

Employee Appeal and Grievance Process

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Policy

It is the policy of the State Human Resources Commission that a grievance procedure shall exist to allow for the prompt and orderly resolution of problems and differences arising between the supervisor and the employee.

Agencies may choose to adopt the Employee Grievance and Appeal Process or choose the Employee Mediation and Grievance Process. Each agency shall establish a process that includes the minimum requirements as outlined in this policy.

Objectives

In establishing this policy, the State Human Resources Commission seeks to achieve the following objectives:

- Assure employees can get their problems or complaints considered rapidly, fairly and without fear of reprisal,
 - Take steps to ensure costs to process grievances are contained, and
 - Resolve workplace issues and problems efficiently and cost effectively.
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Definitions

Following are definitions used in this policy:

Term	Definition
Agency	A department, university, office, board or commission
Career State employee	A State employee who meets the requirements specified in the State Human Resources Act
Grievance (Contested case issue)	An issue that is defined in the State Human Resources Act as being grounds for appeal to the Office of Administrative Hearings
Final agency decision (FAD)	The written decision rendered by the agency head or designee resulting from an internal grievance

Covered Issues

Following are issues that may be grieved and who may grieve:

Who May File (Covered Persons)	Grievable Issues
Career State employees or former career State employees	<ul style="list-style-type: none"> • Dismissal, demotion, or suspension without pay without just cause • Denial of promotion due to failure to post • Failure to give promotional priority over outside applicants • Failure to give RIF reemployment consideration • Failure to give policy-making/confidential exempt status priority reemployment consideration
Any State employee or former State employee	<ul style="list-style-type: none"> • Denial of request to remove inaccurate or misleading information from personnel file • Policy-making designation • Discrimination in denial of promotion, transfer, or training; or retaliation in selection for demotion, RIF or termination • Denial of veteran's preference regarding initial employment and other employment actions.
Any applicant for State employment	<ul style="list-style-type: none"> • Denial of veteran's preference in initial State employment • Denial of employment on the basis of illegal discrimination

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Any State employee	<ul style="list-style-type: none"> • A false accusation about political threats or promises • Violation of the Fair Labor Standards Act, Age Discrimination Act, Family and Medical Leave Act or Americans with Disabilities Act (except for employees in exempt policy-making positions).
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Advisory Note: The list of covered persons above is based on those defined by the State Human Resources Act as having the right of appeal. No agency can prevent covered persons from filing a grievance based on the issues listed above. Some of the listed issues may require mediation as the first step; others may not allow mediation as the first step. For issues which the agency has determined are not subject to mediation, these issues must begin with Step 2. Agencies may also permit grievances to be filed that are based on issues other than those listed. These grievances would not be appealable to the Office of Administrative Hearings. The agency grievance procedure must provide information on other issues that are grievable, how to file a grievance for those issues, and the timeframes which apply.

Discrimination Special Provisions

An employee alleging illegal discrimination has the right to bypass the internal agency grievance procedure and appeal directly to the Office of Administrative Hearings (OAH). In order to appeal to the OAH, the employee must file a petition for a contested case hearing with the Office of Administrative Hearings within 30 calendar days after the alleged discriminatory action.

If the employee chooses to use the agency's internal grievance procedure, the employee must appeal the alleged discriminatory act within the timeframes set by the agency.

Exception for Unlawful Workplace Harassment

An employee alleging unlawful workplace harassment which results in denial of employment, promotion, transfer or training, or in selection for demotion, RIF or termination, shall have the right to bypass any step involving discussions with or review by the alleged harasser.

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Advisory Note: Because unlawful workplace harassment is a form of sex discrimination, the employee also has the right to bypass the agency grievance procedure and appeal directly to the Office of Administrative Hearings.

Leave

To prepare for participation in the internal agency grievance procedure, an employee shall be allowed up to a maximum of eight hours of leave time off from the employee's duties. The employee must request and receive approval in advance before taking this leave. This leave is granted without loss of the employee's pay, vacation or other time credits.

For participation in contested case hearings (or other administrative hearings), the employee may request necessary time away from work without use of vacation or other time credits. This request is subject to the supervisor's or personnel officer's approval. The supervisor or personnel officer determines if the leave is necessary and reasonable. Documentation of the time required by the presiding official may be requested by the supervisor before leave approval is granted.

