

FISCAL NOTE**SEVERANCE SALARY**

AGENCY:

OFFICE OF STATE HUMAN RESOURCES

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RULES:

25 NCAC 01D .2701 – SEVERANCE SALARY CONTINUATION – Amend
 25 NCAC 01D .2702 – SEVERANCE SALARY CONTINUATION ELIGIBILITY – Adopt
 25 NCAC 01D .2703 – EFFECTS OF REEMPLOYMENT ON SEVERANCE PAY – Adopt
 25 NCAC 01D .2704 – AMOUNT AND METHOD OF PAYMENTS FOR SEVERANCE - Adopt
 (See text of proposed rules in the appendix.)

STATUTORY AUTHORITY:

G.S. 126-4; G.S. 126-7.1

FISCAL IMPACT SUMMARY:

State Government:	Yes
Local Government:	NA
Substantial Impact:	No
Federal Government:	NA
Small Businesses:	NA

RULE SUMMARY: The legislature passed House Bill 834 (S.L. 2013-382) resulting in changes to G.S. 126, the State Human Resources Act. A portion of this legislation changed the definition of probationary period from 3 to 9 months to 24 months which in turn impacted a trainee employee’s eligibility for severance pay. In addition, the rule is being amended to comply with G.S. 126-8.5(a) which states that State employees are only eligible for severance if reemployment is not available.

25 NCAC 01D .2701 - This rule is being split into four separate rules in order to better organize and reference sections of the rule. Clarification was also added to ensure it is clearly understood that severance is subject to the availability of funds and approval by this Office of State Budget and Management. There is no fiscal impact to the amendments recommended in this rule.

25 NCAC 01D . 2702 - The eligibility criteria in this rule are the same criteria that were previously included in 01D .2701, except with an amendment that corrects the severance eligibility for trainees from 6 months to 24 months to align with G.S. 126-1-1(b), which defines the probationary period as 24 months. The amendment also clarifies that a trainee who had a permanent appointment prior to the trainee appointment cannot have a break in service in order to continue permanent status as a trainee. This aligns the trainee eligibility for severance pay with probationary employee eligibility for severance pay. The impact of this change is expected to be minor since there is a low number of employees that are trainees separated due to reduction in force (RIF) that would fit in the 6 month to 24 months of

service range. For period of January 1, 2013 through December 31, 2014 there was only one trainee employee RIF-ed that received one month severance payment based on 11 months of service at a payment of \$2,124.

25 NCAC 01D .2703 - The effects of reemployment on severance pay was previously included in rule 25 NCAC 01D .2701; however, those provisions are proposed for amendment as they are moved to .2703 in order to comply with G.S. 126-8.5(a), which states that severance shall only be paid to eligible employees provided reemployment is not available. The law does not state that the reemployment availability must be equal to or greater than the employees employment status and position status at the time of notification of RIF; therefore, the rule as previously written in .2701 did not comply with the law when it allowed employees to be hired in a temporary position or allowed an employee to decline an offer of a lower level position and retain severance benefits. Severance is a bridge to other employment by providing funds to the employee to continue paying living expenses while looking for another job. If employment is available with the State either through placement or job offer, then severance pay should be discontinued. The rule is being corrected to comply with the law.

It is important to note that lower level position does not necessarily imply a lower pay. The pay range for the lower level position may be lower than that for the position the employee held prior to being RIF-ed, but the employee may still be able to maintain the same, or close to the same, level of pay. Based on past experience OSHR staff has had with these types of situations, typically most employees are able to maintain their salary level. If an employee, however, applies for a lower level position that has a posted budget limit that is below the person's current salary, than the employee may in fact receive a lower salary than before. But, a lower level position with a lower salary may still be higher than a severance package when the position's benefits are included.

Since the Office of State Human Resources or State agencies and universities do not maintain records related employment offers that are declined, there are no statistics available on the number of employees that may be impacted by this amendment. It is expected that this rule change would decrease the amount of severance the State would paid out since severance would now terminate if an employee declines a lower level position for which they have applied. This would result in a cost savings to the State of about \$15,500 per employee, on average. This estimated is based on data for the period of September 2013 through September 2014, when there were a total of 204 employees who received severance pay as a result of RIF. The average monthly severance payment was \$7,760, and it was paid out over a two month period, for an average total severance payment per employee of \$15,520.

