

FISCAL NOTE**OFFICE OF STATE HUMAN RESOURCES**

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RULES: 25 NCAC 01H .0801 - PROMOTIONAL PRIORITY
CONSIDERATION FOR CURRENT EMPLOYEES -
Amend
25 NCAC 01H .0802 RELATIONSHIP TO OTHER EMPLOYMENT
PRIORITY CONSIDERATIONS - Amend
25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION IN FORCE
PRIORITY CONSIDERATION - Amend
(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: Changes in the rules are required to match the new definition of promotion for career banded salary administration policy, which was approved by the State Human Resources Commission at the December 2014 meeting. The change in the salary administration policy was in response to requests received from agencies and universities to reconsider how promotions were defined due to concerns that the previous definition did not accurately reflect true promotional opportunities.

During the legislative salary freeze that was in place from 2009 through 2013, agencies and universities could not award salary adjustments except in cases of promotion or reallocation to higher level duties and responsibilities. The salary freeze created some recruitment problems for some classifications in the career banded system that were perceived by employees and management to be higher level duties and responsibilities but did not qualify for an increase under the legislative salary freeze as a result of how promotions were defined in the career banded system. Prior to the legislative freeze, this was not a problem because the career banding salary administration system allowed salary increases to be awarded on any type of employee transfer, whether it was defined as a promotion or reassignment. When the salary freeze was lifted, agencies asked OSHR to fix the issue with the definition of promotion in order to avoid future recruitment problems in the case of another legislative salary freeze.

The standard definition for promotion is the act of transferring an individual to a position with higher job duties, grade, rank, or salary range which typically results in an increased pay rate.

The career banded salary administration policy previously defined promotion by comparison of journey market rates of the old and new position when moving from a banded position to another banded position.

The following is an example of the market rates which are used to determine salary and define promotion for career banded positions:

	Contributing Rate	Journey Market Rate	Advanced Rate
Engineer	53,728	64,273	87,685
Engineering Supervisor	72,077	82,738	90,912

An employee transferring from an Engineering Supervisor (Contributing) to an Engineer (Advanced) was previously defined by policy and the current rule as a reassignment since the employee was transferring to different banded class with a lower journey market rate. However, the Advanced Engineer position is generally considered to have higher level job duties and rank than a Contributing Engineer Supervisor. The move from a Contributing Engineer Supervisor to an Advanced Engineer would now be defined as a promotion under the new definition since the employee is transferring from an Engineering Supervisor contributing market rate of \$72,077 to a higher Engineer advanced market rate of \$87,685.

In the same example, an employee transferring from an Engineer Advanced (market rate of \$87,685) to an Engineer Supervisor Journey (market rate of \$82,738) was previously considered a promotion but is now considered a reassignment since the employee is moving to a lower market rate.

Prior to the policy change, it was very difficult to explain to an employee why a transfer from an Engineer Supervisor (Contributing) to an Engineer (Advanced) was not a promotion when the market rate was higher and when that job transfer would have been considered a promotion under the graded classification system prior to reclassification to the banded classification system.

25 NCAC 01H .0801 – The amendment from journey market rate to the actual market rate for defining promotional opportunities would have a positive impact on state employees as the number of opportunities would increase by more accurately defining what is actually perceived as a promotion by managers and supervisors.

Since promotion priority is only afforded when there is an outside applicant in the pool who has substantially equivalent qualifications when compared to the current State employee, the number of employees impacted by this change in definition of promotion for priority employment purposes is low. Additionally, this mostly affects positions requiring highly specialized skills, therefore the number of occurrences is likely to be small. Since OSHR does not track that information, estimating how many individuals would be impacted is difficult.

There would also be a benefit to agencies as the change would assist them with their recruiting efforts. A higher number of qualified employees would now apply for positions that would not be correctly identified as promotions; therefore, agencies would have a larger applicant pool of qualified State employees. This benefit was identified by agencies petitioning OSHR for this rule change.

No additional resources or personnel are needed to implement this change. Impact of this change would be notification and training of HR staff and hiring managers to ensure the correct application of the rule. OSHR already trains HR staff on recruitment and applicant screening topics, and the agency does not expect any additional staff training hours to be required for this change. Also, training on this topic would not displace other topics in any significant way.