AGENCY GRIEVANCE PROCEDURE

Minimum Requirements

The following are the minimum requirements for an agency grievance procedure to be approved by the State Human Resources Commission:

1. The agency grievance procedure shall require an employee not alleging unlawful discrimination to first discuss the problem with the supervisor.
2. The agency grievance procedure shall state the issues which, in addition to those listed in the State Human Resources Act, can be grieved at the agency level. Any such issues cannot be appealed to the Office of Administrative Hearings.
3. After the discussion with the immediate supervisor (or other appropriate supervisor if the immediate supervisor has no authority over the action being grieved), the employee shall have the option at one or more of the subsequent steps, to present

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- the grievance orally and to present to a reviewer or reviewers outside of the chain of command, e.g., hearing officer or employee grievance committee.
4. All decisions issued by the agency after the discussion with the immediate supervisor shall be in writing.
 5. The employee shall have the right to challenge whether the person or body of people outside of the chain of command review level can render an unbiased recommendation. The agency procedure shall establish a process for the challenge as well as the procedure for selecting a replacement reviewer when necessary.
 6. The agency grievance procedure shall outline the ways of notifying all existing employees and new hires of any change to the agency grievance procedure, no later than 30 days prior to the effective date of the change.
 7. The effective date of the agency grievance procedure and any changes to it shall be stated in the procedure.
 8. The agency shall set up time limits for filing an appeal, and for the employee and the agency to respond to each other during the grievance procedure. The agency may not set any time limit for itself that is more than twice the time limit established for employees. An employee filing a grievance shall do so not later than 15 calendar days after the last incident for which the employee is filing the grievance unless the internal agency procedure provides for a longer period.
 9. Neither party to the grievance can be represented by an attorney or other person during the internal agency grievance procedure.

Settlements

If a grievance is settled and the settlement requires a personnel transaction to be processed (except where the only personnel action is the substitution of a resignation for a dismissal), the approval of the State Human Resources Director is required.

AND

If the settlement involves an exception to any State Human Resources Commission policy, the approval of the State Human Resources Commission also is required.

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Appeal of Final Agency Decision

The agency shall issue the final agency decision (FAD) in writing. If the employee has the right to appeal the decision, the employee shall be informed:

- That appeal to the Office of Administrative Hearings must be filed within 30 calendar days after the employee receives the FAD or after the action which triggers the right of appeal directly to the OAH, and
- That the appeal is made by filing a petition for a contested case hearing with the Office of Administrative Hearings. The address is:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714

Time Limits

A final agency decision (FAD) must be issued within a reasonable period of time from the date the grievance is filed or the employee may, if eligible, appeal to the Office of Administrative Hearings without receiving a FAD.

For cases involving discharge or demotion of a career State employee for disciplinary reasons, the reasonable period of time is 90 calendar days from the filing of the grievance to the issuance of the FAD. For all issues except demotion or dismissal, a reasonable period of time for an employee to receive a FAD is 120 calendar days from the time the grievance was filed. The employee and the agency may mutually agree to extend the time in either case.

Advisory Note: If the agency does not issue the FAD within a reasonable period of time, the employee's right of appeal shall be governed by G.S. 126-34.1 and G.S.150B-23(f).

Dismissal Letter – Public Information

If an employee does not appeal his/her dismissal through the agency grievance procedure within 15 calendar days, the initial letter of dismissal setting forth the specific acts or omissions that are the basis of the dismissal shall become the agency's final

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agency decision. If an employee appeals his/her dismissal through the agency grievance procedure, the final agency decision shall be the decision made at the conclusion of the employee's appeal through the agency grievance procedure. The final decision letter is public information.

RESPONSIBILITIES

Agency Responsibilities

Each agency shall:

- Create and maintain a grievance policy that complies with State Human Resources Commission policy and shall:
 - File the agency grievance procedure by January 1 of each even-numbered year for approval by the State Human Resources Commission,
 - OR**
 - File any modification(s) since the last approved procedure prior to the changes becoming effective,
 - OR**
 - Submit a certified statement that no changes have been made to the agency grievance procedure since the last approved procedure.
 - Include in its procedure the effective date of the procedure and the effective date of any changes to the procedure.
 - Submit the procedure to the State Human Resources Commission at least one month before the meeting at which approval is sought.
 - Continuously evaluate the agency grievance procedure's effectiveness in achieving stated goals.
 - Submit a grievance report semiannually or as requested by the Office of State Human Resources. The report is due the first business day of January and July. The report shall be submitted in the format specified by the Office of State Human Resources.
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Office of State Personnel Responsibilities

The Office of State Human Resources shall:

- Review each proposed grievance procedure for compliance with applicable laws, rules, policies and contemporary employee relations practices.
 - Present the procedure to the State Human Resources Commission for consideration and approval.
 - Provide consultation and technical assistance to the agencies in developing materials for training and/or communicating with supervisors and employees, and assist, as requested, in training grievance committees.
 - Review grievance reports submitted by the agencies and forward to the State Human Resources Director.
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