

1 25 NCAC 01C .1007 is proposed for adoption as follows:

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3 **25 NCAC 01C .1007 UNAVAILABILITY WHEN LEAVE IS EXHAUSTED**

4 (a) An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for
5 work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave
6 without pay.

7 (b) Prior to separation, the employing agency shall notify the employee in writing, of the proposed separation, the efforts
8 undertaken to avoid separation and why the efforts were unsuccessful.

9 (c) The employing agency must also give the employee a letter of separation stating the specific reasons for the
10 separation and setting forth the employee's right of appeal. Such a separation is an involuntary separation, and not a
11 disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed. The burden of proof on the agency
12 in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that
13 the employee was unavailable, that reasonable efforts were undertaken to avoid separation, and the reason the efforts
14 were unsuccessful.

15 (d) Definitions:

16 (1) Unavailability is defined as the employee's inability to return to all of the position's essential duties and
17 work schedule due to a medical condition or the vagueness of a medical prognosis; or the employee
18 and the agency cannot reach agreement on a return to work arrangement that meets both the needs of
19 the agency and the employee's medical condition; and

20 (2) Applicable leave credits is defined as the sick, vacation and bonus leave the employee chose to exhaust
21 prior to going on leave without pay.

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23 *History Note Authority G.S. 126-4(7a); 126-35;*
24 *Eff. November 1, 1989;*
25 *Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003;*
26 *Amended Eff. January 1, 2007; October 1, 2004.*