In addition, the amendment to add “justifiable determination” to the definition of “substantially equal qualifications” is just clarifying that an employer must be able to justify decision related to qualifications when qualifications appear to be substantially equal. This is just for added clarification and does not have any impact.

25 NCAC 01H .0802 – This rule is recommended for repeal because it is not necessary. Paragraph (a) duplicates rule 25 NCAC 01H .0801(d), which covers the definition of outside applicants. In addition, the title of this rule is “Relationship to Other Employment Priority Considerations”, which also makes the rule unnecessary since G.S. 126-7.1 which provides the relationship of RIF priority to all other employment priorities. Paragraph (b) is focusing on EEO requirements which is not necessary in this rule as we have federal EEO laws and Article 6 of G.S. 126 which outlines responsibilities for EEO in all employment program areas.

25 NCAC 01H .0902 - The amendment from journey market rate to the actual market rate for defining reemployment opportunities would have a positive impact by more accurately defining what is actually perceived as same level, lower level, and higher level reemployment opportunities by hiring managers/supervisors and RIF employees. Since RIF priority is only afforded when there is another applicant in the pool who has substantially equivalent qualifications when compared to the RIF employee, and since these types of situation would mostly be limited to jobs requiring specialized knowledge and skills, the number of employees impacted by this change in definition of promotion for priority reemployment purposes is low.

The net impact of this rule on an employees as it would depend on the characteristics of each vacant position and the applicant pool for it. Additional, OSHR has no data to estimate how many times this situation would occur. Agencies are not required to rank applicants, and qualifications is just one selection criterion in a set that includes references and interview performance. While hiring managers are responsible for documenting their decision based on qualifications and other selection criteria, data is not tracked in a way that would capture if there was a candidate with substantially equivalent qualifications in the applicant pool.

No additional resources or personnel are need to implement this change. The impact of this change would be notification and training of HR staff and hiring managers to ensure the correct

application of the rule. As mentioned above, this training topic would be included in the standard HR training, and the agency does not expect it to create any meaningful additional costs.

APPENDIX

25 NCAC 01H .0801 is proposed for amendment as follows:

SECTION .0800 - PROMOTIONAL PRIORITY

25 NCAC 01H .0801 PROMOTIONAL PRIORITY CONSIDERATION FOR CURRENT EMPLOYEES

- (a) Promotional priority consideration shall be provided when a career State employee, as defined in G.S. 126-1.1, applies for a position that is a higher salary grade (salary grade equivalency) or has a higher ~~statewide journey~~ market rate and the eligible employee is in competition with outside applicants.
- (b) If it is determined that an eligible employee and an outside applicant have "substantially equal qualifications," then the eligible employee ~~must~~ shall receive the job offer over an outside applicant.
- (c) "Substantially equal qualifications" occur when the employer cannot make a reasonable or justifiable determination that the job-related qualifications held by one applicant are significantly better suited for the position than the job-related qualifications held by another applicant.
- (d) For purposes of this Rule, an outside applicant is any applicant who is not a member of the State government workforce as defined in 25 NCAC 01H .0631(c).

History Note: Authority G.S. 126-1A; 126-4; 126-7.1;
Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on March 28, 1988;
ARRC Objection January 21, 1988;
Curative Eff. November 1, 1988;
Amended Eff. March 1, 1994;
Recodified from 25 NCAC 01H .0625 Eff. December 29, 2003;
Amended Eff. February 1, 2007.

25 NCAC 01H .0802 is proposed to be repealed as follows:

25 NCAC 01H .0802 RELATIONSHIP TO OTHER EMPLOYMENT PRIORITY CONSIDERATIONS

~~(a) Eligible exempt employees with priority consideration and employees with reduction in force priority status are not considered outside applicants for the purpose of promotional priority.~~

~~(b) Providing equal employment opportunity requires that hiring authorities act affirmatively in minimizing or eliminating underrepresentations of women, minorities and persons with disabilities throughout all levels of the State's workforce. Therefore, when promotional opportunities exist in occupational categories where there is an established underrepresentation of minorities, women, and persons with disabilities, and the selection decision will be made from among applicants in the existing State workforce, hiring authorities shall consider and support these equal employment opportunity needs. Affirmative recruitment efforts shall be taken, both internally and externally, to optimize the presence of the most qualified persons from the underrepresented categories in the applicant pool.~~

History Note: Authority G.S. 126-4; 126-7.1; 126-16;

*Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on March 28, 1988;
Eff. March 1, 1988;*

Amended Eff. June 1, 1992;

Recodified from 25 NCAC 01H .0626 Eff. December 29, 2003;

Amended Eff. February 1, 2007.