The decrease in severance payments made by the State would result in a loss to affected employees. However, it is expected that more employees would accept offers of employment knowing severance payments would be discontinued if they decline the offer. Therefore, the loss would be at least partially offset by the wages and benefits (especially health insurance coverage) that come with finding reemployment. OSHR considers employment to be a better option than unemployment, since it decreases uncertainty and can potentially help the individual to find a desired position faster. It is typically easier and less stressful to find a job while currently employed, especially given the bias that

sometimes exists against unemployed job seekers. This bias was especially revealed during the last recession, and studies have concluded that the probability of obtaining an interview for a position decreases with the length of the unemployment.^{1,2} Additionally, the individual could continue the job search if staying in the new position is not desirable.

While the agency does not have the necessary information to estimate what number of employees may be annually affected by the proposed change, or the net impact on the affected employees, OSHR does not expect the number to be large enough to make this proposed rule change have a substantial economic impact.

25 NCAC 01D .2704 – The provisions of this rule related to the amount and method of payment of severance were previously in .2701. Amendments when compared to the previous rule are minor clarification changes. Due to confusion on payment to employees with less than 24 months of service, the payment chart has been revised to reflect one year but less than two years but the amount of the payment has not changed. There is no fiscal impact associated with this rule.

¹ Ghayad, Rand and William Dickens. 2012. "What Can We Learn by Disaggregating the Unemployment-Vacancy Relationship?" Federal Reserve Bank of Boston, Policy Brief, October 2012.

<http://www.bostonfed.org/economic/ppb/2012/ppb123.pdf>

² Kroft, Kory, Fabian Lange, and Matthew J. Notowidigdo. 2013. "Duration Dependence and Labor Market Conditions: Evidence from a Field Experiment."

http://korykroft.com/wordpress/Kroft_Lange_Noto_Resume_Study.pdf

APPENDIX

25 NCAC 01D.2701 is being proposed for amendment as follows:

25 NCAC 01D .2701 SEVERANCE SALARY CONTINUATION POLICY

~~G.S. 143-27.2~~ G.S. 126-8.5 provides for severance salary continuation or a discontinued service retirement allowance when the Director of the Budget determines that the closing of a State institution or a reduction-in-force will accomplish economies in the State Budget, provided reemployment is not available. "Economies in the State Budget" means economies resulting from elimination of a job and its responsibilities or from a lack of funds to support the job. ~~The provisions outlined below provide for uniform application of severance salary continuation for eligible employees. Severance salary continuation shall be paid to eligible employees as defined in 25 NCAC 01D .2702 in accordance with the rules in this section. Severance pay shall be subject to available funding and approval by the Office of State Budget and Management.~~

(1) ~~Eligible Employees:~~

- (a) ~~A full time or part time (20 hours or over) employee with a permanent appointment who does not obtain another permanent or time limited permanent job in State government or any other permanent position that is funded in part or in whole by the State by the effective date of the separation shall be eligible for severance salary continuation. Also eligible are employees with trainee appointments who have completed six months of service, and employees who had a permanent appointment prior to entering a trainee appointment;~~
- (b) ~~An employee with a probationary, temporary or intermittent appointment is not eligible for severance salary continuation;~~
- (c) ~~An employee separated from a time limited permanent appointment is not eligible for severance salary continuation. If the appointment extends beyond three years, the appointment is made permanent and the employee becomes eligible for severance salary continuation;~~
- (d) ~~An employee who is separated or scheduled to be separated due to reduction in force and who applies for retirement benefits based on early retirement, service retirement, long term disability or a discontinued service retirement as provided by G.S. 143-27.2 shall not be eligible for severance salary continuation. An employee who is eligible for early or service retirement may elect to delay retirement and receive severance salary continuation;~~
- (e) ~~An employee who is reemployed from any retired status with the State and who is subsequently terminated as a result of reduction in force shall be eligible for severance salary continuation;~~

