

## TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to amend the rule cited as 25 NCAC 01C .1007.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://oshr.nc.gov/about-oshr/state-hr-commission/proposed-rulemaking>

**Proposed Effective Date:** July 1, 2023

**Public Hearing:**

**Date:** March 2, 2023

**Time:** 1:00-2:00 p.m.

**Location:** STATEOP\_MEETME\_150 919-662-4657

**Reason for Proposed Action:** *Subdivision (a)(3) of the Rule allows separation in a situation where, following a work-related injury, an employee is unable to return to all of a position's essential duties due to a medical condition or the vagueness of a medical prognosis. The current Rule specifically mentions separation in this situation when an employee is on workers' compensation leave of absence. The revised Rule would specify that separation in this situation also applies when an employee is working with temporary or permanent work restrictions due to a work-related injury.*

*The rule describes in detail when an employee may be separated when unable to perform their position's essential duties listed in the job description or designated work schedule and the employee and agency are unable to reach agreement on a return to work arrangement that meets the needs of the agency and employee's condition in either of the following situations:*

- 1. Due to medical condition or vagueness of medical prognosis;*
- 2. Due to court order, loss of required credentials, loss of other required certification, or other extenuating circumstances; or*
- 3. Due to work-related injury if employee has reached maximum medical improvement and agency is unable to accommodate the employee's permanent work restrictions related to such injury or 12 months after the date of the employee's work-related injury.*

**Comments may be submitted to:** Blake Thomas, 116 West Jones Street, Raleigh, NC 27699-1331; phone (984) 236-0822; email [Blake.Thomas@nc.gov](mailto:Blake.Thomas@nc.gov)

**Comment period ends:** April 17, 2023

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact ( $\geq$  \$1,000,000)
- Approved by OSBM
- No fiscal note required

### CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

#### SUBCHAPTER 01C – PERSONNEL ADMINISTRATION

#### SECTION .1000 - SEPARATION

#### 25 NCAC 01C .1007 SEPARATION

(a) An employee may be separated when:

- (1) the employee remains unavailable for work after all applicable leave credits and leave benefits have been exhausted and agency management does not grant leave without pay, as defined in 25 NCAC 01E .1101, if the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's condition;
- (2) notwithstanding any unexhausted applicable leave credits and leave benefits, the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a court order, due to a loss of required credentials, due to a loss of other required certification, or due to other extenuating

circumstances that ~~renders~~ render the employee unable to perform the position's essential duties as set forth in the employee's job description or designated work schedule, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's situation; or notwithstanding any unexhausted applicable leave credits and leave benefits, when an employee is on workers' compensation leave of absence, or when an employee is working with temporary or permanent work restrictions due to a work-related injury, and the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition, a separation may occur on the earliest of the following dates:

- (A) after the employee has reached maximum medical improvement for the work related injury for which the employee is on workers' compensation leave of absence and the agency is unable to accommodate the employee's permanent work restrictions related to such injury; or
- (B) 12 months after the date of the employee's work related injury.

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

(c) If the agency and employee are unable to agree on terms of continued employment or the employee does not respond to the ~~Pre Separation~~ Pre-Separation letter, the employing agency shall send the employee written notice in a Letter of Separation. The letter shall be sent no earlier than 20 calendar days after the ~~Pre-Separation~~ Pre-Separation letter is sent to the employee. The Letter of Separation shall state the actual date of separation, specific reasons for the ~~separation~~ separation, and set forth the employee's right of appeal. Such a separation shall not be considered a disciplinary dismissal as described in 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 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. 126-35. Rather, the agency's burden shall only be to prove that the employee was unavailable. ~~unavailable, that efforts were undertaken to avoid separation, and why the efforts were unsuccessful.~~

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

*History Note: Authority G.S. 126-4(7a); 126-34.02; 126-35;  
Eff. November 1, 1989;  
Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003;  
Amended Eff. April 1, 2015; January 1, 2007; October 1, 2004;  
Readopted Eff. April 1, ~~2016~~ 2016;  
Amended Eff. July 1, 2023.*