



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME: 39

ISSUE: 12

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
- Notice without a scheduled hearing
- Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 14. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: [State Human Resources Commission](#)

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

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

ADOPTION:

AMENDMENT: [25 NCAC 01O .0113](#)

REPEAL:

READOPTION with substantive changes:

READOPTION without substantive changes:

REPEAL through READOPTION:

4. Proposed effective date: [04/01/2025](#)

5. Is a public hearing planned? **Yes**

If yes:

Date	Time	Location
12/31/2024	10:00a	https://ncgov.webex.com/ncgov/j.php?MTID=mad0c84ecd58c19995915866d3d7bb94f

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s):

The proposed change would align the retention period with OSHR practice in maintaining annual performance evaluations. It would also align the retention period with the Court of Appeals' holding in *Locklear v. NC Department of Public Safety*, No. NCCOA 22-890 (N.C. App., June 6, 2023) (unpublished). The court suggested that the agency should have considered the "performance reviews for the previous ten years of Petitioner's work history with the [employer]." Page 14 of opinion, 223 NC App. LEXIS 321, *17. The Court of Appeals remarked that neither it or the North Carolina Supreme Court "have stipulated that a consideration of a partial history is sufficient to meet this factor for a proper finding of just cause." Page 15 of opinion, Id.

8. 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. If the Rules Review Commission receives written and signed objections 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 email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: Denise Holton Mazza
Address: 333 Fayetteville St
Raleigh, NC 27603
Phone (optional): 984-236-0823
Fax (optional):
EMail (optional) denise.mazza@nc.gov

10. Comment Period Ends: 02/14/2025

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

No fiscal note required

12. Rule-making Coordinator:

Name: Blake Thomas
984-236-0822
blake.thomas@nc.gov

Agency contact, if any:

Name: Denise Holton Mazza
Phone: 984-236-0823
Email: denise.mazza@nc.gov

13. The Agency formally proposed the text of this rule(s) on

Date: 11/13/2024

1 25 NCAC 01O .0113 is proposed for amendment as follows:
2

3 **25 NCAC 01O .0113 CONFIDENTIALITY AND RECORDS RETENTION**

4 (a) Performance evaluations shall be confidential documents under G.S. 126-22.

5 (b) To promote communication and coordination during calibration sessions, agency management may make some
6 version of performance plans visible internally to management; however, any information shared during calibration
7 sessions shall be treated as confidential and shall not be shared outside of the calibration session.

8 (c) A breach of confidentiality shall be considered personal misconduct and may result in disciplinary action up to
9 and including dismissal as defined in 25 NCAC 01J .0604.

10 (d) Annual performance evaluations and supporting documentation shall be retained for ~~three years, and maintained~~
11 ~~according to Article 7 of G.S. 126, the length of the employee's employment with the State and an additional three~~
12 (3) years.

13 (e) Hiring supervisors and managers shall be able to inspect and examine performance management documents of
14 final job candidates who are current or former State employees during the hiring process.

15 History Note: Authority G.S. 126-4; 126-24;

16 Eff. ~~April 1, 2016; 2016;~~ _____, 2025.