- (f) ~~An employee who is receiving workers' compensation or short term disability payments is eligible for severance salary continuation;~~
- (g) ~~An employee on leave with pay or leave without pay shall be separated on the effective date of the reduction in force, the same as other employees, and shall be eligible to receive severance salary continuation;~~
- (h) ~~An employee with a permanent appointment separated by reduction in force, may accept a temporary State position and remain eligible to receive severance salary continuation in accordance with this Section;~~
- (i) ~~An employee may continue to receive severance salary continuation if reemployed under a contractual arrangement in a State university or community college in accordance with G.S. 143-27.2. However, an employee receiving salary continuation may not be reemployed in any other State agency until 12 months have elapsed since the separation; and~~
- (j) ~~An employee with a permanent appointment scheduled to be separated through reduction in force may decline a lower level position with regard to salary grade (or salary grade equivalency), salary rate or appointment type and retain eligibility for severance salary continuation.~~

~~(2) Amount and Method of Payment:~~

- (a) ~~Severance salary continuation shall be based on total State service and supplemented by an age adjustment factor as follows:~~
 - (i) ~~Amount of Salary Continuation:~~

<u>Years of Service</u>	<u>Payment</u>
Less than 1 year	2 weeks
1 but less than 5 years	1 month
5 but less than 10 years	2 months
10 but less than 20 years	3 months
20 or more years	4 months

- (ii) ~~Age Adjustment Factor:~~

~~An employee qualifies for the age adjustment factor at 40 years of age. To compute the amount of the adjustment, 2.5 percent of the annual base salary shall be added for each full year over 39 years of age; however, the total age adjustment factor payment shall be limited by the service payment and cannot exceed the total service payments;~~
- (b) ~~When calculating severance, the employee's annual salary at the time of separation shall be used except when the employee has received a promotion to a higher salary grade (or~~

~~salary grade equivalency) and salary rate within the previous 12 months. If an employee has been promoted within the last 12 months, the salary used to calculate severance is the employee's salary rate prior to the promotion, including any across the board legislative salary increases since the promotion;~~

- ~~(c) Severance salary continuation shall be paid on a pay period basis and is not subject to employee or employer retirement contributions, and as a result, shall not be included in computing average final compensation for retirement purposes;~~
 - ~~(d) Any period covered by severance salary continuation shall not be credited as a period of state service;~~
 - ~~(e) An employee who is reemployed in any permanent position with the State or any other permanent position that is paid in part or in whole by the State while receiving severance salary continuation will no longer be eligible for such pay effective on the date of reemployment;~~
 - ~~(f) If an employee dies while receiving severance salary continuation, the balance of such payment shall be made to the deceased employee's death benefit beneficiary as designated with the Teachers' and State Employees' Retirement System in a lump sum payment; and~~
 - ~~(g) Funds for severance salary continuation shall be provided as directed by the Office of State Budget and Management.~~
- ~~(3) For each employee who receives severance salary continuation, agencies shall show on the separate form, Form PD 105, the calculation and amount of such payment.~~

History Note: Authority G.S. 126-4(10); 143-27.2;

Eff. October 1, 1985;

Amended Eff. October 1, 1995; September 1, 1991; November 1, 1990; November 1, 1988;

Recodified from 25 NCAC 01D .0509 Eff. December 29, 2003;

Amended Eff. March 1, 2009.

25 NCAC 01D.2702 is proposed for adoption as follows:

25 NCAC 01D .2702 SEVERANCE SALARY CONTINUATION ELIGIBILITY

(a) An employee who has been reduced in force and who does not obtain employment to another position in State government or any other position that is funded in part or in whole by the State by the effective date of the separation shall be eligible for severance salary continuation as follows:

- (1) full-time and part-time (half time or more) permanent employees;
- (2) trainee employees with 24 or more months of State service;
- (3) trainee employees who obtained career status with no break in service, as defined in 25 NCAC 01D .0114, prior to entering a trainee appointment;
- (4) time-limited employees with 36 or more months of continuous State service; and
- (5) employees in exempt policymaking or exempt managerial positions as defined in G.S. 126-5(b) are eligible for severance salary continuation if the position is abolished as result of a reduction in force.