25 NCAC 01H.0902 is proposed for amendment as follows:

**25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION IN FORCE PRIORITY
CONSIDERATION**

Upon written notification of imminent separation through reduction in force (RIF), a career state employee shall receive priority consideration for positions at an equal or lower salary grade (or salary grade equivalency) for a period of 12 months pursuant to G.S. 126-7.1, unless the priority has been satisfied in accordance with this section.

The following conditions apply:

- (1) For employees receiving notification of imminent separation from trainee or flat rate positions, the salary grade for which priority is to be afforded shall be determined as follows: For employees in flat rate positions, the salary grade shall be the grade that has as its maximum a rate nearest to the flat rate salary of the eligible employee. For eligible employees in trainee status, the salary grade shall be the salary grade of the full class;
- (2) For employees receiving notification of imminent separation through reduction in force while actively possessing priority consideration from a previous reduction in force shall retain the initial priority for the remainder of the 12-month priority period. A new priority consideration period shall then begin at the salary grade (or salary grade equivalency), or salary rate-of the position held at the most recent notification of separation and shall expire 12 months from the most recent notification date;
- (3) If after receiving formal notice of imminent reduction in force, an employee retires or applies for retirement prior to the separation date, an employee shall have no right to priority consideration;
- (4) Employees notified of separation from permanent full-time positions shall have priority consideration ~~to~~ for permanent full-time and permanent part-time positions. Employees notified of separation from permanent part-time positions shall have priority consideration for-permanent part-time positions only;
- (5) Employees who have priority consideration at the time of application for a vacant position, and who apply during the designated agency recruitment period, shall be continued as priority applicants until the selection process is complete;
- (6) If an employee with priority consideration applies for a position but declines an interview or offer of the position, the employee loses priority if the position is at a salary grade (or salary grade equivalency), market rate or salary rate equal to or greater than that held at the time of notification;
- (7) If an employee with priority consideration is placed in another position prior to the separation due to reduction in force, the employee does not lose priority if the position is at a lower salary grade (or salary grade equivalency), market rate or salary rate less than that held at the time of notification and if the position is at the same appointment status;
- (8) An employee with priority consideration may accept a temporary position at any level and retain priority consideration;

- (9) When priority has been granted for a lower salary grade (or salary grade equivalency) or lower market rate and lower salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) or higher market rate up to and including that held at the time of the notification of separation;
- (10) An employee with priority consideration may accept employment outside State government or in a State position not subject to the State Human Resources Act and retain the priority consideration through the 12-month priority period;
- (11) Priority consideration for an eligible employee is terminated when:
- (a) an employee accepts a permanent or time-limited position with the State at the same salary rate or higher rate than the salary rate at the time of notification of separation; or
 - (b) an employee accepts a permanent or time-limited position with the State equal to or greater than the employee's salary grade (or salary grade equivalency) of the full-time or part-time position held at the time of notification, in accord with subparagraph (4) above;
 - ~~(c)~~ an employee accepts a career banded position at the same or higher competency level in the same banded classification as held at the time of notification;
 - ~~(c)~~ an employee accepts a career banded position in a different banded classification with the same or higher ~~journey~~ market rate than that held at the time of notification;
 - ~~(d)~~ an employee has received 12 months priority consideration;
 - ~~(e)~~ an employee applies for retirement or retires from State employment
- (12) Priority consideration for employees notified of or separated through reduction in force shall not include priority to any exempt positions;
- (13) When an employee with priority consideration accepts a position at a lower salary rate or lower employee's salary grade (or salary grade equivalency) and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; and
- (14) An employee with priority consideration shall serve a new probationary period when there is a break in service, as defined in 25 NCAC 01D .0114.

*History Note: Authority G.S. 126-4(6),(10); G.S. 126-7.1;
 Eff. March 1, 1987;
 Amended Eff. December 1, 1995; April 1, 1993; June 1, 1992; January 1, 1990;
 Recodified from 25 NCAC 01D .0511 Eff. December 29, 2003;
 Amended Eff. February 1, 2007;
 Temporary Amendment Eff. May 23, 2014;
 Amended Eff. April 1, 2015*