

Permanent Amendment for Publication in the NCAC

1 25 NCAC 01C .1007 is amended as published in 36:17 NCR 1449 follows:
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3 **25 NCAC 01C .1007 SEPARATION**
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5 (a) An employee may be separated when:

6 (1) the employee remains unavailable for work after all applicable leave credits and leave benefits have
7 been exhausted and agency management does not grant leave without pay, as defined in 25 NCAC
8 01E .1101, if the employee is unable to return to all of the position's essential duties as set forth in
9 the employee's job description or designated work schedule due to a medical condition or the
10 vagueness of a medical prognosis, and the employee and agency are unable to reach agreement on
11 a return to work arrangement that meets both the needs of the agency and the employee's condition;

12 (2) notwithstanding any unexhausted applicable leave credits and leave benefits, the employee is unable
13 to return to all of the position's essential duties as set forth in the employee's job description or
14 designated work schedule due to a court order, due to a loss of required credentials, due to a loss of
15 other required certification, due to the employee's presence at work exposing others to a condition
16 recognized as a direct threat by the EEOC, or due to other extenuating circumstances that renders
17 the employee unable to perform the position's essential duties as set forth in the employee's job
18 description or designated work schedule, and the employee and the agency are unable to reach
19 agreement on a return to work arrangement that meets both the needs of the agency and the
20 employee's situation; or

21 (3) notwithstanding any unexhausted applicable leave credits and leave benefits, when an employee is
22 on workers' compensation leave of absence, or when an employee is working with temporary or
23 permanent work restrictions due to a work-related injury, and the employee is unable to return to all
24 of the position's essential duties as set forth in the employee's job description or designated work
25 schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and
26 the agency are unable to reach agreement on a return to work arrangement that meets both the needs
27 of the agency and the employee's medical condition, a separation may occur on the earliest of the
28 following dates:

29 (A) after the employee has reached maximum medical improvement for the work related injury
30 for which the employee is on workers' compensation leave of absence and the agency is
31 unable to accommodate the employee's permanent work restrictions related to such injury;

32 or

33 (B) 12 months after the date of the employee's work related injury.

34 (b) The employing agency shall send the employee written notice of the proposed separation in a Pre Separation
35 Letter. The letter shall include the employing agency's planned date of separation, the efforts undertaken to avoid
36 separation, and why the efforts were unsuccessful. This letter shall be sent to the employee at least 15 calendar days
37 prior to the employing agency's planned date of separation. This letter shall include a deadline for the employee to
38 respond in writing no less than five calendar days prior to the employing agency's planned date of separation.

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1 (c) If the agency and employee are unable to agree on terms of continued employment or the employee does not
2 respond to the Pre Separation letter, the employing agency shall send the employee written notice in a Letter of
3 Separation. The letter shall be sent no earlier than 20 calendar days after the Pre Separation letter is sent to the
4 employee. The Letter of Separation shall state the actual date of separation, specific reasons for the separation and set
5 forth the employee's right of appeal. Such a separation shall not be considered a disciplinary dismissal as described in
6 G.S. 126-34.02 or G.S. 126-35. It is an involuntary separation and may be grieved or appealed. The burden of proof
7 on the agency in the event of a grievance is not to demonstrate just cause as that term exists in G.S. 126-34.02 or G.S.
8 126-35. Rather, the agency's burden shall be to prove that the employee was unavailable, that efforts were undertaken
9 to avoid separation, and why the efforts were unsuccessful.

10 (d) "Applicable leave credits and benefits" is defined as the sick, vacation, bonus, incentive, and compensatory leave
11 that the employee may earn, but does not include short-term or long-term disability.

12 *History Note: Authority G.S. 126-4(7a); 126-35;*

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