(b) Trainee employees with less than 24 continuous months of service, time-limited employees with less than 36 continuous months of service, probationary, and temporary employees are not eligible for severance salary continuation.

(c) An employee who is separated, or who has received written notification of separation due to reduction in force and who applies for or begins receiving retirement benefits based on early retirement, service retirement, long term disability, or a discontinued service retirement as provided by G.S. 126-8.5 shall not be eligible for severance salary continuation. An employee who is eligible for early or service retirement may elect to delay retirement and receive severance salary continuation.

(d) An employee who is reemployed from any retired status with the State and who is subsequently terminated as a result of reduction in force shall be eligible for severance salary continuation if the employee meets the eligibility requirements in paragraph (a) of this Rule.

(e) An employee who is receiving workers' compensation or short-term disability payments is eligible for severance salary continuation if the employee meets the eligibility requirements in paragraph (a) of the Rule;

(f) An employee on leave with or without pay shall be separated on the effective date of the reduction-in-force, the same as other employees, and shall be eligible to receive severance salary continuation if the employee meets the eligibility requirements in paragraph (a) of this Rule.

History Note: Authority G.S. 126-4(10); 143-27.2;

Eff.

25 NCAC 01D.2703 is proposed for adoption as follows:

25 NCAC 01D .2703 EFFECTS OF REEMPLOYMENT ON SEVERANCE PAY

(a) An employee who is reemployed in any position with the State, or any other position that is funded in part or in whole by the State, while receiving severance salary continuation, shall not be eligible for severance salary continuation effective on the date of reemployment.

(b) An eligible employee who is offered employment in any position with the State and declines to accept the employment offer, either prior to or following separation, shall not be eligible for severance salary continuation effective on the date that the offer is declined.

(c) The agency offering employment or reemployment is responsible for determining if an employee is receiving severance salary continuation payments and shall notify the separating agency of the date severance salary continuation should be terminated.

*History Note: Authority G.S. 126-4(10); 143-27.2;
 Eff.*

25 NCAC 01D.2704 is proposed for adoption as follows:

25 NCAC 01D .2704 AMOUNT AND METHOD OF PAYMENTS FOR SEVERANCE

(a) The salary used to determine severance salary continuation is the last annual salary in effect upon separation unless the employee was promoted within the previous 12 months. If the employee was promoted within the last 12 months, the salary used to calculate severance salary continuation is the annual salary prior to the promotion plus any across-the-board legislative salary increases.

(b) Severance salary continuation shall be based on total State service as defined in 25 NCAC 01D .0114 and supplemented by an age adjustment factor as follows:

(1) Amount of Severance Salary Continuation:

<u>Years of Service</u>	<u>Payment</u>
<u>Less than 1 year</u>	<u>2 weeks</u>
<u>1 but less than 2 years</u>	<u>1 month</u>
<u>2 but less than 5 years</u>	<u>1 month</u>
<u>5 but less than 10 years</u>	<u>2 months</u>
<u>10 but less than 20 years</u>	<u>3 months</u>
<u>20 or more years</u>	<u>4 months</u>

(2) An employee qualifies for the age adjustment factor at 40 years of age. To compute the amount of the adjustment, 2.5 percent of the annual base salary shall be added for each full year over 39 years of age; however, the total age adjustment factor payment shall be limited by the service payment and cannot exceed the total service payments;

(c) Severance salary continuation shall be paid on a pay period basis.

(d) Any period covered by severance salary continuation shall not be credited as a period of State service.

(f) If an employee dies while receiving severance salary continuation, the balance of the severance salary continuation shall be made to the deceased employee's death benefit beneficiary as designated with the Teachers' and State Employees' Retirement System in a lump sum payment.

History Note: Authority G.S. 126-4(10); 143-27.2;

Eff.