separation of at least 31 consecutive calendar days after the last day that person worked for the State in a temporary appointment. After a separation of this length, and only after such a separation, an individual who was employed for 11 consecutive months by temporary appointment shall be eligible for a new or reinstated temporary appointment.

History Note: Authority G.S. 126-4(5); 126-4(6); 126-4(7a); 126-4(19);
 Eff. February 1, 1976;
 Amended Eff. August 1, 1995; November 1, 1991; December 1, 1978; Readopted Eff. April 1, 2016;
 Amended Eff. December 1, ~~2021-2021~~; _____, 2024.

**Request for Changes Pursuant to
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

Questions contained herein suggest that the rule as written is unclear or there is some ambiguity. If this document includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for the agency's consideration which the agency may find preferable and clarifying.

To properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov and copy RRC Counsel. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: "~~a~~Association"
 - Right: "~~association~~ Association"
6. Treat punctuation as part of a word. For example:
 - Wrong: "day~~,~~ and"
 - Right: "~~day,~~ day, and"
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

William W. Peaslee
Commission Counsel

Date submitted to agency: June 25, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01C .0405

DEADLINE FOR RECEIPT: July 10, 2024

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Line 6: Authorized by whom? Or are you referring to a statute which establishes the levels? In which case cite the statute.

Agency Response:

We interpret the phrase “authorized levels” as referring to the number of positions in the authorized budget under the State Budget Act. (This is the certified budget with any changes authorized by the Director of the Budget through authority granted in the Budget Act or other statutes.) To address your comment, we propose rewriting this line to read “authorized levels set in the authorized budget as defined in G.S. 143C-1-1(d)(1a).”

Line 20: By incorporating the language of the statute into the rule, the agency needs to define ambiguous language in the statute. It needs to define “severe harm” and “vital services” or state factors that the Director will use in making the determination.

Agency Response:

By adding a cross-reference to G.S. 126-6.3(a3)(3) on line 20, we did not intend to define the terms “severe harm” and “vital services” in the statute. The cross-reference was included only to avoid staff overlooking the statute if there is staff turnover in the future. The terms “severe harm” and “vital services” do not appear in the current rule or proposed rule. We are hesitant to add definitions of those statutory phrases (or factors for review) at the Rules Review Commission stage; we would want to receive public comment and consult with the legislative staff who worked on the bill.

To address your comment, we could remove line 20 and revert to the rule’s current text for Rule .0405(1)-(5), so that there is no cross-reference to G.S. 126-6.3(a3)(3) in the rule. We have retyped the rule accordingly.

William W. Peaslee
Commission Counsel

Date submitted to agency: June 25, 2024

Line 23: Explain the authority to expand the Rule to all temporary employees of the State when G.S. 126-6.3(a) appears to be limited to “all cabinet agencies.”

Agency Response:

Rule 01C .0405 implements subsection G.S. 126-6.3(a1), the provision that limits temporary employees from being employed more than 11 consecutive months, rather than subsection G.S. 126-6.3(a), the provision on agencies’ ability to hire temporary employees directly instead of going through the Temporary Solutions Program.

Subsection (a1), about the 11-month limit, does not refer to “Cabinet agencies.” Instead, subsection (a1) reads simply, “No temporary employee shall be employed more than 11 consecutive months.”

The statute’s language shows that the restriction to Cabinet agencies in subsection (a) does not implicitly also extend to the other subsections of G.S. 126-6.3. Subsections G.S. 126-6.3(a4) and (a5) both refer to both “Cabinet and Council of State agencies.” Subsection G.S. 126-6.3(a4) states expressly that the 11-month limit, the subject of Rule 01C .0405(a) and (d), applies to Council of State agencies. Specifically, G.S. 126-6.3(a4) is entitled “Cabinet and Council of State Agency Responsibilities,” and G.S. 126-6.3(a4) instructs that “Cabinet and Council of State agencies are responsible for sending a separation request ... before a temporary employee exceeds 11 consecutive months unless an exception from subsection (a1) of this section applies.”

Therefore, we interpret the Rule as applying to all agencies, not only Cabinet agencies.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: June 25, 2024

Burgos, Alexander N

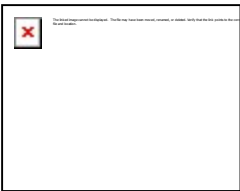
From: Mazza, Denise H
Sent: Wednesday, June 26, 2024 11:38 AM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: RE: 25 NCAC 01C .0405

We have received your email and noted the reply date is due July 10, 2024.

Thanks!

Denise

Denise H. Mazza
Paralegal
Desk: 984-236-0823
denise.mazza@nc.gov



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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, June 25, 2024 4:47 PM
To: Mazza, Denise H <denise.mazza@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 25 NCAC 01C .0405

Hi,

I just remembered Independence Day was during this period so I have amended the staff opinion such that a reply is due July 10, not July 9.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Peaslee, William W
Sent: Tuesday, June 25, 2024 4:40 PM
To: Mazza, Denise H <denise.mazza@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 25 NCAC 01C .0405

Good afternoon,

Attached please find the request for changes for the above captioned rule which will be considered at the July RRC meeting.

As always if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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